GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION

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REGULAR MEETING
1153rd MEETING SESSION (11th of 2003)

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Monday

October 20, 2003

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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 at 441 4th Street, N.W., Washington, D.C. 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

ALBERTO BASTIDA	Secretary
SHARON SCHELLIN	Office of Zoning

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Deputy Director,
JOEL LAWSON	Office of Planning
STEPHEN MORDFIN	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, ESQ.

A-G-E-N-D-A

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

1:29 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the monthly meeting of the Zoning Commission of the District of Columbia for October 20, 2003. My name is Carol Mitten and joining me this afternoon are Vice Chairman Anthony Hood and Commissioners Peter May and John Parsons.

And we invite all of you to take your jackets off and be comfortable because one of our Commissioners forgot their jacket and we don't want them to stand out. So feel free to take your jackets off.

Mr. Bastida, are there any preliminary matters?

MR. BASTIDA: Staff has no preliminary matters, Madam Chairman. Thank you.

CHAIRPERSON MITTEN: All right. Thank you.

Copies of the agenda for our meeting today are in the bin near the door and I would just remind those present that we don't take testimony from anyone in the audience unless they're invited to come forward by the Commission.

I think since we have some lengthy items

on our agenda for today, I'll ask the Office of Planning to allow us to move their status report to the end of the agenda. And one other change would be that under proposed action, the first item, Zoning Commission Case Nr. 03-09, which is the text amendment regarding Section 217 will not be on our agenda for today.

So then the first item is the consent calendar item, Case 03-31/01-09C, which is a minor modification application for Station Place.

Mr. Bastida, did you want to introduce that?

MR. BASTIDA: Yes, Madam Chairman. The staff has provided all the necessary required documents for the Commission to make a decision and the staff requests that the Commission take an action.

CHAIRPERSON MITTEN: Thank you. And we have no submissions of any objections from the parties in the case. And we have the proposal to substitute sculptures and planters for the water features that had been included in the Station Place development.

Mr. Parsons?

COMMISSIONER PARSONS: I will move that

we approve this application for a minor modification request. I've learned a long time ago that you never get any objection to public art until it's erected and that will certainly occur, I'm sure, because that's the way life is. But, relying on the Commission of Fine Arts who has clear jurisdiction over these matters, I think we ought to move forward.

CHAIRPERSON MITTEN: Thank you. I'll second. Any discussion?

VICE CHAIR HOOD: Madam Chair, I guess they still are asking for the option. There still may be a chance that they may do the water features too, I believe, right? The way I anticipate it. They're just asking for the option.

CHAIRPERSON MITTEN: I thought it was that they were clearly substituting them.

VICE CHAIR HOOD: They're clearly substituting?

CHAIRPERSON MITTEN: Yes.

VICE CHAIR HOOD: Okay. Unfortunately, we think.

CHAIRPERSON MITTEN: Anyone else have a different understanding? I think it's a substitution as opposed to an alternative. All

those in favor, please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER PARSONS: Aye.

CHAIRPERSON MITTEN: Those opposed, please, say no.

Mrs. Schellin?

MS. SCHELLIN: The staff would record the vote 4 to 0 to 1 to approve the minor modification in Case Nr. 03-31, Commissioner Parsons moving, Commissioner Mitten seconding and Commissioners Hood and May in favor. Commissioner Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. The first matter under hearing action is Case Nr. 03-28 and this is a request by the Department of Public Works for a planned unit development to allow the expansion of a solid waste facility on Bates Road.

And I'll turn to Ms. McCarthy for a summary.

MS. McCARTHY: Thank you, Madam Chair. This project is a major priority of the District of Columbia and we are really pleased to be able to move it forward because it represents a major improvement in the environmental quality and quality

of life in that neighborhood, the ability to modernize that facility and make it really state of the art and reduce the adverse impacts that it has been having up until this point.

And I'll ask Mr. Mordfin to present the details of what is being requested.

MR. MORDFIN: Good afternoon, Madam Chair, members of the Commission. I'm Stephen Mordfin with the Office of Planning.

The applicant, which is the D.C. Department of Public Works, has applied for a consolidated planned unit development and related map amendment to assign the M district to a portion of the Fort Totten solid waste transfer station. The subject property is split zoned between the M district, including the Fort Totten Overlay District and the R5A district, on which a majority of the site is located. A solid waste transfer station is not permitted within the R5A district, either as a matter of right or by special exception, however the use is permitted by special exception within the M district. And the purpose of this application is so that the existing facility can be modernized.

Due to the public nature of the facility, no amenities are proposed as a part of the

application. The Office of Planning believes that the proposed PUD and related map amendment are not inconsistent with the comprehensive plan and will allow for the modernization of the facility and the Office of Planning recommends that the Zoning Commission set down for public hearing the proposed PUD and related map amendment.

CHAIRPERSON MITTEN: Thank you, Mr. Mordfin. Any questions for Ms. McCarthy or Mr. Mr. Mordfin?

VICE CHAIR HOOD: I just had a few issues about the circulation plan and this is just to be advised and if it's set down for a hearing.

When you look at the Exhibit 4, the scale is, I guess, to the -- get my orientation correct, the scale is to the west and where the private haulers and the collection vehicles enter is to the east. Now, I'm trying to figure out how that's going to work. I mean, the vehicles have to be weighed first before they even unload. So we're going to have them coming in, making a left, going all the way to the west to unload the trash, going back to the east to go into the facility. So I would hope that the applicant would revisit that or maybe I'm -- no, I know what I'm looking at, so I'm

not even going to say maybe I don't understand the circulation plan because I do. So that's one of the things we need to look at.

Also, the entrance to the employee/visitor parking lot. It needs to be clarified because it looks like it's an exit. That means they would have to go through the collection vehicle and private haulers entrance also. If anyone knows the existing conditions, and if this is a PUD, it should be an improvement and from this Commissioner's standpoint, I'm going to be looking for.

Another thing is in the Office of Planning's report, you mentioned the site will be designed to accommodate periodic citizen drop offs of household, hazardous waste, recyclables and bulk solid waste items. I know they do that now, but I hope that we would be a little more specific because the word that confuses me or gives me pause is "periodic."

Okay. I guess everything else, if it's set down, I will wait for the hearing. I just wanted to put that major issue about the circulation because the way it's going now is exactly what I see here in the circulation plan and that is not

working. So being a PUD, it should be an amenity, or it should be much better than the way it is being done now. Thank you, Madam Chair.

CHAIRPERSON MITTEN: And we'll be happy to work with the applicant on that.

Mr. Parsons?

COMMISSIONER PARSONS: The largest abutting owner is the National Park Service. All the green trees you see in the photographs are part of Fort Totten. For some reason the applicant felt I guess that this was under the jurisdiction of the District of Columbia Department of Parks and Recreation because that's where they sent the materials for notice. So the Park Service is not yet noticed. So I just urge the applicant to be working with the Park Service, not with the Department of Recreation. I guess that's all the comments I have.

CHAIRPERSON MITTEN: Thank you. Yes, Mr. Hood?

VICE CHAIR HOOD: Also, Madam Chair, I mentioned on the east side where the private haulers and those who will be entering into the facility, I'm hoping that to the left of there where all that debris, and I understand we're taking all the debris

in under our cover and I'm hoping all this that's been sitting out there for years is something that the applicant is going to deal with and I guess that's why they're moving into the 21st Century. So this down at the bottom, I hope will be -- okay. Yes. Yes, okay.

COMMISSIONER MAY: It's still showing up. I mean, that pile of construction debris that's down at the bottom of the hill that I think Commissioner Hood is referring to is still shown on the plan. It's just construction and demolition debris. So it's not clear what the plan is to do with that.

VICE CHAIR HOOD: I sure hope it's under cover, so I'm sure the applicant is hearing our concerns.

CHAIRPERSON MITTEN: Thank you. Mr. May, did you have anything else?

COMMISSIONER MAY: No.

CHAIRPERSON MITTEN: My question is just, in both the application and in the Office of Planning report the request is to be rezoned to M. But is that within the Fort Totten Overlay District, or not? And if not, why not?

MR. MORDFIN: Yes, it is.

CHAIRPERSON MITTEN: Okay. So we would have to have the application amended then to reflect that.

MR. MORDFIN: Okay. To reflect the Fort Totten.

CHAIRPERSON MITTEN: All right. We have a recommendation from the Office of Planning to set down Case Nr. 03-28 and we will I guess just accept that the intent was to, and certainly the intent of my motion is that the planned unit development include a related map amendment to assign the FT/M district to the portion of the land to be rezoned.

VICE CHAIR HOOD: Second.

CHAIRPERSON MITTEN: Any further discussion? All those in favor, please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER PARSONS: Aye.

CHAIRPERSON MITTEN: Those opposed, please, say no.

Mrs. Schellin?

MS. SCHELLIN: The staff would record the vote 4 to 0 to 1 to set down Case Nr. 03-28, Commissioner Mitten moving. Commissioner Hood

seconding. Commissioners May and Parsons in favor. Commissioner Hannaham not present, not voting.

And this will be a contested case?

CHAIRPERSON MITTEN: Yes. Thank you.

MS. SCHELLIN: Thank you.

CHAIRPERSON MITTEN: Next for hearing action is Zoning Commission Case. Nr. 03-22. And this is a request to rezone property at 1333 M Street, S.E. from M to R5B.

And I'll turn to the Office of Planning, Ms. McCarthy, for a summary.

COMMISSIONER PARSONS: Before we do that, Madam Chair, the National Park Service has a planning process ongoing for the Anacostia Waterfront and one of the suggested boundary adjustments is to place this property and others within the boundary of the park and acquire them for park purposes, so I think it would be in the best interest to the Commission and the Park Service if I recuse myself.

CHAIRPERSON MITTEN: All right. Thank you. Don't go too far away.

All right. Now we'll ask for the summary from Ms. McCarthy.

And let the record reflect that Mr.

Parsons is departing the room temporarily.

MR. LAWSON: Madam Chair, members of the Commission, my name is Joel Lawson. I'm a development review planner with the D.C. Office of Planning.

This application is to amend the zoning map to rezone square 1048S2 in Ward 6 from M to R5B. The small roughly triangular site is bound by M Street S.E. to the north, the right of way for Virginia Avenue S.E. to the south and the right of way for 14th Street S.E. to the east and a small federal reservation to the west. The Anacostia River is to the south with a number of small marinas and boating clubs. To the west is the Maritime Plaza development and the Washington Navy Yard. The site is within the Anacostia Waterfront initiative area, as well as being on the eastern edge of the near southeast target area plan. IT's currently somewhat isolated, but on the edge of a rapidly developing and changing area.

The property is designated on the generalized land use map as production and technical employment. This designation reflects the current fuel storage use or former fuel storage use of the site, but not current planning thought and policy

regarding appropriate uses for this section of the waterfront. The AWI in the near southeast plans both envision a mixture of uses emphasizing ones that better relate to the vision of an active publicly accessible waterfront recreation area than the current use designation. The housing, urban design, land use and Ward 6 elements of the comprehensive plan also include objectives and policies which would support alternative uses on the site.

The applicant has proposed R5B zoning to permit the construction of a town home development. OP has proposed a higher density zone district CR. This would provide additional desired flexibility for additional development and would be more consistent with the generalized land use map and the AWI objectives. The applicant had indicated support for this alternative zone designation.

Just very briefly I should also note that there's a typo in the OP report. The site is located in ANC 6B, not ANC 6D. And that concludes my testimony. And OP is available for questions. Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Lawson. Any questions for Mr. Lawson? Mr. May?

COMMISSIONER MAY: I guess the one question I have is this development seems to be not just slightly, but highly isolated and the consideration of this particular application also seems to be isolated and I'm wondering what consideration you had given, I mean obviously you've given consideration to other zone designations, but in terms of the broader planning context, the relationship to the waterfront, the relationship to other development and potential development in the area and other vehicles for accomplishing the development on the site, I mean, what sort of things have you given consideration to already and are there large open issues for you because it's not very comforting to me to look at it in this narrow fashion.

MS. McCARTHY: Obviously as part of the Anacostia Waterfront Initiative we are trying to look at that entire area, but when we looked at the newest plan that had been done as part of AWI it was basically looking at it more with the thought in mind of memorial and institutional uses. And so it seemed that without something that we could definitively go by, we were comfortable on that particular site in looking at the CR and the

applicant was in agreement with us that he would be happy to do higher density if in a later stage of the project it appeared that there was a market for more than that, but his initial discussions with lenders were that that was not feasible at this point in time. And because right now it's just basically an abandoned industrial area, we had an applicant that was interested in going forward and we though that having a town house development on there was infinitely preferable to its present state. So that was some of your thinking.

COMMISSIONER MAY: Thanks.

COMMISSIONER HOOD: Madam Chair, I'm very concerned about this because while I applaud the effort and intent, and I'm going with what was asked for by the applicant, R5B right in the M zone. I think that jump starting is a good trend to try to do, but I would like to see what's going to happen with those M zones because as you know right now we're having problems in the city now with things that happened that are permitted in CM1, CM2 and CM3, which is like right across the street from these residential homes and people are really heavily impacted.

And since I've been on this Commission,

that's been something that's been going back and forth. And I think here going to R5B we're creating, and I'm not sure if the CR is the answer, but we're creating some of those same instances that come down here in front of us previously.

While I applaud the applicant for jump starting that area, maybe we need to revisit this so we don't have some of those same instances in which we sit down here many nights, Madam Chair, and deal with it. So that's kind of the area I'm coming from. Thank you.

CHAIRPERSON MITTEN: Thank you. I share your concern, Mr. Hood, because there are some additional parcels of land that are not owned by Washington Gas, but that would be north of M Street between the southeast/southwest freeway that would remain zoned M.

And let me ask the Office of Planning, I'm reluctant to go forward with this isolated proposal because I have a concern on a number of levels, not the least of which is the fact that the R5B is very difficult to support in light of the generalized land use map designation and I think this would border on, if not be spot zoning, if we deal with this parcel in isolation. How quickly

could the Office of Planning come forward to us with a more comprehensive look at that triangular piece of the study area for the southeast neighborhood that we seem to have not been able to focus on through the other zoning cases that we've had because it's -- and I'm speaking of the property that's east of 12th Street, south of the freeway and then north of Water Street?

MS. McCARTHY: I think we could probably have something for set down by December.

CHAIRPERSON MITTEN: All right.

MS. McCARTHY: And I should add, something that Mr. Hood said reminded me, the Commission has said to us many times in the past on the issue of M zoning that they would like the Office of Planning to look at the future demand for industrial land and the other kinds of services that take place on M and CM zoned land and wanting to be responsive to that, we've had that study in your budget for I think at least two years, maybe three years. Each time it ended up getting cut in budget cuts, but I'm pleased to be able to tell you that we have actually, if it's not out on the street right now, it will be very shortly in RFP to have an economic consultant with an background in industrial

uses look at that issue and I don't know if -- I don't think the full study would be available by the set down, but certainly by the time we would have the public hearing, we'd be able to get additional input from that to enlighten our look at PTE sections on the comp plan in general and appropriate uses for waterfront industrial land.

CHAIRPERSON MITTEN: Thank you. I think that would be very helpful.

Let me just ask, Mr. May, if you're inclined towards the general consensus because if we were to deny this we'd have to ask the applicant and his representative to come forward. So I want to get the consensus before we take a vote.

COMMISSIONER MAY: You mean whether I'm inclined to go forward to set this down at this time?

CHAIRPERSON MITTEN: I think the consensus that Mr. Hood and I have is that we're reluctant to set this down.

COMMISSIONER MAY: Yes.

CHAIRPERSON MITTEN: And that we would rather that there be this more comprehensive look.

COMMISSIONER MAY: Yes, absolutely. We'd very much rather see the comprehensive look. I

hate to lose any potential momentum that comes with this, so I would like it to be addressed as quickly as possible, but by the same token, we don't want to sort of step into this not doing the right thing for that area because it's sort of a unique spot and would need to be addressed carefully and I'd hate to think, you know, 20 years from now we made the wrong move at this moment.

CHAIRPERSON MITTEN: Right.

COMMISSIONER MAY: And I would also frankly like to commend what I see so far in terms of the design for the town houses because we've seen a lot of different town houses, or versions of town houses, permutations of them, and this one I think makes better use of a difficult site and still manages to capture the sort of things that I think we should be seeing in them now, not necessarily in terms of the details of the architecture, which I think need a fair amount of work, but the overall concept plan for them I think is good. But, this is really just a map amendment case at this moment anyway.

CHAIRPERSON MITTEN: Right.

COMMISSIONER MAY: So the design is not as critical. But I had to mention that while I was

here.

CHAIRPERSON MITTEN: That's fine. Okay. Then I'll ask Mr. Green and Mr. Cohen to come forward since you've heard the consensus and if you'd like to attempt to persuade us.

MR. GREEN: Good afternoon, Madam Chair and members of the Commission. My name is Fred Green. Do you need my address?

CHAIRPERSON MITTEN: Sure.

MR. GREEN: Okay. Address is 1230 31st Street, N.W., Washington, D.C.

Madam Chairperson, we thought we had recommended the use that was consistent with the Anacostia Waterfront Initiative. We worked extremely hard with the Office of Planning and I'm not quite sure as to what we're doing. If you're asking us to wait until the OP study is complete --

(Public announcement system signal sounded.)

MR. GREEN: I didn't do that.

(Public announcement message given.)

CHAIRPERSON MITTEN: And I guess what we're saying is that we are still convinced that this is the appropriate use. This is the proper use for this site and consistent with the Anacostia

Waterfront Initiative.

Now the question is how do we go forward to make this happen?

CHAIRPERSON MITTEN: Yes.

MR. GREEN: I would obviously rather that you approved this, set it down today and if we need to not schedule the hearing until such time as the Office of Planning complete it's report, I think we're prepared to work with you on that.

But to outright throw it out of the door and say this is clearly not consistent or inappropriate, or not consistent with the direction in which the Anacostia Waterfront Initiative is going, I just don't think that would be fair in this case.

We ask for housing. We ask for the R5B. The Office of Planning recommended the CR, which they feel and we agree that it's probably more appropriate with the Anacostia Waterfront Initiative and more appropriate with the planning goals. I thought the Office of Planning did a pretty good report in terms of demonstrating how this request is consistent with the conference plan and I just don't think again that we should throw it out. So those are my, you know, comments.

CHAIRPERSON MITTEN: Okay.

MR. GREEN: And I'm also asking that we come up with an with an alterative to just outright turning it down.

CHAIRPERSON MITTEN: Right. And we have alternatives like that available.

MR. GREEN: Well, I'm asking you to exercise that today.

CHAIRPERSON MITTEN: Okay.

MR. GREEN: You see what I'm saying? I want to be extremely clear here.

CHAIRPERSON MITTEN: Okay. I think we're clear.

MR. GREEN: I mean, I could see if this was an office building or something like that. This is residential.

CHAIRPERSON MITTEN: Right.

MR. GREEN: And it's right there on the waterfront. And these are ugly looking tanks, if you haven't looked at them and we're trying to do the right thing here.

CHAIRPERSON MITTEN: Okay. And I think you've heard -- Mr. Cohen, did you want to add something?

MR. COHEN: I would, if you don't mind.

MR. GREEN: Sure. Push the button.

MR. COHEN: My name is Ronald Cohen. What I'd like to also indicate is that this is a very unique site in many ways, not only from its physical shape, but also its use as a tank forum where there's some questionable materials which precludes the real density to be developed here because of the level that we are forbidden to go down below of actually 11 feet before we start hitting certain areas or certain contaminated areas.

So this was really very, very -- it was designed in a way to meet all of the various elements, and quite honestly, in an area like this which is on the tail end of an area which we know eventually is going to happen obviously greater density would create a greater massing, but for the fact that there's many, many limitations that would even allow anywhere near why we have basically given up almost 150 feet of FAR because we just know it just can't happen there because of all these various constraints that we're confronted with.

We think that the design, which I thank you very much, Mr. May, we put a lot of thought into it because we know that we have a marketing job ahead of us and we think that we can do that. We

can pull it off. We can anchor this area. We can open it to the public, which there's a lot of open space getting down to the waterfront when it is ultimately developed and we would love the opportunity to be able to even parallel track certain efforts if the Board, you know, is so inclined. We don't mind doing that. We do not want to lose the momentum, if it's at all possible, and I recognize that you all, you know, have a process ahead of you, but we're also very cognizant of trying to create a use for an area and juggling the economy at the same time. And there's just a lot of factors that go along and we don't expect to come here and try to blind side you. And if there's a study that has to be done, so be it. Let it be done. We have no problem. But I'd like to keep the track moving, if that's at all possible. Thank you.

CHAIRPERSON MITTEN: Okay. Thank you. And I think, I mean, you've heard a couple things. You've heard support for what you're trying to do, that it is consistent with the AWI. And what we're trying to do is create actually a better environment for what you're proposing. So, you know, I think we all want to work together.

What I would like to propose is that we

just postpone action on this until the Office of Planning comes back to us in December and maybe make a commitment to you that if, just to give the Office of Planning some extra incentive, that if they're not able to get back to us in December, then we will take action on your proposal at that time in December. So, it'll help give them an incentive to get their work done.

Does that sound fair? Because as you said, even if we set it down, we're not going to move forward with a hearing on this before the Office of Planning has moved forward on the, you know, more inclusive study. So I think that gives everybody something to work towards.

Mr. Green?

MR. GREEN: Well, then I guess yes. The answer is yes. Let me just remind you of one thing. The site in front of this is a mixed-used development, the Washington Gas site. It is my understanding.

CHAIRPERSON MITTEN: And when you say "mixed use," what do you mean?

MR. GREEN: Well, I think there's a hotel component.

CHAIRPERSON MITTEN: Yes.

MR. GREEN: There's an office component and there's above ground parking right there on the water. And all we're doing is rounding out the mixed use part, which is residential. So, I guess my point, it is already begun to change and we don't think when you tell us residential is not inconsistent with that.

CHAIRPERSON MITTEN: Okay. Thank you.

VICE CHAIR HOOD: Okay. A point of clarification. The site 1048S, what I'm looking at on this map, is surrounded by M zone.

CHAIRPERSON MITTEN: That's true. The Washington Gas property is zoned M and has been developed according to those regulations.

VICE CHAIR HOOD: Right. Now what Mr. Green just cited is actually in the CM1, which is closer to the water, I believe, right?

CHAIRPERSON MITTEN: No, actually what he cited, that 1025E is the Washington Gas property, the triangular piece here.

VICE CHAIR HOOD: Okay. And that's zoned M.

CHAIRPERSON MITTEN: M. Yes.

VICE CHAIR HOOD: Okay. So my point still remains the same. I thought he was telling us

something that I may have missed.

CHAIRPERSON MITTEN: So, okay. Thank you.

My proposal then to my fellow commissioners is that we not take action on this today and that we put it on our December agenda, either on its own or perhaps we'll have an Office of Planning proposal in lieu of this, but that we take it up again, take the subject up again in December.

Do we have a consensus on that?

VICE CHAIR HOOD: Yes, we do. Let me just say one more point, Madam Chair. I really hope that we can come up with something because like I stated earlier this is what I thought also we were trying to do. My only concern is that it's surrounded by M zones and in Ward 5 and that shouldn't go there, but this has created problems in the past and I don't want to be a part of a problem in the future. Thank you.

CHAIRPERSON MITTEN: You're absolutely right, Mr. Hood.

All right. Then we have a consensus on that and we'll see you both again in December.

MR. GREEN: Thank you.

CHAIRPERSON MITTEN: Thank you. Could I

ask someone to go get Mr. Parsons?

All right. Under proposed action, we have our first case is Nr. 03-06, and this is the zoning for the Southeast Federal Center.

Mr. Bastida, did you have anything you wanted to say by way of introduction?

MR. BASTIDA: Not really, Madam Chairman. The only thing is you have been provided with all the documents that have been filed and the staff just recommends that you go through it and discuss it and perhaps take appropriate action.

CHAIRPERSON MITTEN: Thank you. We have a number of draft versions of the overlay and just so that my colleagues are on the same page with me, the draft that we will use for discussion today is the most recent version that was submitted by the office of planning that has a title on it in red ink, "Southeast Federal Center Overlay Draft for Discussion," dated October 20, 2003.

And what I'd like to do is go through a series of issues that have been raised and then if there are any that any of the Commissioners want to add at the end or that occur to you as we go along, we'll just deal with those as they come up. And I think many of these are shown in red ink on the

draft that we'll be using.

First is just a small change in 1800.2 regarding the second sentence. Is there any concern about that proposed language change? All right.

There's an introductory sentence proposed in 1802.1 which just introduces by saying, "The following sub-sections set forth the objectives of the Southeast Federal Center Overlay District."

There's a suggested language change in 1802.2 that says that this will be -- rather than saying "in consideration of the objectives of the Anacostia Waterfront Initiative," that it will be "in recognition of the objectives of the Anacostia Waterfront Initiative."

I'm just going to keep reading, so jump in if you --

There are in 1802, what would be new .6, because of the introduction of 1802.1, that -- let's see --

MR. BERGSTEIN: Madam Chair, it's really a reordering of those clauses.

CHAIRPERSON MITTEN: Right. I'm not sure they got reordered correctly in the draft. I thought the proposal was that the sentence would read "requires suitable ground level retail and

service uses near the Navy Yard Metro station near the Waterfront Park referenced in Section 1802.7 and at other key pedestrian locations along M Street, S.E."

MR. BERGSTEIN: Well, the reference to Waterfront Park should be eliminated for reasons that I explained.

CHAIRPERSON MITTEN: Right. How about just staying with me on where M Street belongs? Or is that just supposed to be a stand-alone -- I see. Stand-alone.

MR. BERGSTEIN: Well, M Street was really supposed to be all the way at the end because, and maybe this didn't really fix it, it still sounds like it's -- oh, well, actually maybe I've been misinterpreting the provision myself.

CHAIRPERSON MITTEN: Yes.

MR. BERGSTEIN: It was unclear what the relevance along M Street was, whether or not it was a separate requirement or a qualifier to something else, which I guess is what it's supposed to be.

CHAIRPERSON MITTEN: Okay. It looks like it's being proposed as a separate requirement.

MR. BERGSTEIN: Yes.

CHAIRPERSON MITTEN: Okay. Everybody

like that?

COMMISSIONER PARSONS: For both ends of the project.

CHAIRPERSON MITTEN: Okay. Fine.

COMMISSIONER PARSONS: I agree with the change to get rid of "Waterfront Park" and use the W0 as a substitution.

CHAIRPERSON MITTEN: I agree with that too, so do we have a consensus about that so I don't have to keep raising that each time it comes up, that we will substitute reference to the SCFC/W0 District as opposed to the Waterfront Park wherever we encounter it? People comfortable with that? Okay.

Then we're at 1803.2, which would delete the introductory clause and begin, "Within the SCFC/CR District" and also remove the reference to "special "exception and just make reference to "approval by the Zoning Commission." And that's another series of changes that have been suggested that we not call our approvals "special exceptions" and that it will be then subject just to the Zoning Commission review standards in 1808 and 1809. Is everyone comfortable with that? Okay.

There was a question about in 1803.2o,

what does "temporary" signify, and I think the proposed language changed to flesh that out is "temporary parking lot or garage for a maximum approval period of five years which may be renewed by the Zoning Commission as a principal use located at or above grade." There's that issue.

But then there's also the issue that I would just bring to your attention that those last two points, the temporary parking lot or garage and then letter P, solid freestanding walls and/or security gates exceeding a height of four feet. Those were introduced in the applicant's draft and that was not part of the public hearing notice. So if anyone has concerns about those being introduced and want to call that out. So any concern about qualifying "temporary" as a five-year period?

VICE CHAIR HOOD: Madam Chair, the only thing, I guess I've seen it other places in the ordinance where it wasn't clear. At least it's clear here now. But the only issue that I have is temporary and this actually could be come permanent. Because all I have to do is come in front of the Zoning Commission every five years six or seven times and that parking lot remains. Is that what we -- I understand that this is all an if.

CHAIRPERSON MITTEN: Right.

VICE CHAIR HOOD: But is that what we're trying to achieve here?

CHAIRPERSON MITTEN: Well, each time they would come before the Commission, the first time and every subsequent time for renewal, they would have to show that they were in compliance with the review standards of 1808. And among the things that would be considered that are outlined in 1808.2 are compatibility with the surrounding area, this would be in 1808.1a, that the use, building or structure will help achieve the objectives for the Southeast Federal Center Overlay District. So, you know, if they came back repeatedly, they would have to show how having a parking lot that was becoming sort of permanent was actually facilitating the objectives of the overlay district.

VICE CHAIR HOOD: Okay.

CHAIRPERSON MITTEN: So, you know, there's a standard that they'll be judged against.

CHAIRPERSON MITTEN: Okay. Thank you.

COMMISSIONER PARSONS: It really doesn't make sense that somebody would invest in a parking garage for five years.

CHAIRPERSON MITTEN: Well, that's true.

I think that would be a question that one could ask at the time, which is how temporary is this.

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: Okay. Anyone have any other issues before we leave 1803.2?

Okay. 1803.4. In the introduction, or in the first paragraph of 1803.4 basically, and this is another change that would carry throughout the draft, which is instead of talking about designated ground floor street-oriented uses, that, by the way in parens, we call preferred uses that we just call them preferred uses for ease of reference. And I think that's helpful myself. Anyone have any concern? Okay.

In 1803.4a there was the suggestion that some additional language describing the historic wall might be helpful and the proposed language would say, "This requirement shall not apply to buildings directly south of the historic wall along M Street S.E. between 4th Street S.E. and the Washington Navy Yard for so long as the wall remains." Anyone have any concerns about that change?

UNIDENTIFIED SPEAKER: No.

CHAIRPERSON MITTEN: All right. Here's

another change then, In 1803.4b, and this comes up periodically, that "ground level' be changed to "ground floor level" because "ground floor" is not defined, but "ground" -- wait. No, "ground floor" is defined, but "ground level" is not. So "ground floor level" would be more definitive.

All right. 1803.4c. The purpose of this, and maybe we just all want to read this because this is a little complicated. The purpose of 1803.4c is that in the CR zone any use that is permitted by special exception and listed in 1803.2 be counted as a preferred use and the two uses that are in the list that may not be counted as a preferred use would be the gas station or a temporary parking lot.

COMMISSIONER PARSONS: Frankly, I find an automobile, truck or motorcycle accessory sales including installation as offensive as a parking lot.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: I wish I'd caught it before because I really don't have any idea why that's in there.

CHAIRPERSON MITTEN: Well, I think that list is taken out of the CR section. In fact, I can

check.

I'm going to ask, Mr. Lawson, if you can help me out with that. Where does the list that's in 1803.2, where does that originate, or where did that originate, if you remember?

MR. LAWSON: Madam Chair, we developed that list using examples from other overlays such as Capitol Gateway and DDD.

CHAIRPERSON MITTEN: Okay.

MR. LAWSON: So we tried to make it consistent with similar kinds of areas and similar kinds of overlays.

CHAIRPERSON MITTEN: Okay. So, since we're talking about uses that would count as preferred uses, I think anything that we wouldn't consider preferred we should put in the list in 1803.4c.

So, Mr. Parsons, are you suggesting that we include automobile, truck or motorcycle accessory sales including installation?

COMMISSIONER PARSONS: Yes, I am.

CHAIRPERSON MITTEN: Okay. Do we have any objection to that?

And I would add, we have "temporary parking lot" and I think we should also have "or

temporary parking garage."

COMMISSIONER PARSONS: Oh, yes. Yes, those wood parking garages, you know, we really need to look at those.

CHAIRPERSON MITTEN: Okay. Anybody else?

MR. BERGSTEIN: Madam Chair, I'd like authority to sort of try to tweak this later on because I don't think it quite says what it means to say.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: I'd like to say that in essence those uses may be used to satisfy the preferred use requirements to both permit it, but they also can be used to satisfy the preferred use requirement, which I think is the heart of this.

CHAIRPERSON MITTEN: While we're on that, Mr. Bergstein, I have no problem with you tweaking. But while you're tweaking, it says in 1803.4c, "In addition to the permitted uses listed in 1807.2 any use listed in 1803.2," and it's clear, but it's maybe difficult, it takes a couple readings, is not everything that's listed in 1803.2 is a use.

MR. BERGSTEIN: That's true.

CHAIRPERSON MITTEN: So I don't know if while you're tweaking that you could possibly clean that up just to make it easier for people to understand, or if that would end up making it more complicated. But I just call that out for your consideration.

All right. Anything else to be added to "C?" All right. " D." I think this is just conforming some language. I don't think there's anything new there. And I think that the same is true of "E." "H" we already dealt with.

1803.5. "The maximum building height in the SCFC/CR District shall not exceed 110 feet unless the site has frontage on any portion of New Jersey Avenue, S.E.," and it goes on from there, "as opposed to has frontage on all or any portion of New Jersey Avenue." That sounds like a sensible change.

UNIDENTIFIED SPEAKER: Yes.

CHAIRPERSON MITTEN: 1803.6. I think this is really just clarifying the parameters of the height, removing the reference to special exception and adding a standard for review for the height at the end there about considering the relationship to the Navy Yard. Anybody have any concerns with 1803.6?

All right. 2803.10. It's a long one. I'll let you guys read that.

I think the issue that was being raised is about how would a historic structure affect this and the only thing that I could think of, and the modified language is certainly fine, but it doesn't deal with the situation that I don't if we would even ever have where we would have an addition to a historic structure. But then I guess it would up to HPRB to help guide that choice about whether or not there would be setback. Does anybody have any concerns about the new language?

All right. In 1803.12, there's a suggestion of adding private residential recreation space. I don't have any objection to that, but I would just note that the term "residential recreation space" is the defined term, not "private residential recreation space." I don't think it hurts one way or the other to add "private."

1803.13. Before we deal with the language change, I just want to point out that that is another new section that the applicant put in that was not in the set down language and is different. So in the CR zone, there's 100 percent lot occupancy permitted for the commercial portion

of a building and then if it's a mixed-use building and the residential portion has a 75 percent lot occupancy limitation starting at the plane where that use begins. So this would eliminate that provision that's typical in CR. So I wanted to hear some discussion about that.

COMMISSIONER PARSONS: I'm confused. Do you say this would eliminate it?

CHAIRPERSON MITTEN: Yes, because this would say if the building were a mixed-use building in CR, there's basically no restriction on lot occupancy, whereas now in CR, say you had a six story building and the first three floors were commercial. They could occupy 100 percent lot occupancy. And then you get to the residential floors, they would be limited to 75 percent. It's about creating light and air.

COMMISSIONER PARSONS: Sure.

CHAIRPERSON MITTEN: So I didn't want that to just slide by without some discussion.

COMMISSIONER PARSONS: Well, why should we do that here?

CHAIRPERSON MITTEN: I don't know.

COMMISSIONER PARSONS: There's no rationale given for that.

CHAIRPERSON MITTEN: That's correct.

COMMISSIONER PARSONS: It wasn't part of the hearing. It wasn't part of --

CHAIRPERSON MITTEN: I don't recall discussing it and we did not advertise it.

COMMISSIONER PARSONS: So if we were to do anything, we should conform to the CR provision?

CHAIRPERSON MITTEN: That's what I would recommend.

COMMISSIONER PARSONS: I would agree.

CHAIRPERSON MITTEN: Let me just --

COMMISSIONER PARSONS: Maybe that's what's intended anyway.

CHAIRPERSON MITTEN: I don't think so. Let me just ask Mr. --

COMMISSIONER PARSONS: Well, let's --

CHAIRPERSON MITTEN: Could I ask Mr. Lawson and see what I'd like to say on the subject?

Mr. Lawson? I guess the first point is, is my interpretation as I just described it of 1803.13 correct, that it's different than what's permitted under CR, and what's the Office of Planning's position on that? Why would we make a change?

MR. LAWSON: Yes. It is different from

what's under the CR. I'd have to go back through the record to see if this section was part of the advertised text. I believe it actually may have been, but --

CHAIRPERSON MITTEN: I don't think so. I have the notice of public hearing and it wasn't.

MR. LAWSON: Okay. Thank you, Madam Chair. Office of Planning does support this change. We felt that it would provide additional flexibility for doing mixed-use buildings within the CR zone. It's simply another one of those regulations that we feel adds desired flexibility in the Southeast Federal Center area.

CHAIRPERSON MITTEN: Okay. Thank you. So it's flexibility. It's added for flexibility. And I guess the argument for it is when, and this was one of the concerns that was raised by one of the ANCs as they focused on additional height. They thought that there was additional density being granted as well, sort of that the mass would just increase with the height and I think that some of the flexibility on height is meant to have more interesting looking buildings. And I suppose without adding the constraint for lot occupancy that may as well -- although I think having the

flexibility on height actually makes it easier to conform to the provisions of the underlying CR District.

I think what I would propose to do is to conform -- well actually, just to delete 1803.13 and then if people feel strongly about it, we can get some more specific targeted comments during the publication period, the time that it's out for public comment.

COMMISSIONER PARSONS: Good idea.

CHAIRPERSON MITTEN: How do you --

VICE CHAIR HOOD: Are you saying delete it now and then re-advertise?

CHAIRPERSON MITTEN: I'm saying delete it now and if anybody feels strongly enough about it that during the period of public comment that they can make the argument for inclusion.

VICE CHAIR HOOD: Okay. Why don't we do just the reverse? Leave it in there and then delete it after the period of time?

CHAIRPERSON MITTEN: Because I might forget.

VICE CHAIR HOOD: Well, that's what I'm saying. See, that we take it out of there, you know, because if we leave it in and then we'll get

more comment.

CHAIRPERSON MITTEN: Okay.

VICE CHAIR HOOD: Because if we advertise without it, some people may not be aware of it.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER MAY: I would tend to agree. I'm also worried about remembering it, but --

VICE CHAIR HOOD: Just don't forget.

COMMISSIONER MAY: -- not advertising it is --

CHAIRPERSON MITTEN: All right. But we --

COMMISSIONER MAY: -- isn't exactly inviting comment on it.

CHAIRPERSON MITTEN: Okay. I want everyone to help me remember though that --

COMMISSIONER MAY: Okay.

COMMISSIONER PARSONS: Because if nobody comments, we'll forget. So we ought to put in here "potentially to be deleted."

CHAIRPERSON MITTEN: Could you add something like that, Mr. Bergstein?

MR. BERGSTEIN: Yes. Yes, I will.

CHAIRPERSON MITTEN: Thank you.

MR. BERGSTEIN: But I'll just say that you're interested in comments concerning it.

CHAIRPERSON MITTEN: Thank you. Okay. Then let's focus on the language change that is proposed, which is instead of saying for "mixed-use commercial and residential buildings," it would say for "mixed commercial and residential use buildings." I think there's probably some, you know, third way of wording that that Mr. Bergstein will come with. I think that's fine for the time being, but I think we can do better on that.

1804.1 is just deleting "museum" because I think it's implied that it's permitted under 1804.2a. I think we're just deleting some unnecessary references here.

All right. 1804.3b. "For good cause shown the Commission may authorize interim occupancy of the preferred use space required under 1804.3a by other uses permitted in the SCFC/R5D and R5E Districts for up to a five-year period." Any concerns about that? I think that's more clarifying. Anybody else have anything in 1804.3? I don't think there's anything other than clarifications included.

All right. There's an issue about -- this relates to the new proposed 1804.5 and in 1804.4 we say that the maximum height permitted in the Southeast Federal Center R5E District shall be 110 feet and then in R5D it's 90 feet. The Height Act would permit the greater than 90-foot height if it were a business street. So then that's the purpose of adding 1804.5, which says, "For the purposes of Section 25-11 of this title," which is where the reference is made to the Height Act, "the SCFC/R5D and R5E Districts are considered mixed-use districts."

First of all let me ask, Mr. Bergstein, is that all it takes?

MR. BERGSTEIN: That's all it takes for your regulations to be consistent. Your regulations say, "This is what we consider business streets and if it's in a mixed-use zone, then it's a business street," and this would provide consistency with that governing principle, so yes, that's all it takes.

CHAIRPERSON MITTEN: Let me just ask, is this appropriately here or is this more appropriately an amendment to 25-11?

MR. BERGSTEIN: No, because 25-11 tells

you where business streets are located.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: And it says "located in mixed-use zone." This zone, were it not in an overlay, would not be considered a mixed-use zone. By designating this as a mixed-use zone, it enables a cross reference to make sense. Okay?

CHAIRPERSON MITTEN: Okay. Thank you. Anybody uncomfortable?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Because I don't understand it yet.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Does this then mean that because we call these business streets or mixed-use districts that potentially all the buildings in R5D could go to 110?

CHAIRPERSON MITTEN: Only in the Southeast Federal Center.

COMMISSIONER PARSONS: Oh, I object. I mean we were sold a project that stepped down to the water. What are we doing here?

VICE CHAIR HOOD: Let's go --

COMMISSIONER PARSONS: From 110 to 90.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: And we're just releasing that by this one sentence.

CHAIRPERSON MITTEN: No, let me just pull out something.

COMMISSIONER PARSONS: Thank you. I need help.

COMMISSIONER MAY: Ninety is more or less the last step.

COMMISSIONER PARSONS: Down?

COMMISSIONER MAY: Yes. But it didn't go any lower -- I mean, except for the W0.

COMMISSIONER PARSONS: Yes, the little development area.

COMMISSIONER MAY: Yes.

COMMISSIONER PARSONS: But now we just increased it to 110.

COMMISSIONER MAY: I don't --

CHAIRPERSON MITTEN: Well, you got to use in reference. That would be only for R5E. You have to go back to 1804.4.

COMMISSIONER MAY: Right, R5E.

COMMISSIONER PARSONS: I don't trust you yet.

CHAIRPERSON MITTEN: Okay. Just a

second. Just a second. Mr. Bergstein?

COMMISSIONER PARSONS: It says R5D.

CHAIRPERSON MITTEN: Do we need the reference?

MR. BERGSTEIN: Yes, that's what I was talking to Mr. Lawson about. That since it's on the R5E overlay, part of the overlay that goes to 110 and not the D, it's unnecessary to include R5D in the next section.

CHAIRPERSON MITTEN: It is unnecessary?

MR. BERGSTEIN: It is unnecessary, yes.

CHAIRPERSON MITTEN: Okay. So does that make you feel any better?

COMMISSIONER PARSONS: Well, I'm just greatly relieved.

CHAIRPERSON MITTEN: Okay. Anyone else? Okay. The changes to 1805.1 just provide the parallel to the development area. So that's calling out the development area, calling out the open space area and the changes. Then the development area is defined in 1805.3 and the open space area is defined in 1805.4. The purpose is in 1805.1. The area itself is in 1805.3 and 4. Is everybody comfortable with that?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Let's just look at our map real quick. Okay. Then the new 1805.6 outlines those uses that will be permitted within the open space area and those are the boat launching facility dock, boat rental facility, cruise line operation, security gate, marina, concessions and kiosks of a maximum size, water taxi information and ticket booth and shelter, and other maritime uses normally requiring direct access to the water.

I think I want to add to little (b)(iii) on page 9, "other public maritime uses normally requiring direct access to the water." Because I think that's the spirit of this open space area.

COMMISSIONER PARSONS: I like that.

CHAIRPERSON MITTEN: Anybody else? Okay. Now, as we go through 1805.7 --

COMMISSIONER PARSONS: Well, before we go there --

CHAIRPERSON MITTEN: Yes?

COMMISSIONER PARSONS: I'm feverishly looking for boat houses. I don't see them. That is for non-motorized boating. We've got marina, we've got boat rental, we've got everything but, I don't know why.

CHAIRPERSON MITTEN: Let me see what

was --

COMMISSIONER PARSONS: Mr. Lawson, can you help with that?

MR. LAWSON: Madam Chair, we listed uses which we felt would potentially benefit the public enjoyment of a space like this. We included marina because a marina tends to activate the water's edge and, at least in normal circumstances, certainly does not always involve large structures and the taking away of open space.

We had two concerns. Number one, we were concerned that a boat house could do that and our second concern is that the AWI has also identified areas where we're hoping to specifically encourage boat houses and uses such as that in a new boat house row, which is a little bit further down the river. That was our reasoning.

COMMISSIONER PARSONS: So then what would other maritime uses normally requiring direct access to the water do for us?

MR. LAWSON: We can't really anticipate what that might be.

COMMISSIONER PARSONS: It could be a boat house, couldn't it?

MR. LAWSON: Well, that's a good point.

COMMISSIONER MAY: If it were public.

CHAIRPERSON MITTEN: Yes, if we add "public," then that does give some measure of control and this is -- let me just go back and make sure. Just jumping ahead to 1805.11 is that anything that's going to be built, any structure or building, change to a building, is going to be subject to the standards of 1808 in terms of promoting the -- so, you know, there is review and to the extent that there were an area where we were trying to promote boat house development and this wasn't it, there would be the opportunity for that case to be made.

COMMISSIONER PARSONS: So let me go then to why you inserted the word "public."

CHAIRPERSON MITTEN: Yes. Basically consistent with what Mr. Lawson said, which is, I think, the purpose of this particular area. If we go back to the original name, which was Waterfront Park, that it's for the public. It's not to be construed to be any of these structures are going to be for private use and that's why I thought including "public" would just be an extra emphasis on that.

COMMISSIONER PARSONS: All right.

That's fair.

CHAIRPERSON MITTEN: Okay? And I just want folks to just glance through this. Starting with the newly renumbered 1805.7, we start talking about the combined lot provisions for the SCFC/W0 District. And I just want to make sure that this is now being presented as we intend.

COMMISSIONER PARSONS: But these lists are amusing, you know, and whenever --

CHAIRPERSON MITTEN: You're jumping ahead.

COMMISSIONER PARSONS: I'm sorry. I know they are amusing and we'll get to that. I just want to stay focused on this for a second.

I need to have Mr Bergstein's attention for a moment.

MR. BERGSTEIN: One second.

CHAIRPERSON MITTEN: That's okay. I'm looking now, Mr Bergstein, on page 9 of the draft that we're looking at, and we have some revised sections. And then I think there had been a concern that we were now going to be aggregating density across the entire W0 District and sort of blurring the line between the development area and the open space area. And that seems to now be deleted.

MR. BERGSTEIN: Yes, I actually on my notes had a question of how that type of provision would work with the specific combined lot provision that was in the advertised text. This aggregate text was added by the petitioner as part of his prehearing statement.

CHAIRPERSON MITTEN: Right.

MR. BERGSTEIN: And as I've understood the intent of this, was that it be seen as another type of combined lot process. This one would just involve lots within what's now being called the open space zone. And if that's the case, then we should say that expressly because there's nothing in this that would suggest that there would be a covenant that would bind the owners, etcetera. So if that's the intent, then really there can just be one combined lot provision that would allowed combined lot within the open space are, a combined lot between the open space area and the development area, but not a combined lot between a development area and the open space area. And the original provision was only to allow a combined lot one-way transfer of density.

CHAIRPERSON MITTEN: Right. And that's been preserved.

MR. BERGSTEIN: That's been preserved. But this, just on the face of it, would seem to suggest an aggregate FAR cap which would mean that there wouldn't be a cap per building, but a cap per zone, for the entire zone, and that with each building permit application the applicant would need to demonstrate what the aggregate FAR and the W0 overlay district is and what their proposed project would add to that. That's my understanding that that's not the intent of this, that it was an attempt to allow for some sort of process that within the open space zone property owners could transfer density between lots for the purposes of perhaps combining all the density in one area.

But again, maybe Mr. Lawson can throw some light on what the purpose of the language was. I didn't strike it. I merely had a question of what its intent was and how it would play in with the combined lot provision that was advertised.

CHAIRPERSON MITTEN: Okay. I guess I just want to get to where we are rather than how we got there so we can react to where we are. As I read this now, it's a one-way transfer of density from the open space area to the development area and a combined lot-type transfer. And by striking the

old 1805.8, which has the sort of aggregated density idea, then each lot will be judged in terms of density based on the provisions of the proposed W0 text, which would be a .5 FAR limitation for the combined lot.

MR. BERGSTEIN: Yes.

CHAIRPERSON MITTEN: Is that where we are?

MR. BERGSTEIN: Yes.

CHAIRPERSON MITTEN: Okay. Then I just need a little help here. 1805.9 now says, "Gross floor area within structures in the SCFC/W0 District in existence as of February 14, 2003." Should we just say "do not count towards the density limit" instead of towards the --

MR. BERGSTEIN: I'm not even sure why that provision is any longer necessary if there's not going to be an aggregate FAR for this portion of the overlay zone and it's not necessary to --

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: But maybe Mr. Lawson can comment on that as well.

CHAIRPERSON MITTEN: Mr. Lawson, do you see the benefit of retaining 1805.9 at this point?

MR. LAWSON: Well, I do see the benefit

of retaining 1805.9. The reason that I had proposed striking 1805.8 is that I thought it would be a good discussion about whether or not that clause was necessary at all. The W0 zone establishes an FAR cap of 5.0.

CHAIRPERSON MITTEN: 0.5.

MR. LAWSON: Or sorry, 0.5. This seemed simply redundant with an existing W0 regulation. 1805.9 permits the existing structure. There's only one.

CHAIRPERSON MITTEN: Okay.

MR. LAWSON: The existing structure in the W0 zone to be retained and developed and that the space within that structure would not count towards that overall limit within the W0 zone of 0.5. That was the intent.

CHAIRPERSON MITTEN: Okay. So the main purpose of 1805.9 at this point is just to say that the existing building doesn't count towards any kind of density limitation?

COMMISSIONER PARSONS: Mr. Lawson, do you know if that's an historic structure?

MR. LAWSON: It's not. My understanding is that none of the buildings are being land marked. It's certainly been identified as a structure of

historic merit. It's the first -- I'm going to get this wrong, so I probably shouldn't even describe it. But it's a 1941 concrete structure. It's the first post-tension -- I'm getting it wrong, so I'm going to stop there.

COMMISSIONER PARSONS: That's all right. What would this provision do if it was demolished?

MR. LAWSON: If it was demolished, essentially they would lose the FAR potential that's contained within the structure itself right now.

COMMISSIONER PARSONS: But it would not become part of the development area, or it would?

MR. LAWSON: It would be part of the development area.

COMMISSIONER PARSONS: Okay.

MR. LAWSON: So it could be redeveloped within the development area. But then they would essentially not receive what is in essence a bonus for retaining the building.

COMMISSIONER PARSONS: Okay. Thank you.

CHAIRPERSON MITTEN: That's definitely what we want to give them, right, a bonus for retaining that building?

CHAIRPERSON MITTEN: It's a very pretty color. Pink.

MR. LAWSON: I should just note in this case it's the structure which is important. It's covered with a corrugated tin or something, which nobody anticipates would be retained. But the structure itself underneath all that stuff is of some historic significance.

CHAIRPERSON MITTEN: Thank you. Let me just see if we have a common understanding of what 1805.9 should say, which is basically that the existing building, if retained, does not count towards any density limitation and if it were removed, that it would be subject to the density limitation. Do we have a common understanding of that, fellow commissioners?

Okay. And then we'll ask Mr Bergstein to work on the language for that to make that clear.

MR. BERGSTEIN: Madam Chair, we've been receiving notes up here from the petitioner suggesting that we might need to revisit the Height Act issue with respect to R5D and that it would not be possible for a structure in the R5D overlay zone to be able to obtain a height of 90 feet unless we designated the streets within that zone as business streets. So, I'm raising --

CHAIRPERSON MITTEN: So my little note

was not quite accurate then that the 90 foot is the threshold point at some lower point? What's the maximum height on a residential street then that would be permitted by the Height Act? Or is that like an unfair question to ask you on the fly?

MR. BERGSTEIN: I think at this point I'm not able to answer that.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: That's the dialogue. What we're hearing is that it's 10 feet less for a residential street than for a business street.

Would you like to join us?

MS. McCARTHY: Ten feet less than the width of the street in front and some of these streets petitioner notes are only 85 feet. So that would make it substantially lower than what we had expected and substantially lower clearly than the 90 feet.

So one suggestion was to change, actually Ms. Steingasser suggested that maybe in 1804.5 we could add after "for the purposes of Section 25-11 of this title," and then add, "and for purposes of achieving the height prescribed in 1804.4 the Southeast Federal Center R5D and R5E Districts are considered mixed-use districts." And

we thought that perhaps that was sufficiently prescribed to satisfy Mr. Parson's concerns.

CHAIRPERSON MITTEN: Let's see. Mr. Parsons?

COMMISSIONER PARSONS: In other R5D circumstances in the city is there a possibility they could go higher than 90 feet in a mixed-use district?

MS. McCARTHY: Well, I think I'll defer to Mr Bergstein's legal opinion, but we would be specifying that it's not just R5D and R5E. It's SCFC/R5D and SCFC/R5E.

COMMISSIONER PARSONS: No, I understand.

MR. BERGSTEIN: That would be the limitation, that we're just speaking of this zone, overlay district.

COMMISSIONER PARSONS: All right. All right.

MR. BERGSTEIN: Okay.

CHAIRPERSON MITTEN: Okay. So we will advertise the language as Ms. McCarthy just recited.

Okay. Now we are back to 1807. Here we are just outlining the preferred uses. And Mr. Parsons had a comment about lists.

COMMISSIONER PARSONS: I object to three

things. Animal hospital, blueprinting service, shoe shine parlor and ticket office. In a couple of instances, I don't think those are even uses in this city, but I think a ticket office is generally deadly to retail lively retail and I cannot imagine why an animal hospital or veterinarian is considered to be an amenity in a retail area.

CHAIRPERSON MITTEN: Okay. We have a proposal that would from the list of preferred uses delete letter A, letter N, letter KKK and letter OOO. Anybody have any objection to that?

COMMISSIONER PARSONS: My favorite is UUU. It's on the next page.

CHAIRPERSON MITTEN: Aw, that's so sweet.

COMMISSIONER MAY: What's the objection to the ticket office? What kind of tickets?

COMMISSIONER PARSONS: These are airlines. They used to be along K Street, proliferating K Street.

COMMISSIONER MAY: Right.

COMMISSIONER PARSONS: And what happens of course at 5:00 -- their only purpose is to serve those in the office buildings. Now whether they still exist or not, I don't know. I know they were

absolutely deadly to the retail aspects of -- I mean, they didn't even stay open after office hours because that was their only function. So why should they be preferred is my point.

COMMISSIONER MAY: I guess I was wondering whether the definition of "ticket office" extended to other types of tickets that are sold in a storefront.

COMMISSIONER PARSONS: Well, you may be right. I mean, if this was half-priced theater tickets, I suppose I'd have a different opinion.

COMMISSIONER MAY: Exactly. That's what I was thinking.

COMMISSIONER PARSONS: So maybe I'm acting too quickly here. But that's covered under UUU. I don't know what that means, but --

COMMISSIONER MAY: Yes, except for that one, I think it's -- I don't there are a lot of strictly shoe shine parlors that exist, but --

COMMISSIONER PARSONS: Or blueprint.

COMMISSIONER MAY: Well, and blueprints are pretty much a thing of the past.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Well, I think ticket offices pretty much are too.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Except for, as you say, perhaps like a half-price ticket the day of or something.

VICE CHAIR HOOD: I'm not sure if we want to do away with ticket office and my comments will go along with Mr. May.

COMMISSIONER PARSONS: All right. All right. All right. Come on. We got to get on with the afternoon.

VICE CHAIR HOOD: Well, let me just say this. I do have an issue with "I' and I want to know why we designated bank and financial institutions provided the use is not located on the intersection of two streets. I just wanted to know why was that picked. Maybe I missed it. Maybe I wasn't here.

CHAIRPERSON MITTEN: Mr. May, do you want to take a shot at that?

COMMISSIONER MAY: No, I was curious about that too. We like banks, but not when they're on the corner?

COMMISSIONER PARSONS: Well, that's something we decided years ago.

VICE CHAIR HOOD: Is it a security

issue?

COMMISSIONER PARSONS: Same reason. That's when banks closed at 3:00. And they were deadly. They were just the absolute thing to put on an intersection, on a corner. So we fixed it. So the staff has merely repeated that fixing.

VICE CHAIR HOOD: But now they close at 6:00 on Fridays.

COMMISSIONER PARSONS: Anyway.

CHAIRPERSON MITTEN: Well, what would you like?

COMMISSIONER PARSONS: They don't add much to the retail on weekends. And the trouble with doing this --

COMMISSIONER MAY: There's got to be an ATM somewhere.

COMMISSIONER PARSONS: The trouble with doing this is we could spend the rest of the afternoon.

CHAIRPERSON MITTEN: Yes, we could.

VICE CHAIR HOOD: We got plenty of time.

COMMISSIONER PARSONS: Maybe it's another case we could hold in the future.

VICE CHAIR HOOD: We have plenty of time.

COMMISSIONER MAY: Let's move on.

CHAIRPERSON MITTEN: We always have final action, so let's leave it as it is for now.

COMMISSIONER PARSONS: Ah, yes.

COMMISSIONER MAY: I'm just thinking of the future legacy of those bank buildings that were on the corner that eventually become clothing retailers and what not because they're really nice buildings.

COMMISSIONER PARSONS: Yes.

COMMISSIONER MAY: Oh, well.

CHAIRPERSON MITTEN: Okay. So we're going to go along with everything that Mr. Parsons suggested except ticket office, and we're leaving that in.

VICE CHAIR HOOD: And we'll revisit everything else in final.

CHAIRPERSON MITTEN: I look forward to that.

Okay. And here now we're in 1808, just getting into the review standards. There's nothing here that I think is new.

COMMISSIONER PARSONS: I move approval as we have amended it this afternoon.

VICE CHAIR HOOD: Second.

CHAIRPERSON MITTEN: Did I --

COMMISSIONER PARSONS: Do you want to say something else?

CHAIRPERSON MITTEN: Yes. Okay. Well, we have a motion and a second. So now we'll have some discussion.

I wanted to ask, Mr Bergstein, we had a lot of back and forth in the hearing and then we had additional submissions on the -- I'll just right at the moment make reference to the attachment to the petitioner's September 22, 2003 letter, which is called "Proposed Streets and Zoning Areas." And how does this all get incorporated? How do we use this proposed streets and zoning areas? What impact does this have given that, you know, we're doing a text? There's the text and then there's the map. But this is not our traditional map. So how does that get blended in?

MR. BERGSTEIN: Well, there will have to be meets and bounds which I though were attached to the prehearing submission for each of the zones.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: And those meets and bounds would indicate the boundaries of the various districts. The proposed streets really aren't

relevant except as a point of context for you. But ultimately the streets would be added through the process of amending the highway plan, but that's something that council will do.

CHAIRPERSON MITTEN: I'm just going to need your help because I don't remember precisely. The meets and bounds description though sort of defines the entire area, does it not? It doesn't -- for instance, I think the intention is that the parcels which are in yellow are really what we're zoning and there was some discussion back and forth about the streets and whether the boundary lines would extend to the middle of the streets or not and how is the meets and bounds description to be used? It's going to include the area to be proposed for streets, or not?

MR. BERGSTEIN: I'm hearing a yes. But, I hope I'm understanding your question. The meets and bounds as I seem them on attachments for each of the proposed zones themselves set forth the boundaries. The zoning commission could always suggest that when the streets are added to the highway plan that they be added so that the center of the street reflects the boundary of the zone. But that's something that ultimately gets decided

later on. Am I misunderstanding your question?

In other words, you can't compel the location of the proposed streets which haven't yet been added to the highway plan.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: You could state your preference. You created zone boundaries and you can state your preference that when the streets are created that the boundaries of the zones be consistent with the middle of the street. But that may not happen and then it would be up to you to adjust your meets and bounds when the streets are created so that that occurs. But you can't guarantee that.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: I mean, you can't guarantee that there will be streets at all.

CHAIRPERSON MITTEN: Right. Well, I guess my concern is that there are still some issues with where the zoning boundary lines would be. So that's why I didn't want to just move forward without having discussed that. And, you know, I think the main concern is there's a pretty dramatic change in the line between the our R5E zone and the R5D zone on the eastern portion of the site, and I

don't know what street that's potentially going to be. I think maybe it's supposed to be Water Street. So if you're tracing the line and you're going past the existing building and you then you jog around, I mean, that's a funny little traffic configuration to be creating. And I understand why the lines are where they are, but it causes a problem in the future. So we need to talk about what we want to do about that.

COMMISSIONER PARSONS: What we want to do about the fact that the existing buildings penetrate the street space?

CHAIRPERSON MITTEN: Well, first of all there's no street. There's just a potential street.

COMMISSIONER PARSONS: A proposed street.

CHAIRPERSON MITTEN: Proposed street. And I'm less worried about the little blip around the existing building. I'm more concerned about this building that is indicated as a 2.48 acre parcel where the street jogs around the northern perimeter of it. Imagine you're driving on that street and somebody's coming down 4th Street and what that traffic control is going to look like. So I don't think that's a normal street configuration

that we would be wanting to set up the zoning to support a configuration like that. So that's why I'm raising it and I think was a concern that the Office of Planning had raised.

COMMISSIONER PARSONS: It's like the one in the Navy Yard, "Beware of the guy on the left," sign. There's one just like that in the Navy Yard.

CHAIRPERSON MITTEN: Oh, there is?

COMMISSIONER PARSONS: Doesn't mean it should be done.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: I understand.

COMMISSIONER MAY: I don't think we want to be considering our street grid in comparison to the Navy Yard and the way that works.

COMMISSIONER PARSONS: No, I'm jesting.

CHAIRPERSON MITTEN: Open to suggestions.

COMMISSIONER PARSONS: Do you mean for us to start moving these proposed streets around this afternoon?

CHAIRPERSON MITTEN: Well --

COMMISSIONER PARSONS: We could do that. We could move the proposed street 21 feet 56 inches north.

CHAIRPERSON MITTEN: Well actually --

COMMISSIONER PARSONS: Existing building and then --

CHAIRPERSON MITTEN: We want to focus on the zoning lines. We don't want to focus on the streets. The streets are there sort of as a guide to something in the future, but what we need to focus on is where the zoning line is going to be.

I think what the Office of Planning had said is, "Recommends that the zoning order clearly state that development potential is based on the yellow parcel -- oh well, there's that too -- based on the yellow parcel areas to ensure that ultimate development potential on the Southeast Federal Center site corresponds to the densities anticipated in the illustrative plan."

So we have two things. One is where the zoning line is going to be. And then the other is, as implied, that, you ,know the Office of Planning would have us state is that this is not all intended to be developed under the zoning categories, that there is the intent that there be streets dedicated and that the ultimate development will bear some relationship to these yellow parcels.

COMMISSIONER PARSONS: Well, the only

way to solve your concern is to reduce the R5D parcel by 80 feet.

CHAIRPERSON MITTEN: Right. That's right. And I think that's what -- I'll just double check with Mr. Lawson. Am I correct that on page 2 that's what you're recommending so that it doesn't jog around the R5D parcel, that it would in essence reduce the size of that parcel in favor of increasing the size of the R5E parcel to the north?

MR. LAWSON: We certainly recommended additional discussion about this. Quite frankly, I see pluses and minuses to both. I should note that the planning process to date has always shown a jog around parcel D. And it is important that parcel D remain of a size that's appropriate for development. DDOT and the Office of Planning had some concerns about the street jogging and how that would lead to,you know, the long term functioning of the street. You know, it's one of those things where there many pluses and many minuses kind of on both sides.

You know, Office of Planning in general has concerns about the exact location of the map along the south edge of R5E though.

CHAIRPERSON MITTEN: And you go so far

as to recommend that we realign Water Street or in essence realign the zoning line so that it's more of a straight line. And I guess at this point what I'm asking is you to be more precise in that would you have the line raised up to its most northerly point where it goes around so that it would be straight across starting on the east side, go straight across from the northern part of the R5D, or would you have us start at the point on the west which is the western boundary of the proposed Water Street and carry that forward, reducing the size of the R5D parcel?

We need a recommendation at this point.

MR. LAWSON: Sure.

CHAIRPERSON MITTEN: Because I'm not getting anything from these guys.

VICE CHAIR HOOD: We got a motion and a second.

MR. LAWSON: I guess my first recommendation is that certainly on the --

CHAIRPERSON MITTEN: There's an unresolved issue.

VICE CHAIR HOOD: Yes.

MR. LAWSON: Certainly my first recommendation would be that certainly on the, I

guess it would be the west side of the site, the proposed street, and I understand that's separate from the zoning boundary line to some extent.

CHAIRPERSON MITTEN: Right.

MR. LAWSON: The proposed street is in the correct location.

CHAIRPERSON MITTEN: Correct.

MR. LAWSON: Again, we have some questions about the zone boundary line would be within that street right of way. But the second part to that question I guess is the street between the R5E and the R5D area. DDOT has recommended that a straight through alignment results in a more functional street alignment. OP doesn't disagree with that. We would have to take a close look at what that does to the R5D parcel in terms of its developability and how that would relate to the overall vision in terms of the development potential that was agreed to for the site.

CHAIRPERSON MITTEN: Okay. Here's what I'm going to propose and you can guys can -- or, Mr. May, you want to make a proposal?

COMMISSIONER MAY: Could I ask a question? The existing building that is right in the middle there, the R -- not the existing building

that's in the development area, but the one directly north of that.

CHAIRPERSON MITTEN: Yes?

COMMISSIONER MAY: Is that a building that is going to stay there in the long term?

MR. LAWSON: That would be up to the developer to determine. Again, it's not a protected building. It is a listed historic building. We would like to see it preserved, but there's no requirement in the RFP or in the zoning that would mandate that that building be retained.

COMMISSIONER MAY: Okay. Because the street, Tingey Street is going right through the north end of it.

MR. LAWSON: I'm sorry. I didn't hear you.

COMMISSIONER MAY: The proposed Tingey Street is going right through the north end of that.

MR. LAWSON: Well, the street right of way is going through the edge of the building. Now again, the street, the paved surface of the street would be somewhere within that.

COMMISSIONER MAY: Right. Okay. I asked that question simply because I mean the other way to address having this would be to work backward

from that point, work down. And then maybe eliminate some of these other jobs in the process because you have that existing building which is not sitting happily on that entire block. I mean, that doesn't do you any good for the right of way of Tingey Street because you already have the other existing building on the parcel to the north that's here with the DOT site.

But I'm just -- your concern on the one hand is making the R5D parcel too small to be developable. But one way to address that would be instead of moving that zoning line further to the south, move the other line further to the north. Because I mean the proposed street as it passes directly north of the W0 zone aligns with N Place across the way, but it doesn't have to because it has that building in between. I know that has implications for the overall development of the site. I'm not sure how much.

I mean, there are other aspects of this too. It's sort of a difficulty not having a real, you know, kind of master plan to go with it because the development of the R5D parcel and the proposed street that kind of rings it there, is that really the best way to treat that property's relationship

to the park as well?

MR. LAWSON: You know, this is certainly raising an awful lot of questions and I think all I can do really is go back to what the intent was, you know. And certainly the intent was to, number one, make sure that there was a waterfront park space of approximately 5.5 acres, that that not be reduced in size. This map does show waterfront park space of approximately 5.5 acres.

And the second thing I guess is to make sure that the parcel areas and the street system that we're establishing at this point has some logic to it. I wouldn't want to preclude the idea that at some point when we see an actual master plan, when we see a development plan for this site that some minor tinkering with this is going to be necessary and hopefully beneficial to the overall plan. I think what we're trying to do here is to kind of establish what the ground rule is, what the basis is that we're expecting the eventual developer to work from. Some additional flexibility may very well be requested and may very well be beneficial at some point in the future. I know that's not really adding much, but I think those are important considerations.

MS. PRINCE: If I could at some point speak on behalf of the General Services Administration?

CHAIRPERSON MITTEN: Sure. Why not?

MS. PRINCE: Allison Prince from Shaw Pittman. These parcel sizes were all heavily discussed and they're in the RFP material.

The R5D parcel size is a critical parcel size to make it a buildable R5D area. Pulling the street straight to the east, and this is a street to nowhere, by the way. I mean, this is a dead-end street. So whether it jogs around or goes straight to the east, I think it's a distinction without a difference. But jogging around, as we propose, maintains that very critical parcel size. The change that's been discussed would enlarge the R5E area, which we do not need, and diminish the R5D area.

And I'll also add that it's really not within the purview of this Commission at this point to think about the functioning of the streets. That's very much a part of the dedication process. DDOT will weigh in heavily at that point. Office of Planning will weigh in heavily. And if it's ultimately determined that that's a problematic

grid, the appropriate bodies within DDOT can review that. But at this point it's absolutely critical for us to maintain the parcel sizes that are part of the RFP.

CHAIRPERSON MITTEN: Okay.Thank you.

COMMISSIONER PARSONS: I agree. And if it gets hard, we'll come back and we rezone it.

CHAIRPERSON MITTEN: Okay. So part of your proposal is that we use the zoning boundary lines that are included in the applicant's proposed streets and zoning areas?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: That we conform to that? Okay.

COMMISSIONER PARSONS: What else have you got?

CHAIRPERSON MITTEN: That's all. I'm not going to say anything else.

All right. Is there any further discussion?

COMMISSIONER MAY: Yes, I wanted to hopefully have a brief discussion of this, but I was particularly interested in the comments that we had received from the Committee of 100 and some of the issues that were raised. I mean, building height

we've touched on just a little bit and the idea of stepping down the buildings toward the waterfront. And there are a couple of other issues in there that I think are worth noting, but at this point not particularly persuasive to me.

But I am concerned about this notion or the question of the retail spaces or the prospect of the retail spaces would essentially all become ABC establishments and that we would be recreating something similar to the Washington Harbor Development. Is that the right one?

CHAIRPERSON MITTEN: Yes.

COMMISSIONER MAY: Yes. Right. Which, you know, is a terrific place to visit on a Friday night, but not a great place to live next to, I would imagine, for that same reason. So I'm just wondering whether that gave pause to any of the other members of the Commission.

CHAIRPERSON MITTEN: I read that. I noted that. I guess one of the things that I think about is that there's going to be an awful lot of opportunity as this particular area gets built out for the Zoning Commission to be weighing in on what is being proposed and I think there would certainly be the opportunity if we felt that there was

becoming an over concentration of any particular kind of use that we would have some opportunity because there's so many occasions that we would be in a review mode. We'd be able to weigh in at that point.

And then also I think of this just in terms of, you know, as we talk about coming back after the street grid is finally conceived, and as we talked about when we were doing the Capitol Gateway Overlay that, you know, this is a big area and we're taking the best first shot that we can and it may come to the point where, you know, we need to refine these as the areas start to build out and that, you know, I don't think that anyone thinks of this as a finished product.

So I think the concern is worth noting and I think it's premature at this point to really try and micro-manage the development now before we see what starts to transpire. That would be my thought. Anybody else? Mr. May?

COMMISSIONER MAY: Okay. Thanks. No, I just wanted your -- at least address it.

CHAIRPERSON MITTEN: Okay. Thank you.

COMMISSIONER MAY: Thanks.

CHAIRPERSON MITTEN: All right. We have

a motion and a second to approve Case Nr. 03-06 consistent with the draft that we reviewed today and the changes that we proposed, as well as the configuration for the zoning categories on the applicant's proposed zoning boundary map. All those in favor, please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER PARSONS: Aye.

CHAIRPERSON MITTEN: Those opposed, please, say no.

Mrs. Schellin?

MS. SCHELLIN: The staff would record the vote 4 to 0 to 1 to approve for proposed action Case Nr. 03-06, Commissioner Parsons moving, Commissioner Hood seconding, Commissioners May and Mitten in favor. Commissioner Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. We're going to take a five-minute recess and we'll be back shortly. Thank you.

(Whereupon, at 3:47 p.m. off the record until 3:54 p.m.)

CHAIRPERSON MITTEN: -- 03-05, which is the PUD for the Department of Transportation

Headquarters Building.

Mr. Bastida, did you want to say anything by way of introduction?

MR. BASTIDA: The staff have provided you all the documentation and has put it in front of you for your consideration. Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

All right. I just wanted to go back to a couple of points that we had raised early on. The first is that we determine a base zone for this parcel and that will affect the degree of relief that's being requested. So we had two proposals. One was CR and one was C3C. The Office of Planning had proposed that the base zone be CR and the applicant had requested that the base zone be C3C.

Then going back even as far as the set down, we had noted that there were a number of areas where mitigation was required as opposed -- well, mitigation required of negative impacts. Among those items that we had called out originally were the close of 3rd Street to traffic, the 50-foot set back required for a "defensible perimeter," the lack of publicly accessible retail spaces within the building and in the event that we use CR as the base

zone and trying to promote a mixed-use environment, this project would be completely commercial and that, depending on where we come out on the base zone, may also be viewed as an negative impact that would need to be mitigated.

I guess I want to start this discussion with a sense of where the Commission is regarding the base zone. When we were doing the Capitol Gateway Overlay case and there was rezoning being contemplated along M Street and we had a request from an applicant, I don't remember the exact square, but it was along the south side of M Street and they were requesting that they be zoned C3C and we decided that the best zone in that case would be CR because we are trying to promote a mixed-use environment. And I think that was the thrust behind the Office of Planning's recommendation for, in this case, you know, in the event that this development did not go forward, that CR would be the appropriate base zone and I guess I would speak in favor of CR as the appropriate base zone. Mr. May?

COMMISSIONER MAY: And I would note that that would be consistent with what we are contemplating for the surrounding area.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER MAY: On both sides of the street. It seems sensible from that point.

CHAIRPERSON MITTEN: Okay. So we have two.

VICE CHAIR HOOD: Madam Chair, remember in that case, while I voted against it at that time, in trying to make sure we're consistent, I would agree with the CR zone recommended by the Office of Planning.

CHAIRPERSON MITTEN: Any thoughts, Mr. Parsons?

COMMISSIONER PARSONS: Four for four.

CHAIRPERSON MITTEN: Okay. So we're dealing with CR as the base zone. So that would then bring into consideration the fourth item that I think would be one that we should think about when we're talking about mitigating factors or adverse impacts that need to be mitigated, which is that this is a completely commercial development in an area that we would otherwise want to see for mixed-use development. I certainly think some of the proposals that the applicant has made go towards mitigating that adverse impact, but I just want to make sure that we view in that light.

Let me go to the first issue then that I

had raised that had given us concern from the very beginning, which is the fact that 3rd Street will not be open to traffic. And I just want to ask a point of clarification from the Office of Planning, if I can.

As a legal matter, is 3rd Street open regardless of how traffic moves right now? Is it considered to be open or is it considered to be closed now?

MR. LAWSON: The 3rd Street right of way was closed some time ago, back in the early 1900s, so it's not an open street.

CHAIRPERSON MITTEN: Okay.

VICE CHAIR HOOD: Madam Chair, I'd like clarification so I know what a opened and closed street is. Obviously I don't know as someone who uses 3rd Street. What do you mean by whether it's closed or open? I'm just trying to understand because --

CHAIRPERSON MITTEN: It means technically it's not on the highway plan.

VICE CHAIR HOOD: But it's still used. People are still using that street.

CHAIRPERSON MITTEN: Well --

MR. LAWSON: There is a paved surface

and cars can go on it. It's gated.

VICE CHAIR HOOD: Okay.

MR. LAWSON: But it's, as Ms. McCarthy stated, it's not on the map.

VICE CHAIR HOOD: Oh, it's not on a map? That's what it means by being closed. Because, you know, right now you show your driver's license you can go on through as it exists right now. To me that's open, but if the legal definition, legal term is closed, then I would accept being closed.

CHAIRPERSON MITTEN: Well, as we find out you proceed at peril of your tires.

VICE CHAIR HOOD: Actually it's not too bad. It isn't.

MR. LAWSON: I'm sorry?

VICE CHAIR HOOD: I'm saying the road was in disrepair, but actually it's not -- I've driven on worse that are open.

CHAIRPERSON MITTEN: Okay. I just wanted to clarify that before we start this discussion.

I think we have an area that we have to sort out, which is we have a recommendation from -- first let me say, we have a submission from the Department of Transportation, DDOT, I'm sorry, the

District Department of Transportation that outlines a study that they commissioned to understand the traffic impacts for the entire area in the vicinity of the DOT headquarters and that came in after the public hearing and there wasn't the opportunity for the Commission to ask questions or for the applicant to cross examine. But the conclusion of the report, one of the conclusions of the report is that there is adverse impact created by the fact that 3rd Street will remain closed and they're recommending that we assess a financial fee or require a financial contribution of $500,000 to $600,000 per year to mitigate that adverse impact. And I think I'd like to start there. So, I'll ask for initial reactions to that, which the applicant is clearly opposed to.

VICE CHAIR HOOD: Madam Chair, in all fairness, unfortunately this was not presented to us earlier, because when I first read it, I looked back and I said, "What's the history? Has this been done before?" I don't believe it's ever been done before. I don't recall and I would have to direct that question to Mr. Parsons.

But that's a substantial amount annually, but then again not being able to ask any

questions on it, I would feel rather uncomfortable in moving forward on this piece. This piece would make me -- I'm very hesitant about moving forward knowing that I have some figures in front of me that are recommended by the authority here in the city of $500,000 to $600,000 annually.

Now I think in all fairness maybe it's possible we can ask for briefs or have a hearing or whatever, but I feel very uncomfortable. And also I want to make sure we're fair to the applicant because $500,000 to $600,000 annually may make people rethink some things. That's my point of view.

CHAIRPERSON MITTEN: Mr. Parsons?

COMMISSIONER PARSONS: Well, a couple of thoughts. One, I share your view, we had no hearing on this. Second, I think it exceeds our jurisdiction. That is for us to impose this kind of penalty, if you will, on the Federal Government for staying in the city and having to close the street for a period of time, and I don't know where that leads. I mean, there are a lot of streets closed in the city at this point and we could do more studies of this kind and send the bill to the Congress for nine dollars per hour. I'm glad to know how much

DOT thinks we're worth, by the way. Nine bucks an hour is interesting. At least while we're in our cars.

But I don't know how we can deal with this. I just think clearly it's a tax. It's something that, as Mr. Hood said, maybe we could have another hearing on the concept, but not hold up this project for it. I mean, it seems to me the city council is the one who should be holding hearings as they close streets, if it's proven to be detrimental, that they somehow deal with this impact. But not to throw this into the mix here at this point in time. So I would note the report and return it.

CHAIRPERSON MITTEN: Thank you. Mr. May?

COMMISSIONER MAY: Okay. Well, I have highly mixed feelings about the report and the suggestion in the report. I wouldn't go so far as to say that the idea of assessing this kind of a cost is a tax and is therefore outside the realm of what the Commission can do. But then again, it's very hard to believe that a street that is not currently open that would essentially just remain closed with this project that the impact, logically

the impact of that, it's just so hard to imagine that it's going to cause all the failing intersections that the report implies when the road, you know, even when there's development further to the south is only going to go another two blocks. It's hard to -- it's just a common sense reading of it that it just doesn't make sense that there's that much impact associated with the closing.

Now, that's not to say that there's not a significant impact to it. I mean, it's useful to see it this way and see it quantified and I think that it is something that needs to be mitigated as part of the development and I think that the study is useful in that regard and that it does attempt to quantify it in a way that perhaps we've never seen before, but at least it does quantify it. It's useful to see a demonstration of it. It's hard to believe it's as bad as it as, but it's useful to see the demonstration of it.

You know, ultimately I'm not sure what the right solution is. I don't think that we need to have a hearing on the concept of doing this kind of an assessment because I don't think there's a lot of future for it. But I think that having this method of quantifying the cost as an instrument for

coming to terms with what mitigation is necessary, you know, I think it's useful in that regard whether we need to have further discussions of that and further discussions with the public on that. I believe it is something we'd be willing to entertain. I'm not ready to just jump right in and say though that it's going to cost this amount and therefore we should be charging the applicant.

CHAIRPERSON MITTEN: I agree with the concerns that Mr. Hood raised and I generally agree with everything else that's been said.

I think what we need to deal with is to the extent that there are adverse impacts created by this project, and specifically now we're talking about traffic and that's a concern. We have to deal with that because we can't approve a project that has an unacceptable impact on city services and facilities, and traffic would be one of them.

I guess what's missing from this report by DDOT is there is no connection between the adverse impact that they say would result and the mitigation proposed, which is there's no connection between the money that they say should be assessed and a solution, a mitigating solution.

So I mean there are a number of things

that I would like to know further, including why this particular project is unusual in DDOT's mind or else are they taking a new approach relative to other projects where there have been some impacts on traffic that were worsened, but they were not made unacceptable and why is this unacceptable versus some of the other cases that we have had where the background traffic has been worsened as a result of the project. And I'd like to know if in fact they do have some proposal in mind where this money would be used to actually mitigate the negative impacts of this project on traffic, specifically as it related to keeping 3rd Street closed.

So I guess I would be in favor, because I think the applicant probably has questions of DDOT and we certainly have questions of DDOT that we would want to flesh that out in a further, albeit narrow, public hearing, sa Mr. Hood had suggested.

So I don't know if there's -- I think I heard Mr. May being supportive of that. Was that accurate?

COMMISSIONER MAY: Of a further hearing on the subject?

CHAIRPERSON MITTEN: Narrow.

COMMISSIONER MAY: Narrow. I would have

no objection to that. I have no objection to -- there's a lot of information to absorb related to this case and I think that further study of the traffic issue in a hearing could be a benefit so I wouldn't be opposed to that.

CHAIRPERSON MITTEN: Mr. Parsons?

COMMISSIONER PARSONS: I object.

CHAIRPERSON MITTEN: Just maybe turn the mike on, or I'll just note Mr. Parsons says he objects, but I think he's willing to not do that too loudly and go along with the --

COMMISSIONER PARSONS: -- microphone on.

CHAIRPERSON MITTEN: Okay. All right.

Well, what I'd to do then is, so we have that issue, we have the issue of 3rd Street remaining closed, the adverse impacts that the Department of Transportation has identified. We have a proposed mitigation plan that doesn't seem to be connected to the problem and the magnitude of the mitigation plan, the applicant finds objectionable. And I think we would want to have a narrow hearing basically on the submittal and recommendations by DDOT so that we could cross examine, ask further questions and so forth. But I would like to go through the balance of the issues so that if there

were any additional issues, that we could flesh them out at that time or ask for additional submissions at this point.

One of the other issues that we had raised early on was the 50-foot set back required by the Department of Transportation and the basic proposal. This to some extent is related to the lack of publicly accessible retail in the building. So I guess maybe I'll keep those two together because the set back would basically preclude, to some extent, even if they were to include retail, having it be more successful.

So, among the things that have been proposed to mitigate those negative impacts are the landscaped area along M Street that's specifically for the set back. Regarding the lack of retail, we have a proposal to include at least 8,000 square feet of retail space in building 170. We have permanent retail structures at New Jersey and M and 4th and M, seasonal kiosk program along M Street and then the potential at the time that the federal tenancy of the building would end to convert a minimum of 24,000 square feet of space to retail. And then we have the open space for the community including the Southwest Plaza.

So I'd like some discussion on whether or not, first of all, the things that I had just enumerated, does the Commission find those to be elements that are mitigating the negative impacts of the 50-foot set back and lack of retail space in the building, or do we find those to be amenities? Because I think we need to be thinking very clearly in terms of what is a mitigation, what's being proffered to mitigate an adverse impact versus what is a benefit and an amenity to be balanced against the relief being sought. And if you'd like a summary of all of the benefits and amenities that the applicant has proposed, there's a list at finding of fact Nr. 40 on page 9 of their proposed order.

COMMISSIONER PARSONS: I'm a little confused, Madam Chair.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: Because we got a letter this morning, I believe, that somehow changed this to say, "We won't dedicate the million and a half to specific purposes, but rather we will leave it on the table for future decision making. Am I mistaken?

CHAIRPERSON MITTEN: Well, that relates

to a general contribution that had been proffered to us at the public hearing where there was an undefined contribution of $1.5 million towards area wide benefits and that was not defined at the public hearing. That was just a, "Okay. We're going to give you $1.5 million." So that's not what I just articulated.

COMMISSIONER PARSONS: So this letter today didn't do anything to change that? Is that a different subject?

CHAIRPERSON MITTEN: It's a slightly different subject.

COMMISSIONER PARSONS: Okay. Well then, we'll move on.

CHAIRPERSON MITTEN: Well, let me just bring that to closure, which is we had a general proffer of $1.5 million that was not defined about how it would be spent. Then we had a submission by the applicant on the 8th of October that said, "Here's how we're going to spend the $1.5 million." The Office of Planning suggested that they were not in favor of that allocation and then the applicant has since basically said, "Okay. Forget that allocation. We're back to the more abstract proffer of $1.5 million and we'll work with the Deputy Mayor

and Office of Planning to define that better."

And I guess because it's ill-defined at this point, I wasn't focusing on it as a possible -- it could still be in part used to mitigate if we find that these various negative factors haven't been fully mitigated, but I was trying to focus on those things that were clearly meant to address adverse impacts by particularly the security constraints on the project.

COMMISSIONER PARSONS: Well, I have a chart that maybe nobody else has in front of them, it was part of the hearing, but in view of public benefits, project amenities and development centers --

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: -- and they break it down into two categories, public benefits and project amenities on site.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: And off site, or community benefits and amenities. And it would see to me in large part that the on-site benefits and amenities are mitigation.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: Rather than what

we would traditionally call amenities --

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: -- because of the peculiar nature of the project. I mean, this whole setting around building 170 is going to be wonderful and it's on the south side of the building. It's just going to be a wonderful place to be. And to me that is mitigation for the fortress they've got to build, if that's what you meant in stimulating this conversation.

CHAIRPERSON MITTEN: Yes, what I'm trying to get the Commission to focus on is we have this whole pile of things that have been proposed and we need to sort out, okay, all the adverse impacts have to be mitigated.

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: That's point number one. Once we get to that point, then we can start talking about benefits and amenities that go to the balance between the relief being sought and what's being proffered in terms of benefits and amenities. So that's what I was attempting to do.

Now, are you suggesting that we should use this chart and go through and identify point-by-point what's --

COMMISSIONER PARSONS: I think that would be helpful, yes.

CHAIRPERSON MITTEN: Okay. I see everybody has this chart but maybe Mr. May. Do you have this chart with you?

COMMISSIONER PARSONS: (Off microphone.)

CHAIRPERSON MITTEN: Okay. That might be the best thing. I think you can also use the proposed order because most of the things, if not all of the things, are in finding of fact Nr. 40 and pretty much in the same order. There you go. Okay.

Okay. So we're using the exhibit that we were given at the public hearing rather than the proposed order.

COMMISSIONER PARSONS: Okay.

CHAIRPERSON MITTEN: So the first is land contribution of about 90,000 square feet to dedicate various streets. I view that as mitigation.

COMMISSIONER PARSONS: Oh, yes.

CHAIRPERSON MITTEN: Anybody who doesn't, speak up. Okay.

Improvements to New Jersey Avenue and portions of 4th Street and Tingey Street, including design and construction of the roadway. Mitigation.

Adaptive reuse of building 170. Mitigation.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Permanent retail structures at M and New Jersey and M and 4th Streets, and in the Southwest Plaza. Mitigation.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Seasonal kiosk program along M Street. Mitigation.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Ability and commitment to provide additional ground floor retail, a minimum of 24,000 square feet at the end of the federal tenancy. That's mitigation light.

COMMISSIONER PARSONS: Light mitigation?

CHAIRPERSON MITTEN: Yes. I mean it's so far in the future that it doesn't weigh as much.

Okay. Contribution of $1.5 million toward area wide benefits. I think we'll have to just keep that aside for a moment with a question mark.

Then the next one, transportation-themed site animation and activation program and the paren was to be deleted. I view that as mitigation as well.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Okay? Enhance landscape and streetscape materials for approximately 170,000 square feet of open space. What do you think?

COMMISSIONER PARSONS: Well, I'm confused by this because the open space is the Southwest Plaza and the rest are streets.

CHAIRPERSON MITTEN: Let me see if this fleshes it out any further.

COMMISSIONER PARSONS: See, if you go to the next one down, it talks about the Southwest Plaza at 35,000 feet.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: Unless you include the defensive perimeter, so the 170 is what I'm questioning. Where is all of that?

CHAIRPERSON MITTEN: I don't know. Let me ask the Office of Planning if they can help us out with that.

We're trying to define, if you're looking at our chart, it's at the top of page 2. If you're looking on the proposed order, it's finding of fact Nr. 40, letter K, page 12. Can you help us identify the 170,000 square feet of open space?

MR. LAWSON: I can give you my guess.

CHAIRPERSON MITTEN: Okay.

MR. LAWSON: I assume that that includes all the landscaped areas which would include M Street, 3rd, the 3rd Street pedestrian way as well as the Southwest Plaza and probably the New Jersey set back as well. I see the applicant nodding, so I believe that's correct.

CHAIRPERSON MITTEN: Okay. So that's the landscaped areas that they're creating by the set back?

MR. LAWSON: All around the site. That's correct.

CHAIRPERSON MITTEN: Okay. So that would definitely be mitigation then. And then the open space including the Southwest Plaza. That's mitigation. Environmental benefits.

VICE CHAIR HOOD: That's mitigation, Madam Chair.

CHAIRPERSON MITTEN: We think mitigation on environmental benefits?

VICE CHAIR HOOD: Yes, because it's in with Brownsfields and everything else. That's mitigation.

CHAIRPERSON MITTEN: Well, I guess the

benefit is that, or I should say the adverse impact is not being created by the project. It's that the opportunity to clean it up is being created by the project and in fact I think the Federal Government had already invested a significant amount of money in cleaning up the whole Southeast Federal Center.

VICE CHAIR HOOD: What are you saying? You want to change it?

CHAIRPERSON MITTEN: Well, there's a couple things I guess.

VICE CHAIR HOOD: You brought up a good point about the cleaning up of the site, so I'm not going to be hard nosed on that.

CHAIRPERSON MITTEN: Okay. So we'll call that amenities and benefits.

Okay. Then we have community benefits and amenities. Contribution of $2.5 million to the Canal Blocks Park. I could view this one of two ways. One is when I think of the underlying zone and the desire to create a mixed-use area, I can think of the Canal Blocks Park contribution as a mitigation factor because there will be no residential use in this project and this is serving, this contribution is serving to enhance the residential neighborhood to the north and become a

centerpiece. If I don't focus on the mixed-use zoning as much, I can think of this as more a pure amenity, but I leave it to the Commission as to how they view it.

COMMISSIONER PARSONS: Well, I think it's an amenity. I mean, the fact that we want an underlying zone of CR, this is purely a commercial project. I mean, to say that they owe something else to assist and enhance a residential area with a canal park, I'm not with you on that.

CHAIRPERSON MITTEN: Okay. Anybody else? Mr. May?

COMMISSIONER MAY: Yes, I'm inclined to consider this an amenity.

CHAIRPERSON MITTEN: Okay. Contribution of $75,000 toward a comprehensive signage program. I think that's an amenity.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Yes? Yes, I see nodding heads.

For source agreement LSDBE and a memorandum of understanding. Both amenities.

So let's just go back a second and I guess at this point we're embracing three main adverse impacts. One is that related to

transportation and traffic generation. And with the understanding that we'll flesh out the 3rd Street closure in greater detail in a limited public hearing. The 50-foot set back and the lack of retail space in the building.

So then the question is for all these mitigation factors that we listed and all these contributions in that regard, do those sufficiently mitigate the adverse impacts, leaving aside 3rd Street because we'll flesh that out?

COMMISSIONER PARSONS: But you skipped over the contribution of $1.5 million.

CHAIRPERSON MITTEN: Oh, I did skip over. So then I guess that's the point, is how are we going to view the $1.5 million contribution? And maybe we can't flesh that out fully without having the 3rd Street discussion.

COMMISSIONER PARSONS: But it's to me clearly an amenity. I mean, it's $1.5 million contribution not on site.

CHAIRPERSON MITTEN: Yes. Right. Right, right, right, right. Right off site. Right.

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: Okay. So that we consider an amenity. So then, keeping 3rd Street

aside, do all the other things proffered by way of mitigation, are they sufficient to satisfy the other negative impacts that we've identified? And again, keeping 3rd Street aside.

VICE CHAIR HOOD: I just want to go back to the kiosk program along M Street.

CHAIRPERSON MITTEN: Yes.

VICE CHAIR HOOD: It went kind of fast and I was sitting here, I put a question mark by it. I didn't know whether that was an amenity or mitigation. I was kind of torn on that one. So I'm still not sure about the seasonal kiosks because of the security issues. They're still trying to come up with retail. I don't know if that's an amenity. I mean, you know, I'm not going to be hard-nosed about it, but I think that might be more in the frame of an amenity because of the -- well we've heard this whole bit about homeland security and security issues and retail not going to this place and making a sacrifice here in trying to put the kiosks, trying to put something there.

CHAIRPERSON MITTEN: Right. Well, I think that's the point. They're putting it there because they're not putting it in the building. So they're mitigating the adverse impact that they're

creating by not putting retail in the building.

VICE CHAIR HOOD: Okay. All right. Got you. Got you.

CHAIRPERSON MITTEN: That's why I think we said mitigation.

So what's the sense there? Keeping aside 3rd Street, are the proffers related to mitigation sufficient to offset the adverse impacts being created?

COMMISSIONER PARSONS: I'm curious. Do you mean that the 3rd Street discussion is separate from this?

CHAIRPERSON MITTEN: Well, we are going to flesh that out in greater detail in a public hearing.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: So I don't want to pretend that we can decide that.

COMMISSIONER PARSONS: Okay. Well then I think they are.

CHAIRPERSON MITTEN: Okay. Do we have a consensus about that generally?

VICE CHAIR HOOD: I'm trying to remember what the $1.5 million toward area wide benefit was. Was it specific?

CHAIRPERSON MITTEN: Well, it has been specific and now it's general again.

VICE CHAIR HOOD: Now, it's general.

CHAIRPERSON MITTEN: But what's clear is that they're now proffering it for off site. So Mr. Parsons is suggesting -- well, that is going to be an amenity because it's going to be enhancing things off site.

VICE CHAIR HOOD: Off site?

CHAIRPERSON MITTEN: Yes.

VICE CHAIR HOOD: And I know we went through this before in other cases, but is it a certain area it should be done in? I think they requested area at the ANC or this may be another case, but I'm remembering them --

CHAIRPERSON MITTEN: Right.

VICE CHAIR HOOD: -- specifically asking for it in a specific area.

CHAIRPERSON MITTEN: Well, I think --

VICE CHAIR HOOD: ANC to whatever.

COMMISSIONER PARSONS: What they did, as I recall, is they proffered some ideas and the Office of Planning is objecting to those in their report saying for various reasons they don't think they're appropriate. So here we go. I mean, we

made this exception last week with a different ANC to say, "Well, this isn't very complicated. Let these two ANC Commissioners deal with it. Very small ANC. We won't be setting a precedent for this kind of a solution."

So I think we've got to get pinned down what this $1.5 is for and put it in the order rather than -- I think this letter says, "If a non-profit corporation or if a development corporation is established to treat or deal with this area, we'll give it to them." It's too loosey goosey.

CHAIRPERSON MITTEN: Okay.

VICE CHAIR HOOD: And that's my point. I remember last week we had the same issue.

CHAIRPERSON MITTEN: Right.

VICE CHAIR HOOD: And I'd just like to see us be consistent. That might have been an exceptional case, but I just see us going on down the road. Now I would like to still see the surrounding area benefit. You know, of course I'd like to bring it over to my area, but I can't.

CHAIRPERSON MITTEN: You could move down here.

VICE CHAIR HOOD: I won't comment on that.

CHAIRPERSON MITTEN: Okay. Here's what we can do, since we will be --

COMMISSIONER PARSONS: I think that was a good one. All right.

CHAIRPERSON MITTEN: Since we will be having some further discussion, notwithstanding the mechanism that might be desirable for distributing these funds, is that if we could narrow the potential application of the money, that I think would give us some more comfort. Okay. There's that point aside.

All right. So I still haven't gotten the definitive read, but I think what I'm hearing is that the factors, or the contributions made to mitigate adverse impacts are generally sufficient, keeping aside the issue of the closure of the 3rd Street, which we will flesh out further with DDOT.

Do we have a general consensus?

COMMISSIONER MAY: I think so and I'll try to be as definitive as possible.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER MAY: Back when we first started learning of this project and the competing concerns that we had of the program, the size of the building, the set back requirements, the street

closing, all of the issues that are associated with it, I think frankly what they have done to mitigate the negatives associated with this building program overall is I think very successful and I frankly am amazed that it has gone as well as it has, all things considered. Because there were some real tough conflicting interests here and I think it's come a long way from where it started out. So I think it's well mitigated.

CHAIRPERSON MITTEN: I agree. Okay. Then the next question, which I'm going to ask after I speak to Mr Bergstein for one minute. Just hold on.

All right. Then the next question is for all those other proffers that we consider to be amenities, are those amenities, which would be the $1.5 million plus the $2.5 million for the Canal Blocks Park, $75,000 for signage, the first source agreement, LSDBE agreement. Are those sufficient to balance the requested relief and flexibility? And that's outlined on page 3 of this chart that we've been using that we were given by the applicant at the hearing and we have to have a discussion about building height too, but the maximum height of the building and two portions of the building, the issue

about grouping compact parking spaces and less than five and the set back for the roof structure.

COMMISSIONER PARSONS: Yes.

VICE CHAIR HOOD: I think it is, Madam Chair.

CHAIRPERSON MITTEN: Okay. So we're satisfied with the amenities, we're satisfied with the mitigation proffers and the 3rd Street issue is going to be fleshed out in some greater detail. We're agreed about that? Yes?

COMMISSIONER PARSONS: And the million and a half.

CHAIRPERSON MITTEN: Yes, and we're going to have that be more well-defined. Let me just take a moment and have a side bar here.

(Whereupon, off the record to for a side bar discussion.)

CHAIRPERSON MITTEN: The one remaining issue that we need to have some input on from the applicant is, what we're being asked to do is to allow two buildings to be measured from one reference point for purposes of height and that's in part what I think the flexibility that the applicant was referencing. But I think we need a clarification whether this is relief that is

actually being sought or is there some legal basis for us to depart from the normal way in which building height would be measured and, you know, the requirement that the buildings be joined if they're going to be treated as a single building? So I think we could ask for an additional submission on that particular point so we would know specifically whether that was relief that was being sought or there's some other legal interpretation that we're being invited to make.

MR. BERGSTEIN: What I'm looking at is 3025 of the zoning regulations, which allows the Commission to after a hearing in essence reopen the record and have a further hearing on issues designated for the Commission. In that case, the notice of hearing is 14 days to the parties.

CHAIRPERSON MITTEN: Oh, fabulous.

MR. BERGSTEIN: That wasn't my bright idea, I'll confess.

CHAIRPERSON MITTEN: But it's a good idea and we don't care that it wasn't yours.

All right. So that's much better. Thank you. I'm very relieved to hear that. So we can set that date after we're done here, is that correct?

MR. BERGSTEIN: Yes.

CHAIRPERSON MITTEN: Okay. Thank you. Thank you very much, Mr Bergstein.

All right. So if everyone is in agreement then, we will have a narrow further hearing on the subject of the DDOT submission and that would allow us to ask questions, it would allow the applicant to cross examine, it will allow the ANC to cross examine and then we can flesh out exactly the nature of the adverse impact and exactly the nature of how this money would be spent towards mitigating. And then I think we have a general consensus on the balance of the proffers. Is that correct? Are we in agreement about that?

UNIDENTIFIED SPEAKER: Yes.

CHAIRPERSON MITTEN: Okay. So then we will defer taking action on the Case Nr. 03-05 until after the subsequent public hearing.

Anything else I need to do on that, Mr Bergstein or Mr. Bastida, before we move on?

MR. BASTIDA: No, Madam Chairman. I will find a specific date to see if it complies with the Commission and then give it to you.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

Okay. Then we're ready to move to the cases under final action. We're going to have to take something out of order because we're about to lose Mr. Parsons.

If you have just another minute or two.

COMMISSIONER PARSONS: Yes, I do.

CHAIRPERSON MITTEN: We have a piece of correspondence on the GW Wellness Center and this is item B on the agenda, Case Nr. 02-26. And this was a case that Mr. May did not participate in.

COMMISSIONER MAY: So I'll take my leave?

CHAIRPERSON MITTEN: Not for the day. We're not -- okay. Yes, don't go away for the day.

All right. We have a letter from the applicant asking us to proceed to take up the merits of the case which we had denied originally for being out of compliance with the condition 9. And we also have a report that has been submitted by Mr. Slade that came in after the closing of the record. So I guess the first question would be do we want to reopen the record to receive the Slade report, or do we want to strike the Slade report? Because there would be implications if we reopened the record that we would, as we did in the prior case, have a

limited hearing on the issue or allow the parties to respond.

So we need to decide first about how to deal with the Slade report. My suggestion would be that we just strike it and not accept it into the record.

VICE CHAIR HOOD: I'll agree, Madam Chair, we send it back.

COMMISSIONER PARSONS: I agree.

CHAIRPERSON MITTEN: Okay. Then to take it up on the merits, I'm going to need a little update from Mr Bergstein on what the status of the litigation is overall.

And then if you give us a status report and then if you could make a recommendation on whether it's prudent for us to take this up at this time.

MR. BERGSTEIN: Well, the status is is that the District of Columbia Court of Appeals has ruled on the challenged brought by the university, to put it in short form, they invalidated what we've referred to as the interim phase or phase one of the housing requirement, which was the condition that you had found the university not to be in compliance with. They sustained condition 10, which is the

requirement that the university house all of its freshman and sophomores on campus, which was not a condition that you actually addressed at the decision meeting because condition 9 took care of the compliance issue. However, the Court of Appeals stayed condition 10, which it found to be invalid pending the remand.

The District of Columbia has filed a petition for review asking the court in essence to reconsider its decision to stay a provision that it found to be valid and I'm not sure if the university has yet filed its response, but it will take some time, perhaps a matter of weeks, for the Court of Appeals to review that.

My concern is that the reason that a decision couldn't be issued in the first instance here is because the legal landscape changed between the time that the Commission found non-compliance at its decision meeting and when the Court of Appeals issued its stay of that condition. My concern is if you take action on the merits, that may well happen again.

My recommendation is that at this juncture you wait until the Court of Appeals has ruled on the petition for review and issued its

mandate. At that point, it'll be clear whether or not condition 10 is in effect. If it is in effect, then the university would have an opportunity to prove compliance with that and the District has suggested in its brief a means to do that. And if the Court of Appeals continues to maintain the stay on condition 10, then you can move ahead to the merits finding that they are in compliance. So I would wait for that to occur.

CHAIRPERSON MITTEN: Thank you. Is there any objection to that?

COMMISSIONER PARSONS: Seems like good advice.

CHAIRPERSON MITTEN: All right. Then we would wait to have some further action by the Court of Appeals before we take this issue up on the merits.

VICE CHAIR HOOD: Madam Chair, let me just ask a question. Will that conclude everything that's in litigation, or is that just for that particular issue? I guess my question is, are we going to wait until you complete everything? Because it seems like this has been going on for awhile.

MR. BERGSTEIN: I'd like to think that

this is it. In the federal case, the Supreme Court denied certiorari on the federal challenge so the federal case -- well, part of the federal case is over. There is in fact more to the federal case involving equal protection claims, a takings claim, a claim under FERPA, there is a status conference going on. That still may well percolate some more. So that is still going on and it's also possible, I suppose, that the university, if it loses in the District challenge, could try to seek certiorari.

So I'd hate to say it's ever over. I'd like to think we're coming close to the finish line, but with this particular litigation, I'd be wary about making any declarations like that.

VICE CHAIR HOOD: Thank you.

MR. BERGSTEIN: But in terms of what I'm recommending, the only impediment to going forward is that right now there is in fact a stay of both conditions because the court hasn't issued its mandate and there is no other injunction or stay in place. And what we're waiting for is to see whether or not the Court of Appeals will decide to lift the stay with respect to condition 10 since it had found that to be a valid condition. And if it disagrees, continues the stay, then you should move on the

merits and not wait for any further proceedings.

Of course, if it changes its mind, that would be an opportunity to ask the university to demonstrate compliance with condition 10 and if you find compliance you can go ahead and reach the merits.

CHAIRPERSON MITTEN: Thank you, Mr Bergstein.

MR. BERGSTEIN: That's about as clear as I can make that.

CHAIRPERSON MITTEN: Thank you. I'm inclined to take Mr Bergstein's recommendation.

VICE CHAIR HOOD: I am too, Madam Chair.

CHAIRPERSON MITTEN: And, Mr. Parsons?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Yes? All right. Thank you very much.

And thank you, Mr. Parsons, for staying a few minutes past when you thought you'd have to leave. Thank you.

All right. Now we're back to the regular agenda. Final action, Case. Nr. 02-35. If someone would be so kind as to call Mr. May.

Okay. The first case is 02-35, which is the Text Amendment regarding the measurement of

building height. And we have a proposed order. I have some editorial changes, nothing substantive. And the only piece of correspondence I think we got is the NCPC Report during the period for public comment. Is that correct? No? Mr. Bastida's not here?

MS. SCHELLIN: Yes.

CHAIRPERSON MITTEN: Is that correct? Thank you.

VICE CHAIR HOOD: I would move approval, Madam Chair, Zoning Commission Case. 02-35, text amendment to building height.

CHAIRPERSON MITTEN: Second. Any discussion?

COMMISSIONER MAY: No, I don't know if I need to state this for the record, but I don't think I was here when the proposed action was taken, but I've read the record of that discussion and am prepared to vote in the final vote.

CHAIRPERSON MITTEN: That's terrific, because otherwise we wouldn't be able to move on that. So that is great.

All those in favor, please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

CHAIRPERSON MITTEN: Those opposed, please, say no. And I have an absentee vote that Mr. Parsons just gave me in favor. So we actually have his vote in favor too.

Mrs. Schellin?

MS. SCHELLIN: Okay. Staff would record the vote 4 to 0 to 1, Commission Hood moving, Commissioner Mitten seconding, Commissions May and Parsons, by absentee ballot, in favor, Commissioner Hannaham not present, not voting. And this is to approval final action in Case Nr. 02-35.

CHAIRPERSON MITTEN: Thank you. Next is case Nr. 03-25 and this would amend the text to allow the Office of Zoning to adjust the fees for the copy of the zoning map and to actually now offer a color copy of the zoning map. And I would move approval of 03-25.

VICE CHAIR HOOD: Second.

CHAIRPERSON MITTEN: Any discussion? All those in favor, please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

CHAIRPERSON MITTEN: Mr. Parsons votes aye.

Mrs. Schellin?

MS. SCHELLIN: Staff would record the vote 4 to 0 to 1 to approve final action in 03-25, Commissioner Mitten moving, Commission Hood seconding, Commissioner May in favor and Commissioner Parsons in favor by absentee ballot. And Commission Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. Next we have Case Nr. 03-17, which is Bethune Hall at Howard University. This is a further processing case basically to replace an improvement existing building.

VICE CHAIR HOOD: I will move approval, Madam Chair, Zoning Commission Case Nr. 03-17, Howard University New Bethune residential hall.

CHAIRPERSON MITTEN: And I'll second. Any discussion?

COMMISSIONER MAY: Yes, Madam Chair. We did get some additional materials on this. We got the campus plan with some modifications noted in it. And I have to say that while what we got in terms of the modifications of the campus plan did editorially correct some things that needed to be changed to reflect this change of use of the one building, it didn't seem that there was any effort made to

address how this different use fits into the overall plan.

Now, I didn't study the plan in great detail, but it doesn't look like anybody has taken the time to think, "Well, we had been planning on a faculty center. Instead we have this pressing need for new dormitory space and so therefore it changes our vision in this way, or our direction in this way." And, you know, given some of the blanket statements that exist in the plan, I would have thought they would be addressed, such as the fact that, you know, the office of residence life stated that there is no need for additional dormitory space for the foreseeable future. And so now we have that statement in the plan and yet they have a new dorm that they want to build. So I found it lacking in that regard.

Now, is it lacking enough for me to not want to proceed at this point? I wouldn't say that. But, it does make me question how seriously the plan itself is being taken.

The second thing I wanted to note in this particular case is that I really did want to see something that described better what these penthouses look like on the building. And, you

know, we have a drawing that shows the penthouse and shows the compliance with set backs or, you know, how it works in terms of set backs. But it does not address, I think, at all what these things will really look like. And in fact, you know, when you look at some of the other additional drawings that we did receive where there are these models or computer models that are done that show what the building looks like from a variety of different angles and, you know, magically the penthouse isn't there. And I mean these are not insignificant penthouses on a building that's this narrow and it's going to be a very obvious thing. And I really would like to know what it's going to look like.

VICE CHAIR HOOD: If Mr. May has some uncertainty, I don't have any problem taking my motion off the floor.

CHAIRPERSON MITTEN: In lieu of doing what? Asking for some additional --

VICE CHAIR HOOD: Asking for some more information. I will tell you that the reason that I didn't have any problems making the motion was because there were other sites and here they're trying to build dorms and keep students on site.

CHAIRPERSON MITTEN: Right.

VICE CHAIR HOOD: I thought that was the first thing we need to do, is more forward so we don't have some existing problems that go on. And also, when I looked at the -- I think they wanted to use it for a faculty lounge room, or whatever it was. I assume it was a faculty lounge room. And I thought that was so unnecessary and I thought this was a much better use. But now looking at the architectural piece of it, I don't mind withdrawing it because I really didn't look at that too much about the penthouse. Probably wouldn't have even noticed it.

CHAIRPERSON MITTEN: Let me say a couple of things. One is, if I understood yo correctly, at the moment you're not satisfied with what you've seen in terms of the additional submissions as to how the pent houses will look. Is that correct?

COMMISSIONER MAY: Yes, we have nothing that really shows us what it's going to look like. We have, you know, some elevation drawings that are very, very simplistic.

CHAIRPERSON MITTEN: Okay. Then I guess the next thing would be I'm just trying to avoid a situation where we ask for some additional submission, we come back in a month and then you go,

"Oh, now that I see it, it's ugly and I don't want to vote in favor of it." So, you know, I just want to kind of move ahead to doing something that would be more helpful if we did go back to the applicant and I don't think there was really any lack of clarity on your part at the hearing.

COMMISSIONER MAY: Well, you know, the mere prospect that we could come here in a month, look at what they've designed and then I would say, "Well, I don't like it" and then be voting against it, I mean, all the more reason not to go forward today.

CHAIRPERSON MITTEN: Well, no. And I'm not trying to suggest it.

COMMISSIONER MAY: Yes.

CHAIRPERSON MITTEN: I'm just trying to give a maximum amount of direction to the applicant in that, you know, it's not just that we want to see what they're going to look like. It's beyond that. And if they have a certain, you know, appearance or what's it going -- give some guidance in making that request.

COMMISSIONER MAY: Okay. I guess what I'm looking for is more than a demonstration of sort of technical compliance or how this penthouse works

from a strictly technical point of view. We did talk about the possibility of, since this is a building that has taken the roof itself and made it into a feature and, you know, tried to make the very top floor a significant aspect to the building, that they exert the same standard of care for the development of the penthouses and not simply have, you know, some painted corrugated metal up there that you got to mask the air-conditioner, or the elevator penthouses, I think is pretty much all it is.

I guess I want to know that it is going to be designed and that it is going to be something that fits with the architecture. And given what we've seen so far with the architecture of the building overall, I have every confidence that the architects can actually address this successfully.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: It does need to be really designed. It can't just be a big metal box on the top.

CHAIRPERSON MITTEN: Okay. Mr. Hood has withdrawn his motion? Yes?

VICE CHAIR HOOD: Actually, I will.

CHAIRPERSON MITTEN: Will you? Okay.

VICE CHAIR HOOD: Yes, I'll withdraw it.

CHAIRPERSON MITTEN: Okay.

VICE CHAIR HOOD: Didn't really want to, but I will.

VICE CHAIR HOOD: Okay. I think in the long run it'll be in everyone's best interest.

So then we would ask the Office of Planning perhaps to carry the message back to the applicant that in addition to seeing renderings that reflect the appearance of the penthouse as we had asked before, in order for whatever that looks like to be found acceptable to the Commission, the recommendation is that the penthouse actually be designed to be consistent with the balance of the architecture and not merely be a, what would the proper terminology be, an overlooked appendage?

COMMISSIONER MAY: Yes, just a box on top of the roof.

CHAIRPERSON MITTEN: Okay. Is that sufficient guidance, Ms. McCarthy? I see you nodding your head. Okay.

So then we will postpone action on case 03-17 and reopen the record to receive the renderings from the applicant and if necessary if they were to revise those to follow the guidance

offered by Mr. May that that would be all to the good.

COMMISSIONER MAY: I would also note, I don't think that everything that's been rendered needs to be rendered again. I mean, there are four or five views in here that are all, you know, very interesting, but I think they could be pretty selective. I mean, just a couple of different versions of it that allow us to see the building and see the penthouse as it's been designed.

CHAIRPERSON MITTEN: All right. We're getting there.

All right. The next thing to take up is then the first item under correspondence. We have a number of pieces of correspondence relating to Case Nr. 02-32. This is the Performing Arts Center at Georgetown University. I guess we'll just take these in the order that they are on the agenda.

So first we have a motion for reconsideration or clarification of our order from the Citizen's Association of Georgetown. And then we have the applicant's opposition to that motion. So we'll deal with that first.

If you remember, when we took up the Performing Arts Center case, there was actually no

objection for the processing case itself. The issues turned on compliance with a variety of the conditions. And we have a revisiting in this motion of those issues that I thought we had given quite a bit of consideration to regarding compliance, specifically condition 3, condition 9, condition 14 and I guess I would just ask if there is among the argument that's made for reconsideration for those three conditions, and I will leave condition 19 for just a moment, which is a substantial compliance condition, whether there's any concern that any of the commissioners that has merit to give granting the motion for reconsideration.

VICE CHAIR HOOD: If I remember correctly, Madam Chair, and I'm going on memory. I read the submittal. I think we had an issue about, what was it, code of conduct, and whether that was being enforced?

CHAIRPERSON MITTEN: Right. That was --

VICE CHAIR HOOD: And I have a few things here highlighted, but I just can't remember exactly. I'm trying to recall --

CHAIRPERSON MITTEN: It relates to the off-campus housing and the university's ability to revoke the privilege of off-campus housing in the

case where there is student misconduct. And that's condition 3. Condition 9 relates to the type of information being reported to the community on various types of complaints and the way that those complaints are being handled by the university. And then condition 14, which has to do with the enforcement of the, you know, students registering their vehicles.

VICE CHAIR HOOD: Didn't we receive a submittal from the Department of Motor Vehicles?

CHAIRPERSON MITTEN: Yes, we did.

VICE CHAIR HOOD: On the issue?

CHAIRPERSON MITTEN: Yes, we did.

VICE CHAIR HOOD: So I think that issue has been resolved. I forgot exactly what they ruled on that and I remember specifically that they had commented on that to us and I think in their view they thought that they were dealing with it as best as they could. Now I stand to be corrected.

CHAIRPERSON MITTEN: I think that's generally true. I think what's happening is, you know, in some of the conditions on various orders, and this is not an isolated case, there is some disconnect between the expectations of the people who propose conditions and what can actually happen

either legally or what can happen to be in compliance with the language of the condition. So there's clearly dissatisfaction on the part of some members of the community that the spirit of this condition isn't being met, but what the piece of correspondence that we got from the Department of Motor Vehicles suggested that, you know, the university had done what they had been asked to do in terms of sharing the information with DMV and that was about as far as it could go.

VICE CHAIR HOOD: So how do we -- well, go ahead.

COMMISSIONER MAY: Well, I don't know that I have any specific points to address here, but just in reviewing this information and recalling what was discussed in the hearing and the subsequent discussions, I really don't see that we are covering any new ground with the information that was submitted by the Citizens Association and I don't frankly see reason to reconsider the order as it was issued with regard to these specific conditions 3, 9, 14. I'm sure that's all. I just didn't see any new information.

CHAIRPERSON MITTEN: I'd have to agree with you. I mean, I thought we took great pains to

analyze exactly what was happening in each of these cases and while in some cases I think the conditions were not -- I don't think it was fully understood what could be done when the condition was written and perhaps in some cases they're not written as artfully as they could be, but I think under the circumstances and given the wording of the order, I think the university is in compliance. I should say, now going to condition 19, substantial compliance.

I think what we're being asked for, as it relates to condition 19, and this is where the clarification comes in, is they're asking us to clarify what the term "substantial compliance" means. I think at least as it stands now, for us to flesh that out in further detail would not be an interpretation of substantial compliance, which is what we did. We interpreted what substantial compliance for us. But to somehow issue language clarifying what substantial compliance means would go beyond interpreting it, but it would mean, you know, basically revisiting the order and revising the language and that's again not something I'm prepared to do. So, I think substantial compliance, you know, it's up to us to determine when it's

before us and it's up to the zoning administrator to determine when it's before DCRA.

So, I would move that we deny the Citizen's Association of Georgetown motion for reconsideration of Order 02-32 on the bases that they have put forward.

COMMISSIONER MAY: Second.

VICE CHAIR HOOD: Discussion. I

CHAIRPERSON MITTEN: Mr. Hood?

VICE CHAIR HOOD: I just think, and I think I said this earlier when we went through all of this, is that when we do conditions, and I know we all have said it on the BZA, that we do things that everybody understands.

CHAIRPERSON MITTEN: Yes.

VICE CHAIR HOOD: And maybe that's easier said than done. And then we won't have any problems coming back, "Well, what do you mean by that?" All parties have agreed these are the conditions that went forward. Either you're in compliance or you're not. And how we work on that is going to depend on how we craft these conditions from this point on. So hopefully that eventually in the future will solve problems from having to reconsider and reconsider and reconsider.

CHAIRPERSON MITTEN: Well, you know, I think you raise a good point and I think, you know, to its credit, the BZA was trying -- and, you know, we had a whole slew of campus plans come through and the BZA had some, we've had some and when you craft these conditions to deal with problems, either longstanding problems or new problems that arise, one of the reasons why we revisit the campus plan periodically is because, you know, it's a question of, "Okay. Are these conditions working?" And to the extent that they're not working, they may not be working because they're not crafted well and they may not be working because they were insufficient to start with, but we learn from it and do better the next time. And to the extent that these are, you know, somewhat lacking, then we learn from that and do better the next time.

VICE CHAIR HOOD: Madam Chair, I will agree. I thought we fleshed these out in totality the first time. Thank you.

CHAIRPERSON MITTEN: Thank you. Okay. So then we now have the applicant's motion for reconsideration, or in the alternative, for a stay of part of our order.

MS. SCHELLIN: Excuse me.

CHAIRPERSON MITTEN: Yes?

MS. SCHELLIN: Madam Chair, do we need to go ahead and record a vote for that first motion?

CHAIRPERSON MITTEN: I'm sorry. Yes, that's right.

MS. SCHELLIN: I'm sorry.

CHAIRPERSON MITTEN: Thank you for reminding me. Okay. Thanks.

MS. SCHELLIN: I think you were --

CHAIRPERSON MITTEN: On the motion for the Citizen's Association of Georgetown motion for reconsideration, all those in favor of denying the motion, please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

CHAIRPERSON MITTEN: And those opposed, say no.

All right. Mrs. Schellin.

MS. SCHELLIN: Okay. Staff would record the vote 3 to 0 to 2 to deny the Citizen's Association of Georgetown's motion. Commission Mitten moving, Commissioner May seconding, Commissioner Hood in favor, Commissioners Parsons and Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. Thank

1 you for not letting us forget that.

2 All right. Now we have the applicant's

3 motion for reconsideration, or in the alternative,

4 for a stay of paragraph 26 of our order in Case Nr.

5 02-32. I think we all have a copy of the order in

6 front of us at this point.

7 And then we also have the Citizen's

8 Association of Georgetown answer in opposition to

9 their motion for reconsideration of paragraph 26.

10 And this relates to another issue that

11 we discussed in detail, which is whether or not we

12 considered it appropriate for the applicant to use

13 averaging of their enrollment as the benchmark for

14 meeting the cap versus actual enrollment at any

15 given point in time.

16 We did have a fair amount of discussion

17 about this and as I recall Mr. Parsons even so far

18 as to listen to some tapes, or to read some

19 transcripts of public hearings because he was

20 interested in knowing whether or not the use of

21 averaging had been discussed during the campus plan

22 proceedings. And I think he found that that had not

23 been discussed, although the university's made it

24 clear that it's been their practice, but I think

25 there are a number of pieces of evidence in the

record that suggest that that was not the intent of the BZA in making that -- setting the cap.

But one of the things that I guess I didn't have in mind when reading the order, the proposed order, was I thought this condition or this finding was only going to relate to our action. I did not see it as being interpreted by the zoning administrator as on any given day that the actual enrollment would exceed the cap, that there would be, you know, the opportunity to issue notice of infraction or revoke a permit or all of that. And I'm not backing away from the fact that I don't think average enrollment was appropriate to be used, but I think particularly if this took the university by surprise, that we should give at least some consideration to phasing in the enforcement of it. I think it was clear what we had done when they came in. When they made their initial application, they were to in compliance with our interpretation of the way that the cap should be interpreted. And by the time we made the decision, they were because they were into their spring numbers at that point.

So, I would be in favor of reconsidering paragraph 26 in light of I guess the problem phasing in the enforcement, but I wouldn't want to back away

from the spirit of it, which is that I don't the averaging is the proper interpretation. So, Mr. May?

COMMISSIONER MAY: I guess I feel a need to go back and reread the record in this particular case because I don't recall that in the end that it was the consensus of the Commission, it may well have been, but I just don't recall this, that it was the consensus of the Commission that averaging was not acceptable in this case. And so I just want to go back and refresh my own memory in regard to that.

Clearly, that has implications for the cap itself. If they had been operating on the averaging concept up to this point and thought that that had been the acceptable means of measuring what their enrollment would be, for us to insist on it being the actual hard count at any given moment has implications for their existing enrollment, not just how far up they would go. And I'm not sure how far into that we would want to venture in this case at this time. I think that opens up a much bigger issue.

But in any case, I'm quite willing to at this point stay the enforcement of paragraph 26, if that's the right way to put it, until we've had a

chance to revisit the question and then we'll revisit it as quickly as we can.

CHAIRPERSON MITTEN: So you're proposing that we vote to reconsider paragraph 26 and stay the applicability of paragraph 26 during the period?

COMMISSIONER MAY: Yes. Right. Well, for the reasons that you stated, I think that it would be problematic to allow it to be enforced until we've had a chance to reconsider the question.

CHAIRPERSON MITTEN: Mr. Hood?

VICE CHAIR HOOD: I'm not sure. Is that exactly what you're saying, stay Nr. 26 as it is until we have a chance -- I think what I got from what you said, Madam Chair, and I agree with what you said earlier, was that I didn't want to back away from this. But if it's causing a problem, I think he put it every day, then it's something we need to look into. But I do want to stand firm with Nr. 26, but we may have to fine tune it in dealing with the issue on the cap. I'm not really sure. I think you're saying something different from Commission May.

CHAIRPERSON MITTEN: Well, I think we're actually saying the same thing. Let me just say it differently and maybe collect all the thoughts,

which is I think that the proper interpretation of the cap, based on everything that was in our record and in the record of the BZA case and in their order, is that averaging is the improper interpretation of the cap. That's not what they intended.

Notwithstanding that, because this was an assumption that was made by the university and they have students, you know, that they've enrolled under that assumption for this year, that that would be extremely problematic for them to come into compliance with that or to, you know, hold us -- this would hold up a project that we approved, you know?

So I think that prudence and fairness would suggest that we revisit the paragraph and try and figure out a way that we can have the ongoing, you know, what, at least Mr. Hood and I agree, is the proper interpretation of not averaging, going forward without overly penalizing the university in the short term, but having that long term interpretation take effect as being the proper interpretation and the one that was intended by the BZA.

VICE CHAIR HOOD: Madam Chair, let me

ask, Mr. Parsons listened to the tapes or whatever?

CHAIRPERSON MITTEN: Yes.

VICE CHAIR HOOD: Was anything ever said about those tapes or clarification? Did they come out on the hearing or --

CHAIRPERSON MITTEN: I recall him saying something. Now, whether he said it to me publicly or privately, I don't remember. I don't remember if we took that up.

VICE CHAIR HOOD: So we don't know what happened with those?

CHAIRPERSON MITTEN: No, but if we reconsider it, we can have Mr. Parsons give us his conclusion on the record and go from them.

VICE CHAIR HOOD: That was nice of him to listen to all those tapes.

CHAIRPERSON MITTEN: It really was. It really was.

So, Mr. May, if I could put a motion in your mouth, which is that you would move that we reconsider paragraph 26 and during the time that we take it up that it would be stayed.

COMMISSIONER MAY: Yes, I so move.

CHAIRPERSON MITTEN: And I would second that. Any further discussion? All those in favor,

please say aye. Aye.

VICE CHAIR HOOD: Aye.

COMMISSIONER MAY: Aye.

CHAIRPERSON MITTEN: None opposed. Two absent. Mrs. Schellin.

MS. SCHELLIN: Staff would record the vote 3 to 0 to 2 to stay the enforcement of paragraph 26 until it can be reconsidered by the Commission in Case Nr. 02-32.

CHAIRPERSON MITTEN: It's actually not quite that.

MS. SCHELLIN: No?

CHAIRPERSON MITTEN: It's that we have moved to reconsider paragraph 26 and during the period of reconsideration --

MS. SCHELLIN: To stay --

CHAIRPERSON MITTEN: -- the enforcement of paragraph 26.

MS. SCHELLIN: -- the enforcement. Okay. The vote was 3 to 0 to 2, Commissioner May moving, Commissioner Mitten seconding, Commissioner Hood in favor and Commissioners Hannaham and Parsons not present, not voting.

CHAIRPERSON MITTEN: Thank you. Okay. Now we're ready for the Office of Planning's Status

Report, for anyone who has any energy left.

MS. McCARTHY: Thank you, Madam Chair. In the interest of low levels of energy, I'll keep this especially brief. There are just a couple of things I wanted to note.

CHAIRPERSON MITTEN: I don't think we have copies actually.

MS. McCARTHY: Oh.

CHAIRPERSON MITTEN: So that might be a place to start.

MS. McCARTHY: That would be good. Just a couple things I wanted to note. On the first page, about the fourth one down, Reservation 13 Zoning. Based on the initial reaction from the residents to our initial proposed zoning, we have decided to do something completely different and we are talking about possibly using this as a bit of a pilot for something more similar to the new Form Based Codes, rather than the usual Euclidian approach. We have a plan to go by there, but the plan steps down in one direction in height and then steps down in another direction in terms of its uses. And we don't have zones that fit very well perpendicularly like that. But we are in the process of coming with that and I'd say January is

realistic in terms of when we would like to bring that to you. But I just wanted to explain why it's now taking much longer than we'd originally been talking about.

On the second page, toward the bottom of the page, you have the 200 K Street PUD extension and modification request. We met a few weeks ago with the applicant. We told them that since that is essentially in limbo at the moment, they've asked for a PUD extension. We said they needed to modify the design as well. And it's been kind of on hold for awhile waiting for the redesign. There were some aspects, the massing of the redesign we were not happy with in terms of how it related to some two and three-story town houses that were immediately next to a proposed 130-foot building. So we have suggested that they redo the massing a bit, but we've also told them, you know, November/December, something like that, is the drop dead date. So, we expect for that to be back again.

CHAIRPERSON MITTEN: Did you just say that you were uncomfortable with the massing of town houses next to a 130-foot building? Is that what it was?

MS. McCARTHY: Yes.

CHAIRPERSON MITTEN: Okay.

MS. McCARTHY: The PUD as originally approved had 130 feet and the applicant has been unable to assemble the three town houses on the end and so right now he was still thinking about 130 feet right next to very small town houses. So we suggested some alternative ways to mass it that we thought were more sensitive to the rest of the neighborhood.

CHAIRPERSON MITTEN: Thank you.

MS. McCARTHY: On the third page, inclusionary zoning housing text amendment. I think we've mentioned in the past we've had a lot of problems in the procurement cycle of bringing our consultant on board which includes a nationally known zoning law firm, Robinson & Cole out of Boston. We finally have broken that log jam, but just recently, so we will probably be beginning that in the next few weeks and we'd originally thought probably 90 days for that consulting work.

For new zone district map and Georgia Avenue and Southwest Waterfront and Maine Avenue, these are two new plans that the Office of Planning is working on. With regard to the Southwest Waterfront, it's completed and it was just adopted

by the council. So we will begin very shortly to take that new plan and work up the zoning to implement that. The Georgia Avenue in the general vicinity of PEtworth is an ongoing study at our office. It's been going on for a few months and we're saying winter of 2003 because we expect that's probably the time period in which the study will get wrapped up and we'll be able to take it to the council for approval and then go forward with the new zoning.

And the Tacoma - DC overlay, as you know you implemented some of the recommendations out of our small area plan for Tacoma last year in terms of a rezoning, but there's also some additional recommendations for overlay treatment and we're working on getting them into zoning language right now. And I think those are all the ones that I wanted to specifically highlight.

CHAIRPERSON MITTEN: Let me ask you a question that sort of bears on the case that we had earlier, 1330 M Street, S.E. I know you've had a couple of small area plans that you've taken to the city council. Has the Anacostia Waterfront Initiative been passed by the council as some form of an amendment to the comprehensive plan?

MS. McCARTHY: There is an overall AWI document and that is broader brush. And that one we're not taking that to the council, but then there are individual pieces of it. So the Southwest Waterfront was the first piece. The Southeast Waterfront is the next piece and then there's a Poplar Point piece east of the river. And there's also related to that, we're just beginning new plans for the Ivy City-Trinidad area and the Old Anacostia area.

So what I need to do is to check with Uva Brand, who's our head of waterfront planning and see exactly what his time table is for the Southeast, but I believe that should be going to the council fairly soon and then hopefully that will provide us some guidance in terms of the rezoning of the Maritime Plaza and 1333 M.

CHAIRPERSON MITTEN: Good. Because, you know, the applicant and his representative were sort of making reference to the AWI and, "Hey, we're just trying to comply with that," but we still have the old comp plan and whatever that designation is and so, you know, until something has actually been embraced by the council, I think that's another reason why we kind of need to step back a second and

then go forward.

MS. McCARTHY: Right.

CHAIRPERSON MITTEN: So hopefully that'll be another reason to get that Southeast Waterfront plan going.

MS. McCARTHY: That's right. And we also, this is the final draft of the upper Wisconsin Avenue corridor study, which we're trying to review and expect to get out on the web site some time this week and then to get to the council as well.

CHAIRPERSON MITTEN: Okay.

MS. McCARTHY: So that will obviously figure into at least to two PUD applications that have been filed with the Commission.

CHAIRPERSON MITTEN: Okay. Great. Any questions for Ms. McCarthy?

VICE CHAIR HOOD: Madam Chair, I wanted to ask Ms. McCarthy about, I see on the status sheet, it looks like it's way off, but it says, "Halfway house use in industrial zones."

MS. McCARTHY: Yes.

VICE CHAIR HOOD: I mean, is that something that's being proposed or that's coming down the pipeline?

MS. McCARTHY: Yes. You remember we had

proposed that originally as a result of a request from Central Union Mission. When they withdrew their application, we withdrew, we stopped doing work on that. But certainly the Bantom case and some potential or proposed locations have made us look again at the possibility that we could permit, even though M zones don't generally permit residential, that given that some of these uses are not uses that are desired by neighborhoods to be close to them, we were thinking that we should take a look at that again. But we are recognizing the fact that there are many M zones which immediately abut residential areas. So this time we were talking about including a distance provision. Our notion is to locate those kinds of halfway house facilities with the M zones by special exception provided that they are not within a certain distance of residential areas. But we're working with the Office of Corporation Counsel to try to refine the language and to look at those issues.

VICE CHAIR HOOD: And let me just say, it may be a good time for us to look at, I think it's 807.k. I forgot exactly what that regulation is. Since we're looking at it. Ms. Schellin is going to help. I can't remember regulation numbers

too well.

CHAIRPERSON MITTEN: Is this one that defines temporary --

VICE CHAIR HOOD: Temporary. Yes. It may be a good time for us to look at that along with what we're doing here.

CHAIRPERSON MITTEN: At least to clarify what on earth it is?

VICE CHAIR HOOD: Clarify it, keep it there, remove it or whatever the Commission, you know, decides the recommendations to come forward.

CHAIRPERSON MITTEN: Right. Okay.

VICE CHAIR HOOD: Thank you.

CHAIRPERSON MITTEN: Sounds like a good idea.

VICE CHAIR HOOD: Thank you, Ms. McCarthy.

CHAIRPERSON MITTEN: I guess I'd also just want to add, just to go back to something that you had said earlier when we were talking about again, you know, 1330 M Street, S.E., which was, you know, on the one hand we have dwindling M and CM zones and then on the other hand we're trying to figure out more things.

It's 801.7k was the reference that Mr.

Hood was looking for.

You know, we're talking about creating more competing uses for the industrial land that we have left and so I think we'd want to look at that comprehensively and not take up the issue of halfway houses before we had looked at all the industrial zones.

MS. McCARTHY: Right. We had an economic development consultant take a look at some aspects of that for our vision planning effort that's part of the comprehensive plan, but we need something much more detailed. So that's what this second study is supposed to be doing.

CHAIRPERSON MITTEN: Great. Thank you. Anybody else have any questions?

Mr. Bastida, can you think of anything else that we need to take up today?

MR. BASTIDA: No, Madam Chairman. The rest of the agenda is self-explanatory and I cannot add anything else.

CHAIRPERSON MITTEN: Thank you. Then I think this meeting is adjourned. Thank you.

(The meeting was adjourned at 5:31 p.m.)