

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

Thursday,

June 17, 2004

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The Special Public Meeting of the District of Columbia Zoning Commission convened at 6:00 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY HOOD	Vice Chairperson
KEVIN HILDEBRAND	Member
GREGORY JEFFRIES	Member

OFFICE OF ZONING STAFF PRESENT:

ALBERTO BASTIDA	Secretary
SHARON SCHELLIN	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

ANDREW ALTMAN	Director
JOEL LAWSON	Office of Planning
JENNIFER STEINGASSER	Office of Planning

OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

ALAN BERGSTEIN, ESQ.

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

6:18 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a Special Public Meeting of the Zoning Commission of the District of Columbia for Thursday, June 17th, 2004.

My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand and Greg Jeffries. We're actually expecting Commissioner Parsons, who may or may not get here in time to participate in this decision.

Copies of the agenda for the Special Public Meeting are available in the wall bin near the door. I'd just like to remind those present that we do not take any public testimony at our meetings, unless the Commissioners requests that a specific person to come forward.

Please be advised that this proceeding is being recorded by the court reporter and is also being web cast live. Accordingly, we ask that you refrain from making any disruptive noises or actions in the hearing room.

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phones at this time so as not to disrupt these proceedings.

Mr. Bastida, do we have any preliminary matters?

SECRETARY BASTIDA: Yes, Madam Chairman.

We have received a letter dated June 9, 2004, from Greenstein, DeLorm, and Lotts requesting that you open the record to submit a letter they have attached to their request regarding input from Forest City, which is an adjacent property owner.

The Office of Zoning believes that the sign was properly posted and there was plenty of advertisement and later there=s no stated reason why they didn=t do it in a timely fashion and that concludes my presentation and I would like to obtain from you either if you would like to open the record or not?

CHAIRPERSON MITTEN: All right. Is there anyone who would like to move to open the record to accept the letter from -- who is it again -- Greenstein, DeLorm and Lotts on behalf of Forest City, an adjacent property owner?

All right. Thank you.

Anything else, Mr. Bastida?

SECRETARY BASTIDA: The staff has no other

primary matters, Madam Chairman.

CHAIRPERSON MITTEN: All right. Then I would just add that we have a request from the Office of Planning to waive our rules to accept their submittal of their supplemental report after the date required and I would move that we waive the rule or I would recommend that we waive the rule to accept the OP Report.

COMMISSIONER HILDEBRAND: Second.

CHAIRPERSON MITTEN: Okay. I think we can do it by consensus. Is there any objection? Any objection?

VICE CHAIRPERSON HOOD: Madam Chair, I'm moving a little slow this evening.

Let's go back to the first request. What is the significance of the -- where it was requested that we reopen the record?

SECRETARY BASTIDA: The significance is that they are adjacent property owners. My concern is that the site was properly posted, notice was given to all the people within a 200 foot radius and they didn't show up for the hearing, nor they provided any other correspondence until June the 9th after the record had been closed.

VICE CHAIRPERSON HOOD: Okay.

SECRETARY BASTIDA: And in addition, they did not address on their letter why they couldn't be here and they needed a waiver for the extra time.

VICE CHAIRPERSON HOOD: Is that how we normally treat a situation like that? I just want to make sure we be consistent.

SECRETARY BASTIDA: I believe that the Commission has taken that position on several times and several occasions.

VICE CHAIRPERSON HOOD: Okay. Thank you, Mr. Bastida.

CHAIRPERSON MITTEN: When was the letter received?

SECRETARY BASTIDA: The letter was -- let me see.

The letter is dated June the 9th. The letter was received on June the 9th.

CHAIRPERSON MITTEN: Okay. Thank you.

Okay. So, anyone again. All right.

Then we will move to the first case or the only case on the agenda for tonight's Special Public Meeting, which is Case No. 04-07, which is the Special Exception Review of the Proposed Additions and Renovations to the WASA Main and O Street Pumping Stations.

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And what I propose to do just to move ahead in an orderly way, is we have the Applicant=s proposed order and then we have the supplemental report from the Office of Planning. We also have the submission from the National Capital Planning Commission in the record. And I would just like to move through the issues that have been raised by the Office of Planning and then if there are additional issues that anyone wants to raise, we can deal with those after we take up the recommendations from the Office of Planning.

And I think I=d like to skip over the Findings of Fact related to -- or the recommendations related to Section Number 24 and deal with, perhaps, the easier issues first and then we=ll go back to Section 24, since that seems to be the most problematic area.

All right. We have a recommendation from the Office of Planning that we make a condition of the approval in this case that nothing will preclude the establishment of a river walk, because it hasn=t been included as a condition.

Thoughts? Comments?

VICE CHAIRPERSON HOOD: I would accept that as the Office of Planning=s recommendation that

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we make that a condition.

COMMISSIONER HILDEBRAND: I would absolutely agree.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER JEFFRIES: Agreed.

CHAIRPERSON MITTEN: I think the issue related to Section 32 is -- well, it's just a recommendation that that particular section be deleted as unclear and I don't think it adds anything to the meaning or import what the order may result in. So, I would concur with the recommendation to delete the section that reads "The Office of Planning and the Applicant also reached working agreements on extensions or modifications of specific street segments in the immediate vicinity."

Any objection to deleting that?

COMMISSIONER HILDEBRAND: I agree. I think it either needs to be clarified or deleted, one or the other.

CHAIRPERSON MITTEN: Well, I -- go ahead.

COMMISSIONER JEFFRIES: Agreed. I mean absolutely. I mean I was actually going to request some sort of from the Office of Planning that they had some understanding about what was intended here. But barring that, I would just say we should delete it.

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CHAIRPERSON MITTEN: I don=t think it has -- ultimately has any impact on what=s being proposed, so it=s just extraneous language, I think.

COMMISSIONER JEFFRIES: Okay.

CHAIRPERSON MITTEN: Unless you want to propose some alternative language.

COMMISSIONER JEFFRIES: No.

CHAIRPERSON MITTEN: Okay. In the Conclusions of Law section, Section Number 2, the Office of Planning is suggesting that there actually may be some adverse impact and is questioning the mitigation that=s being proffered. And I think maybe we should just hold that aside as well until we deal with the proposal that=s in Section 24. And we=ll come back to that and see if we feel that we=ve satisfied what=s included in the Conclusions of Law.

In the Decision, Sections 1 and 2. I think there=s a concern, a valid concern, that there=s a very high degree of flexibility included in Condition Number 2 in the Decision section. It really basically says that we are -- that we=re giving WASA and the adjacent property owner the full flexibility to redesign the site as long as it meets approval of the Commission on Fine Arts, who has a different perspective than the Zoning Commission in this

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context, because -- and I'm not 100 percent sure what their mandate is. But I think one of the reasons why we have this design review in the Capital gateway Overlay for the Waterfront Parcels, is that we're concerned about views from the waterfront and having designs that are complimentary to the open space, which I'm not sure is precisely the Commission on Fine Arts mandate.

So, I think we need to tighten up Condition Number 2. And if anyone else has any comments, they would like to add about that.

COMMISSIONER HILDEBRAND: I would definitely agree that if there is a change to the location or the size or design of the load-out facility, then it definitely needs to come back to us.

CHAIRPERSON MITTEN: I think the only kind of flexibility that we've given design in the past has been, if there is a modification that's required to respond to a recommendation of the Commission on Fine Arts, that they be given the flexibility to respond to that recommendation, not to propose recommendations for approval.

So, would you be comfortable with just giving them the flexibility to alter the design in response to requirements from the Commission on Fine

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Arts?

COMMISSIONER HILDEBRAND: Yes. That seems appropriate, because I'm assuming that if Fine Arts would make minor adjustments for architectural intent, not significant changes in massing.

MR. BERGSTEIN: Madam Chair, what I could do is look at past orders where that type of flexibility has been given and use that as a template for this condition.

CHAIRPERSON MITTEN: That would be great.

I think there's also an issue with the Condition Number 3, which relates to the security fencing. I think there's a couple of issues here.

One is, there's no definition of what interim means, so I guess interim is in the eyes of the beholder.

And then the fact that there is no design review besides the material selection that would be mandated here by the Commission for any permanent fencing. And as the Office of Planning noted, the proposed -- Comprehensive Site Development Plan would include a review of any permanent security measures, so I think if we --

COMMISSIONER HILDEBRAND: I guess the part that concerns me is the interim security measures

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language that you brought up initially and that if this is a process that=s going to take eight to ten years to implement, that=s a significant amount of time that these interim measures could be in place.

CHAIRPERSON MITTEN: Right.

COMMISSIONER HILDEBRAND: And I=m concerned about their impact on the views from the water and to the water, depending upon what their design is. Are we talking a chain-link fence that=s a certain height or are we talking a solid wood fence that=s plywood and painted? I think we need to know what they are intending to do.

CHAIRPERSON MITTEN: Let=s -- if we could, let=s come back to 3, because I think the way we dispose with Section 4, paragraph 4, may dictate what we can do on Condition Number 3 related to the interim security measures.

So, moving ahead to Condition Number 4.

The proposal would be that WASA would submit a Comprehensive Site Plan that would include various things that, including you know, consideration of permanent security measures and so on and then how will WASA accommodate the proposed river walk. And basically the kinds of things that we would have expected if this was a new building, that we would

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have expected to have been included with the proposal.

And I think, you know, the Office of Planning's concerns are valid that first of all, it's too long but then in addition to that, there's the question of, okay, you submit a plan. So what? You know, what happens then? How are we assured that the plan will be implemented?

So, what I would like to suggest is that the plans that they propose to submit would be submitted in one time frame, which is a shorter time frame than eight years. And there would be an implementation period that would be dictated at this point in time. So, we would say, okay, you get so much time to do your plan and you get so much time to implement your plan. You know, give them some time to catch up, but not leave it so open-ended that we may never realize the design provisions that they are proposing.

COMMISSIONER HILDEBRAND: But I do think it's important to recognize that they are operating under a very short time constraint to correct deficiencies that have been brought up in the treatment of waste and the quantity of waste they can accommodate at the station.

And I think some flexibility to allow them

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to move forward with correcting a significant problems is warranted, but I do think that it has to have a limit.

CHAIRPERSON MITTEN: yes.

COMMISSIONER HILDEBRAND: It has to have a reasonable limit as you=ve said.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER HILDEBRAND: And it has to have a reasonable limit, as you said.

VICE CHAIRPERSON HOOD: Madam Chair, I believe this came up at the hearing about the time frame, the years, and I can=t remember exactly why they felt they needed eight years. I think there was a discussion and if anybody else can help me with that, because I=m always inclined to yield to the subject matter expert, if that=s a part of my colleagues submission of Forest trying to correct some of the measures or some issues that they=re going through now. Maybe that was factored into the eight years. And I don=t know if that was mentioned at the prior hearing. I think it was. I=m just not clear.

COMMISSIONER JEFFRIES: well, I would agree with the Chair as it relates to some sort of delineation of the time frame. In fact, it might end up being eight years, but I tink we need to see a

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little bit more delineation of exactly what happens in that eight year time frame, if it=s in fact eight years.

I mean, we talk about implementation and so forth and giving them enough time to really sit back and figure out soft of how the pumping station works along side the overall plan of AWI.

I think it=s important that they just give us more detail as it relates to, you know, the time frame of eight months -- eight years and not just say eight years.

VICE CHAIRPERSON HOOD: And that=s my question. I was just asking, was that brought out during the hearing and I just could not recall.

CHAIRPERSON MITTEN: You know, I don=t know if I have this notion because I heard it or because I=m just trying to put myself in their place. But they=re not in the land development business.

VICE CHAIRPERSON HOOD: Right.

CHAIRPERSON MITTEN: They=re in the, you know, the sewage pumping and water pumping business. So, this is sort of a side thing that they have to do because of where they=re located. And I think the fact that they=re a signatory to the AWI plan and that whole group, suggests that, you know, they recognize,

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acknowledge and even embrace their role there, so I don't think it's entirely unexpected that they would have to do, you know, this kind of work. But because it's outside of what their real business is, I think they were looking for more flexibility in terms of time.

COMMISSIONER HILDEBRAND: I just think there is a merging of things here that we need to try to sort of try to separate church and state, you know, from what is truly a planning effort and what is really sort of responsive to the consent decree.

CHAIRPERSON MITTEN: Well, just to put something out there in terms of time frames, I mean if we have a proposal for eight years, I would suggest that they get four years to plan and four years to implement.

COMMISSIONER HILDEBRAND: I'm just trying to think and not knowing the specifics of their construction schedule, and how far along they are with their documents to move forward with the engineering improvements to the facility, I mean a two-year process to change out the equipment, build the structure and get it up and operational, doesn't seem unrealistic and I'm not sure that the planning phases that are really tangential to that couldn't be ongoing

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at the same time. So, perhaps, four years for the planning process might be a little lengthy.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER HILDEBRAND: It would certainly be nice if they continued to work with OP and develop a plan and a two-year time frame, I think, for what they plan to do with the open spaces and then give them a longer period for implementation, if necessary, after that.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER JEFFRIES: Yes. I don't think we're in any position here to -- I mean, I know that I'm not in a position to project sort of how much time it's going to take for their planning efforts. But I would concur with you and the Office of Planning that eight years is long and four and four, I don't really know, in fact, if that's the breakdown. But, just intuitively, it seems long. The four year planning, so I would agree with Kevin on that.

CHAIRPERSON MITTEN: Okay. If we go to two years for planning and, you know, the submittal of this plan to the Zoning Commission, then how long do you all want to give them for implementation?

I'm not fixed on the four and four at all.

COMMISSIONER HILDEBRAND: Again, I think

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we shouldn't tie their hands too much, but I think if we gave them two years for planning just to keep it an urgent thing for them to move forward with as opposed to letting it linger, and then give them four years for implementation and have some flexibility with that should they come back and say that that's too aggressive a time frame, that the rest of their process is moving forward more slowly, then I think there should be some leeway granted there. But I think we could at least ask for initially a response in four years.

COMMISSIONER HILDEBRAND: Yes. Two years with a lot of flexibility. I mean, sort of being embedded into this process is fine, but just start off with two years.

CHAIRPERSON MITTEN: Okay. So, two years to plan and then four years to implement. Is that what I heard?

COMMISSIONER HILDEBRAND: Yes.

CHAIRPERSON MITTEN: Okay. That sounds good.

Now, is everyone satisfied with the elements of the plan that would be proposed? The A, B, C and C of Paragraph 4.

COMMISSIONER JEFFRIES: I'm not

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comfortable with C.

The District government has, let me get this right.

In terms of replacement parking.

CHAIRPERSON MITTEN: Right.

COMMISSIONER HILDEBRAND: Yes.

COMMISSIONER JEFFRIES: That seems like a non-starter.

COMMISSIONER HILDEBRAND: It did seem like a lot of parking was being moved toward the waterfront and my fear is that the site would be aggressively loaded with parking to the waterfront and they would look to someone else to provide them replacement in the future when that parking had to be given away. And I think that WASA has to be responsible for their own parking and clearly the intent is to provide access on the waterfront and that they shouldn't aggressively load parking at that portion of the site which will have to be moved later.

CHAIRPERSON MITTEN: Well, the other thing is, we can't force the District government to do anything anyway in terms of this order.

COMMISSIONER JEFFRIES: Exactly.

CHAIRPERSON MITTEN: So, should be just stop or delete everything after Aprovided that@?

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Everything including and after Aprovided that@? So, it would say, AThe plan would delineate the removal by WASA of specified waterfront parking spaces on its site.@

COMMISSIONER JEFFRIES: Period. Yes. Period.

CHAIRPERSON MITTEN: Okay. Okay. Anything else?

COMMISSIONER JEFFRIES: Is there like a catch-all, something that we might not be -- not listed here that allow us to sort of include it down the road here. It=s giving us a very finite list of things.

COMMISSIONER HILDEBRAND: And also what is the significance of AD@? Is that a typical that the parties would come together to jointly present their proposed plans?

CHAIRPERSON MITTEN: Well, this is actually the first review we=ve had in the Capital Gateway Overlay for the design review. So, I think all this does is add flexibility and that probably is not a bad thing.

COMMISSIONER HILDEBRAND: Yes. Okay.

CHAIRPERSON MITTEN: Okay. So, we=re satisfied with A, B, C, D as we=ve modified AC@?

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So, then if we go back to 3 and we talk about interim security measures, the interim security measures would be in the two-year period pending submittal of the plan.

COMMISSIONER HILDEBRAND: Well, actually the -- would it be the two years or would it be two years plus, then the reasonable time to implement? If the have four years to implement, the final security measures won't be in place for six years. So, the interim should be in place throughout that entire period.

CHAIRPERSON MITTEN: Well, I guess what I was thinking and I was thinking that when they submit their plan that they would -- well, I guess I see what you're saying.

The one thing now that I'm thinking all of that, the one thing that's missing is that the plan -- they can submit anything, you know. The plan could have hideously ugly fencing and, you know, there's no approval process here for the plan. They just have to submit the plan, then implement the plan. And depending on what's included there, it might be something we wouldn't even want them to implement.

So, now I have to ask Mr. Bergstein something.

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Is there a way to include an approval process for the design plan?

MR. BERGSTEIN: Not really that I'm aware of. You would, in essence, have to take out the fence and have them bring it to you as a modification of the order and then you would have the ability at that point for approved modifications and modification plans.

CHAIRPERSON MITTEN: No. Not to focus on the fence exclusively though, but when they submit the plan within two years, the plan contemplated by Condition Number 4, there's no approval of that plan.

MR. BERGSTEIN: I understand, but once you issue the order in this case and unless you set a time frame for the order to expire, which would then require them to come back and seek to extend the approval --

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: -- you've lost jurisdiction over the matter.

CHAIRPERSON MITTEN: Okay. Thank you.

Okay. So, what Mr. Bergstein basically said is that if we want to have any approval rights on the plan, we have to limit the life of this order and make it, you know, temporary approval and that would

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trigger them having to come back to us with this plan in hand to get the order extended.

Go ahead.

COMMISSIONER HILDEBRAND: I think it would be worthwhile doing it that way then.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER HILDEBRAND: What would you recommend as a appropriate?

CHAIRPERSON MITTEN: Well, it should be something consistent with the time to develop the plan, so if we're giving them two years to submit the plan, then the approval should be for two years.

COMMISSIONER HILDEBRAND: Two years.

CHAIRPERSON MITTEN: Subject to extension upon approval of the plan contemplated in Condition Number 4.

Okay. Then what I would suggest in Number 3 then, is we just keep the first sentence and the rest of it would be addressed in the Condition Number 4, unless somebody thinks we need to keep the rest of that.

Can we just go with the first sentence of three?

COMMISSIONER HILDEBRAND: I would agree to that.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: Let me make sure I understand what we're doing here.

Are we talking about -- the plan is for two years and making this PUD valid for two years. The order?

CHAIRPERSON MITTEN: Special exception. Yes.

VICE CHAIRPERSON HOOD: Yes. For two years?

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: Which would only limit them to just doing the planning stage, not any of the implementation?

CHAIRPERSON MITTEN: Right. Basically what it would say is, okay, in order to make sure that you come back to us to get our approval for the plan, so that it's just a plan, but it's a plan that we approve of, then you have to come back on two years because your special exception is only good for two years and it's at that point in time we'll review the plan, making any necessary changes, approve it and then they have four years to make the plan happen after that.

VICE CHAIRPERSON HOOD: So, if they come

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back and say they -- ask for a modification of the PUD to extend the planning program, naturally we would have a valid reason.

I guess my point is, we're not pinpointing them to any of this, because they can come back and ask for an extension --

CHAIRPERSON MITTEN: That=s right.

VICE CHAIRPERSON HOOD: -- on the two years.

CHAIRPERSON MITTEN: That=s right.

VICE CHAIRPERSON HOOD: So, they can wind up getting either years.

CHAIRPERSON MITTEN: Well, if they can make a valid case, you know, I mean whatever the Commission at the time would have, you know, whatever proposal before them, they would make a decision in the context that existed at that point in time.

VICE CHAIRPERSON HOOD: Now, what standard are we setting for them? Are we using the Good Cause clause or what standard are putting in place?

MR. BERGSTEIN: That is their standard.

CHAIRPERSON MITTEN: If you would turn on your microphone, it would help.

MR. BERGSTEIN: What I was suggesting is, this is not a Planned Unit Development. And, in fact,

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the rules don't even talk about if you hadn't set a time frame when the approval might expire. This is, in essence, an approval. It's like a special exception. You're authorizing something to happen. But virtue of that they can get a building permit and a C of O for what they're proposing to do.

If you place a limit on this order and the order expires in the middle of that process, then let's say they got a building permit and they're undertaking construction, then they can't get a C of O because then this permission expired.

In order for them to be able to continue their processes for not being unlawful status, they are going to have to come back for a new approval based upon at least the plans, I mean, what you're going to be focusing is the completion of the process that's contemplated, which is the submittal of the plans and the implementation of the plans.

So, the new proceeding would be a full hearing based upon the plan submitted and the implementation schedule. But it's not a PUD where there's good cause or anything like that. What the standard would be for the hearing is whether or not the remainder of requirements for the overlay, the submission of plan for suitable open space treatment,

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and implementation of that will be met by the new submittal.

VICE CHAIRPERSON HOOD: Okay. Thank you, Mr. Bergstein. You've answered my question.

CHAIRPERSON MITTEN: All right. So, I think I was still inquiring as to whether we could just keep the first sentence of Condition Number 3?

VICE CHAIRPERSON HOOD: Yes. I think that would be sufficient.

CHAIRPERSON MITTEN: Okay. Okay.

COMMISSIONER HILDEBRAND: Madam Chairman?

CHAIRPERSON MITTEN: Uh-huh.

COMMISSIONER HILDEBRAND: Could we add the language to the effect that it is of a transparent nature that doesn't obstruct views to the waterfront?

CHAIRPERSON MITTEN: That's good. Such fence being of a transparent -- of a transparent nature that does not obstruct --

COMMISSIONER HILDEBRAND: View to or from the waterfront.

CHAIRPERSON MITTEN: That's good.

Okay. There were a couple of additional things at the end that the Office of Planning had suggested. One was for the temporary construction building that they would not remove any trees. And I

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remember talking about that, so I would want to include that as a condition.

And the Office of Planning is also suggesting that a traffic management plan be an additional requirement under Condition Number 4, which makes sense, particularly since we're talking about removing parking spaces. So, that may be important.

Okay. We'll include that.

And then, I guess, WASA had suggested that they would initiate land-marking of the main pump station, but I don't know that we've made a requirement of one of our decisions that an Applicant would pursue historic designations. And given that anyone can initiate such a thing, I'm more inclined --

COMMISSIONER HILDEBRAND: Right.

CHAIRPERSON MITTEN: -- to pass on that one as a requirement.

COMMISSIONER HILDEBRAND: I would agree. But I certainly would encourage WASA to consider it.

My impression from listening to their testimony was that they appreciate the asset that they have with this pumping station, that they have recognized it's a significant structure on the waterfront and they are willing to make the effort to improve it and add to it in such a way that it doesn't

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detract from its architectural character.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: Any kind of way we can encourage that because that pump station has been around for so long, I don't know if it would come from us, but something that would kind of encourage this as my colleague said that this be derived from historic preservation -- landmark. It actually should be but it was whatever we can do in the order, if we can or cannot. But I think it's something that needs to have more attention brought to it.

CHAIRPERSON MITTEN: Well, I think what we could do is just to make sure that in one of the Findings of Fact there's a discussion specifically about, you know, the suggestion that the main pumping station be land-marked and then a comment that the Commission would, you know, encourage support or something like that.

COMMISSIONER HILDEBRAND: I definitely would encourage that.

CHAIRPERSON MITTEN: Okay. Then let's just go back now to Finding of Fact Number 24, which has a series of basically intentions that at the moment have no teeth. They're just a series of intentions.

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And the Office of Planning has suggested making certain of these conditions of approval. For instance, the commitment to provide public access from Tingey Street to the waterfront, specifically.

VICE CHAIRPERSON HOOD: I would definitely agree with that, Madam Chair.

CHAIRPERSON MITTEN: Secondly, they focused on 24A4. And it says that WASA=s obligation to provide this public access way is predicated on Forest City Washington also contributing an equitable share of its property to the public access way as required in accordance with the agreed upon alignment.

And I would agree with OP=s recommendation that this section be removed, because I don=t want there to be conditions on something that we don=t know what=s going to happen in the future.

And so I wouldn=t want there to be a way for WASA to say that they wouldn=t do something because, you know, an adjacent property owner wouldn=t do it, because we just don=t know the whole context at the moment. So, I wouldn=t want to include this.

COMMISSIONER HILDEBRAND: I would agree with that too, because I would be certain that we would require the developer of the Forest City property to provide access to the waterfront. But it

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might be contiguous with the loss of property. It may be in some other fashion.

CHAIRPERSON MITTEN: True.

COMMISSIONER HILDEBRAND: So, to assume that it has to be contiguous with loss of property, doesn't seem reasonable.

CHAIRPERSON MITTEN: Right. And then finally as to Paragraph 24. The 24B that deals with the intersection of Tingey Street and new Jersey Avenue. The Office of Planning is recommending that this be made a condition of the order as well.

COMMISSIONER HILDEBRAND: I would agree with that as well.

COMMISSIONER JEFFRIES: Agreed.

CHAIRPERSON MITTEN: Okay. I think that's everything unless I skipped over. Okay.

Now, maybe we should just go back to the concern that we had skipped over in the Conclusions of Law section number 2 that relates to adverse impacts.

And, I mean, I would be satisfied that by putting a time limit on the order making the Comprehensive Site Plan and all its components subject to our approval, and then putting a time frame for implementation, that that really does sort of set up a framework for mitigation of adverse impacts. You know, it might not

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be immediate, but it will be eventual and we have a mechanism for doing that.

So, as conditioned, I think maybe that Conclusion of Law actually is accurate.

Any thoughts?

COMMISSIONER HILDEBRAND: And my only concerns is and this goes to something that I will bring up a little later and it has to do with their Finding of Fact Number 14, which is the facade of the O Street pumping station is severely deteriorated and will be replaced by new facade. The design modifications will be complimentary to the Bozart style of the main pumping station and will significantly -- will be a significant ascetic improvement to the property.

That certainly doesn't describe what they are proposing. What's shown in the drawings has no relation to the Bozart style whatsoever. It doesn't pick up on any of the characteristics of the main pumping station.

As a matter of fact, it clads the building in the cheapest possible envelope possible, this corrugated metal siding that, I think, is underwhelming adjacent to the Bozart style of the main pumping station.

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So, the only concern I have is, is that an adverse impact on the esthetics of the open space associated with the site?

In my personal opinion, it would be yes. I think that not knowing what the development of the rest of that waterfront edge will be, it=s hard to say if it=s in context with the adjacent properties. It might have some transition quality to some future development. But I think in and of itself, as a standalone piece, it=s not a significant improvement over what=s there now other than the fact that it won=t be falling down.

So, I would certainly strike the last sentence, if nothing else in that statement, because I don=t believe it=s true.

CHAIRPERSON MITTEN: I would agree with that.

COMMISSIONER HILDEBRAND: And that would be my only comment on the Conclusions of Law, Section 2, would be, is the objectionable elevation, does it create a negative impact or an adverse effect on the neighboring properties?

That=s the only thing. I would like to have anyone else=s opinion on it.

CHAIRPERSON MITTEN: You know, I think all

your concerns are valid about the appearance of the new facade and inasmuch as we don't know what the context is going to be --

COMMISSIONER HILDEBRAND: Exactly.

CHAIRPERSON MITTEN: -- but it seems to be a fairly urgent matter that the facade be replace. So, I don't know how we reconcile sort of the modest change that=s being proposed that we might want to be more attractive with the urgent need to replace the facade. And if you have an idea about how we can reconcile those, I=d be open to it, but we do have this sort of urgency with the facade replacement --

COMMISSIONER HILDEBRAND: Right.

CHAIRPERSON MITTEN: -- at least as they conveyed it to us.

COMMISSIONER HILDEBRAND: I can appreciate that and I think that the nature of the replacement is of a seemingly cost-effective solution that perhaps if its seen somewhat as an interim phase, and they=re encouraged to improve upon it later, as the rest of the waterfront develops, maybe it could be handled somehow that way, that as an exigency, yes. This is a stop-gap measure, but we hope it=s not the final solution.

CHAIRPERSON MITTEN: Well, what we could

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do is we could include that as part of the Comprehensive Site Plan. We could ask them for, you know, some treatment, some facade treatment enhancement as necessary to, you know, to be consistent with what, you know, they eventually propose. And they may say, we're just going, you know, put trees in front of it so no one can see it or I don't know what they might do. But, we could include that at that point.

COMMISSIONER HILDEBRAND: I think that would be acceptable. My only concern is that if we don't have a better understanding of what's happening on the adjacent properties by then, it may be premature.

CHAIRPERSON MITTEN: But that's sort of like our one shot at it.

COMMISSIONER HILDEBRAND: Right.

COMMISSIONER JEFFRIES: So, excuse me. But, Kevin, so what are you recommending. I mean, I understand your concern that we don't know what the context is going to be. It relates to where the facade is. But what's your recommendation?

COMMISSIONER HILDEBRAND: My recommendation would be that WASA would take the opportunity as the waterfront continues to develop to

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improve the appearance of this structure and while they need to safeguard it in a temporary measure, I can certainly appreciate the exigency of needing to keep the facade from crumbling.

COMMISSIONER JEFFRIES: Yes.

COMMISSIONER HILDEBRAND: But that they do so in a manner that=s cost-effective to them now so that in the future they will be able to invest capital improvements to make the building appropriate to the new waterfront setting.

COMMISSIONER JEFFRIES: I see this as an interim fix. I think it should be addressed and I think the Chair is correct that we should probably, you know, as part of the Comprehensive Plan, not necessarily -- it=s not really site plan issue, but it=s part of the Comprehensive Plan. We somehow will review facades and make certain that there is some continuity as it relates to the overall context of the designs that are happening on the adjacent properties.

COMMISSIONER HILDEBRAND: And perhaps if there=s nothing developed by that point, we would just go back and look at the same facade again.

COMMISSIONER JEFFRIES: Yes.

CHAIRPERSON MITTEN: Right.

COMMISSIONER HILDEBRAND: As a

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continuation.

CHAIRPERSON MITTEN: So, we'll add some language to A to incorporate a requirement to -- Commissioner Hildebrand, you're probably in the best position to give us the language to add.

COMMISSIONER JEFFRIES: It wouldn't be in A though.

CHAIRPERSON MITTEN: Not in A?

COMMISSIONER JEFFRIES: No. It's not A. Because that's a Comprehensive Site Plan.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER JEFFRIES: And it deals with, you know --

CHAIRPERSON MITTEN: Separate. Okay. So, maybe it's a separate.

COMMISSIONER JEFFRIES: It would be a separate point.

COMMISSIONER HILDEBRAND: Let me find my place here.

Perhaps we would just add -- is it possible to say to continue to develop the -- let's see, how would we put this?

Given the importance of the O Street station on the waterfront that WASA would continue to develop the architectural enclosure for the O Street

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station to be compatible with the existing Bozart structure and future adjacent development.

CHAIRPERSON MITTEN: No. I won't say anything.

Okay. What I have as since we're delineating the plan, the plan will, the plan will, the plan will. So, I say the plan will develop the architectural enclosure of the O Street pumping station to be compatible with the existing Bozart structure and the future adjacent development.

I guess maybe I just want to make that -- and then we don't need to, you know, get it down to the last word right here. But that captures it. But I think we want to suggest that it doesn't have to be an architectural solution, perhaps?

And maybe what we could add to that and the load-out facility. Since, you know, the two non-historic components of this are the O Street pumping station and the load-out facility, so that they have to deal with these two things that, you know, they need to do them urgently. They're not particularly attractive. You got to come back later and sort of make it fit better.

Can we add the load-out facility?

COMMISSIONER HILDEBRAND: I have no

objection to adding the load-out facility. But I think WASA has at least in their initial efforts have come forward with a solution that is more compatible with the main pumping station. And I'm less concerned about where they are going with that --

CHAIRPERSON MITTEN: Okay.

COMMISSIONER HILDEBRAND: -- as a whole.

CHAIRPERSON MITTEN: Okay. So, we'll just deal with O Street pumping station. Okay.

Okay. I just want to briefly go back to Finding of Fact Number 24, which I think maybe we just need to pull out some of this other language because I don't think we need to constrain. I mean, WASA was attempting to give us some comfort by saying, well, this is how we're going to deal with permitting the public access to the waterfront.

And I think as long as we establish that they will and that the plan can then show us how they plan to do that, we don't really need all of those sub-points in the Finding of Fact. That we're not going to convert to conditions anyway.

So, that the conditions would basically be the substance of A without the sub-points and the substance of B.

COMMISSIONER HILDEBRAND: Okay.

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CHAIRPERSON MITTEN: Is that okay?

COMMISSIONER HILDEBRAND: That's okay with me.

And the one other thing I wanted to strike was to make this cohesive or at least not to conflict with itself is on page 4, Item 15B3. I'd like to strike the word Asignificantly@.

CHAIRPERSON MITTEN: Yes. And, you know, when we approve this, there is still the opportunity to make editorial changes.

VICE CHAIRPERSON HOOD: I actually was hoping that Commissioner Hildebrand was wanting to strike the word Ahandsome@. The main pumping station is a handsome, impressive building and is considered a major historical building.

Actually, I thought this was where you were going.

COMMISSIONER HILDEBRAND: Oh, no. I do think the main pumping station is a handsome and impressive building. It's the O Street facility that I'm not particularly happy with.

The old building is quite nice. And I hope that as the waterfront develops and the ABI takes hold and that whole waterfront experience becomes much more accessible to the public, that the surroundings

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of the main pumping station will be an integral part of that experience. I think it's an incredible asset to the city and something that the citizens should be able to enjoy.

CHAIRPERSON

MITTEN: Okay. So, let me attempt to very briefly and not totally comprehensively recap what we did.

Okay. We have modified the conditions for this approval to limit the design flexibility in Condition Number 2 to allow the Applicant to only respond to those changes that are required by the Commission on Fine Arts.

We have modified Condition Number 3 to include only the first sentence and getting the notion of the fence being transparent as not to obstruct the view to or from the waterfront.

We have modified Condition Number 4 to require the submission of plan contemplated in Number 4 in two years with an implementation of that plan within four years. And that the plan will be approved by the Commission -- the approval of the plan by the Commission is a requirement to extend this special exception beyond two years.

We have added a component to Number 4 related to further treatment of the O Street pumping station to enhance its compatibility with the existing

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historic building and adjacent development.

We have modified Condition C such that the plan will delineate the removal by WASA of specific waterfront parking spaces.

We have converted what are now Findings of Fact in Number 24, 24A and 24B as conditions of the order as suggested by the Office of Planning.

We have adopted the recommendation of the Office of Planning regarding Condition Number 25 that WASA will not do anything to preclude the establishment of a river walk that will also be converted to a condition.

We have adopted the recommendation or we discussed adopting the recommendation to delete the language that the Office of Planning suggested be deleted in Finding of Fact Number 32.

And as further conditions, we will require that no trees be removed for the placement of the temporary construction building and that a further requirement of Condition Number 4, the plan submittal will include a comprehensive traffic management and transit plan as part of that submittal.

So, I think I captured most of the substitutive points and I would move approval of the order with those changes.

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Mr. Altman?

DIRECTOR ALTMAN: I just want a quick point of clarification on one thing which maybe the Commission does or doesn't want to do just so there's not confusion down the road.

With respect to Finding of Fact 25 - -

CHAIRPERSON MITTEN: Yes.

DIRECTOR ALTMAN: -- which you converted to a condition of approval.

CHAIRPERSON MITTEN: Yes.

DIRECTOR ALTMAN: Or you're proposing to.

We were just -- we had in our paragraph were specific about what some of that precluding would entail. In other words, we identified work such as additional paving or repaving, restriping and construction of a proposed bridge.

CHAIRPERSON MITTEN: Okay.

DIRECTOR ALTMAN: Which we thought those were some of the specific site work that may have been proposed that we felt might preclude the establishment of a river walk wasn't necessarily needed in terms of the work that needed to be done --

CHAIRPERSON MITTEN: Okay.

DIRECTOR ALTMAN: -- in terms of the immediate improvements. So, I just for clarity,

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wanted to point that out.

CHAIRPERSON MITTEN: Thank you.

DIRECTOR ALTMAN: And then we had a much smaller item which related to the temporary construction building.

You talked about the removal of trees. We had also talked about a time limit for the temporary building which is in front of the pump house to be removed. We suggested a time frame prior to issuance of a Certificate of Occupancy. In other words, so once they had constructed their improvements, that that temporary building they need, when they make those improvements, would then be removed.

CHAIRPERSON MITTEN: Okay.

DIRECTOR ALTMAN: Just so we were clear so that it didn't remain temporary, become permanent.

CHAIRPERSON MITTEN: Okay.

DIRECTOR ALTMAN: That's it. Thanks.

CHAIRPERSON MITTEN: Thank you.

MR. BERGSTEIN: I'm sorry, but I'm going to ask to clarify one thing too.

On the two and two. You're having the order expire essentially on the date that the plan is due, which would mean that the period after the submission of the plan they would technically not have

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an approval.

I'm assuming that you intend, so long as they file an application, within the two years which has the plan, that it would temporarily extend the permission until you've had an opportunity to dispose of the application.

CHAIRPERSON MITTEN: Yes.

MR. BERGSTEIN: Okay.

CHAIRPERSON MITTEN: All right. Then in my motion I will expand it to include the suggestion regarding the removal of the temporary construction building that it be removed prior to the issuance of the Certificate of Occupancy for to the main pump station and then also to adopt the recommendation of the Office of Planning that I had overlooked as it relates to Section Number 25 to basically preclude or not include any additional paving or soon that would be included in the area of the river walk that may otherwise be shown on the drawings.

COMMISSIONER HILDEBRAND: I would second that.

CHAIRPERSON MITTEN: Thank you.

Is there any further discussion?

COMMISSIONER JEFFRIES: Agreed.

CHAIRPERSON MITTEN: Well, we didn't call

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for the vote. I was just asking if there was any further discussion.

Anyone else want to -- anything else you want to modify?

All right. Then all those in favor please say Aaye@.

(AYES)

CHAIRPERSON MITTEN: I believe we have no opposed, Mrs. Schellin.

MRS. SCHELLIN: Staff would record the vote four to zero to one to approve Case No. 04-07, with the modifications discussed. Commissioner Mitten moving, Commissioner Hildebrand seconding, Commissioners Hood and Jeffries in favor. Commissioner Parsons not present, not voting.

CHAIRPERSON MITTEN: Thank you.

And I have to apologize for the fact that we ran over, but we did have, I think a helpful discussion and so we=ll just take a five-minute break and then we=ll start the hearing for this evening.

Thank you.

(Whereupon, the above matter was concluded at 7:17 p.m.)