

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:  TEXT AMENDMENTS TO REQUIRE THE PROVISION OF AFFORDABLE HOUSING - INCLUSIONARY ZONING	Case No. 04-33
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Monday,  
July 25, 2005

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing of Case No. 04-33 by the District of Columbia Zoning Commission convened at 6:33 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 J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
KEVIN HILDEBRAND	Commissioner (AOC)
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN                      Acting Secretary

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes from the regular meeting held on June 25, 2005

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Adjourn

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

6:33 P.M.

CHAIRPERSON MITTEN: I will now convene our public hearing for tonight and it's nice to see all the faces out there. Welcome.

This is a public hearing of the Zoning Commission of the District of Columbia for Monday, July 25, 2005.

My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons, and Greg Jeffries.

The subject of this evening's hearing is Zoning Commission Case No. 04-33. This proceeding was initiated through the filing of a petition by the Campaign for Mandatory Inclusionary Zoning for text amendments to Title 11 of the District of Columbia municipal regulations, that's the zoning ordinance, to require new housing projects with 10 or more units to set aside a certain percentage of units at prices affordable to households within specified income ranges.

The Commission also advertised a somewhat different concept proposed by the Office of Planning.

I just want to remind everyone the

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1 Commission specifically decided not to advertise a map  
2 amendment that would specify the areas where the  
3 affordable housing requirement of either proposal  
4 would apply. The Commission will take up that  
5 question if it adopts some form of mandatory  
6 inclusionary zoning.

7 Public notice will be given if and when  
8 such hearings are held. As for tonight, no testimony  
9 may be offered concerning the impact of the proposal,  
10 including the additional density contemplated in both  
11 on any particular project or neighborhood. I'm asking  
12 for your cooperation in that.

13 Given the large number of people who are  
14 here to testify, I hope all witnesses will voluntarily  
15 adhere to this limitation. So we're talking about the  
16 substance of the inclusionary zoning proposal, not  
17 where we're going to map it. And I just want to  
18 remind you that I will not hesitate to interrupt and  
19 strike testimony that goes beyond the scope of this  
20 hearing and will, if necessary, disallow further  
21 testimony of a noncompliant witness of which we will  
22 have none, I'm sure.

23 Notice of today's hearing was published in  
24 the D.C. Register on June 3, 2005 and copies of that  
25 hearing announcement are available in the wall bin

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1 near the door.

2 This hearing will be conducted in  
3 accordance with the provisions of 11 DCMR Section 3021  
4 and I'll read the normal order of procedure and then  
5 I'll talk a little bit about how we're going to change  
6 that up to try and hear from as many people as  
7 possible tonight.

8 Normally, we begin with preliminary  
9 matters followed by the presentation of the  
10 Petitioner, followed by the presentation of the Office  
11 of Planning. We'll hear from any other government  
12 agencies present. We take reports or statements of  
13 those representing their ANCs who are in attendance as  
14 opposed from individual Commissioners testifying on  
15 their behalf.

16 Then we will take organizations and  
17 persons in support and organizations and persons in  
18 opposition.

19 So the first change we'd like to make to  
20 that is we'd like to with the agreement of the Office  
21 of Planning have the Office of Planning go later.  
22 We're going to have at least one more and possibly two  
23 more hearings, actually, it's likely we will have two  
24 more and the Office of Planning will go later, so we  
25 can hear from more individual people tonight. Is that

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1 acceptable to you? Okay.

2 Then we will take those representing ANCs  
3 after the Petitioner. And then what we'd like to do  
4 is just take people who have signed up to testify in  
5 the order that they've signed up to testify so we'll  
6 have a mix of opposition and persons testifying in  
7 support, all mixed up as opposed to segregating those.  
8 So we'll just take them in the order that you signed  
9 up.

10 And people should continue to sign in, if  
11 you didn't call ahead and we will hear from everyone.

12 If you signed up to testify tonight and you know  
13 someone who is not here, we'll hear them at a later  
14 opportunity. Or if you didn't sign up tonight, but we  
15 get through everybody and we'll hear from everybody in  
16 due time. It's our intention to make sure no one is  
17 excluded.

18 And since we are anticipating that we will  
19 go for a third night, I want to announce that which  
20 you probably know we're scheduled to go on Thursday of  
21 this week at 6:30 and we have a third session that  
22 we're going to schedule for Monday, August 1st which  
23 is just a week from tonight at 6:30. So spread the  
24 word that if anybody didn't get a chance, they can  
25 come on Monday, a week from today and we'll be happy

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1 to take anybody's written testimony in addition to  
2 that.

3 So all that being said, we intend to  
4 maintain the following time constraints so that we can  
5 hear from as many people as possible. Those  
6 representing organizations will have five minutes.  
7 And if there are multiple people here from  
8 organizations, only one of those people will have five  
9 minutes. The rest, and any other individuals, will  
10 have three minutes.

11 We intend to adhere to these time limits  
12 as strictly as possible in order to hear the case  
13 tonight in a reasonable period of time and we reserve  
14 the right to change the time limits for presentations,  
15 if necessary, and we note that no time shall be ceded.

16 And since we do plan on having three sessions, we're  
17 going to go until about 10 o'clock tonight. So  
18 depending on when you signed up and look at the sign-  
19 in sheet and we encourage everyone to stay in here to  
20 hear other folk's testimony, but if it gets late and  
21 you'd like to come back another night, please do that.

22 All persons appearing before the  
23 Commission are to fill out two witness cards. Those  
24 cards are on the table by the door. Upon coming  
25 forward to speak to the Commission, please give both

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1 cards to the reporter who is sitting to our right.  
2 He's the guy with the headphones on.

3 Please be advised that the proceeding is  
4 being recorded by the court reporter and is also being  
5 web cast live, so we're all on everyone's computer  
6 tonight. Accordingly, we ask you to refrain from  
7 making any disruptive noises or actions in the hearing  
8 room. I'd also remind folks that as this room gets  
9 crowded, we have overflow seating in the hallway and  
10 there's a monitor and we prefer that people not stand  
11 inside the Hearing Room for fire code purposes. So  
12 you'd be more comfortable and we do have a few chairs  
13 up front, if anyone would like to come up and take  
14 those now.

15 So when you come forward, give your cards  
16 to the reporter and then when you present your  
17 information to the Commission, we're going to ask you  
18 to sit at one of the four chairs at the table in front  
19 of us. You need to touch the button on the base and  
20 turn the microphone on and then you turn on and speak  
21 into the microphone and we'd like everyone when they  
22 begin speaking to state their name and home address.

23 When you're finished speaking, please turn  
24 the microphone off because they tend to pick up  
25 background noise.

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1           The decision of the Commission in this  
2 case must be based on the public record. To avoid any  
3 appearance to the contrary, the Commission requests  
4 that persons present not engage the members of the  
5 Commission in conversation during a recess or at any  
6 other time.

7           Ms. Schellin will be available throughout  
8 the hearing to answer any procedural questions, so if  
9 you have any questions, just direct those to her.

10           Now I'd like to ask that you all turn off  
11 your beepers and cell phones, if you have any one, so  
12 as not to disrupt the proceedings, including the  
13 members of the Commission who may have their beepers  
14 or cell phones on.

15           Now we'll take up any preliminary matters.  
16 Ms. Schellin, are there any preliminary matters  
17 before we proceed?

18           MS. SCHELLIN: Staff has no preliminary  
19 matters.

20           CHAIRPERSON MITTEN: Okay, then we'd like  
21 to begin by having the representatives from the  
22 Campaign for Mandatory Inclusionary Zoning come  
23 forward and make the initial presentation.

24           We're going to put you on the clock for 45  
25 minutes and I'll ask you to just organize, you're the

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1 orchestra leader for this part and we'll hold our  
2 questions until you're done, so just continue making  
3 your presentation until you're finished.

4 MS. SPENCER: Good evening, my name is  
5 Mary Spencer and I'm a member of DC ACORN. I've lived  
6 in D.C. my entire life. ACORN was one of the founding  
7 members of the D.C. Campaign for Mandatory  
8 Inclusionary Zoning that includes almost 60 housing  
9 advocacy groups, labor leaders, social service  
10 providers, civic associations and political  
11 organizations. They came together to advocate for a  
12 mandatory inclusionary zoning policy to be adopted in  
13 the District.

14 On November 17, 2004, following almost  
15 three years of research, outreach and discussion, the  
16 Campaign submitted a petition for a text amendment to  
17 the Zoning Commission that would establish a mandatory  
18 inclusionary zoning program. The Mayor set a goal to  
19 attract more than 100,000 new residents to the  
20 District over the next 10 years. Then our members  
21 recognized that there were lots of new developments  
22 and saw a gentrification of our neighborhoods. This  
23 is when ACORN and other coalition members that are  
24 here, that are with us today, decided to do something  
25 about the desperate need for more affordable housing,

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1 especially for those who make the city run: for the  
2 teachers, the firefighters, the public work employees,  
3 administrative assistants that aid our day to day  
4 activities that we often take for granted.

5 We began to meet and hold forums in the  
6 community and found overwhelming support for  
7 affordable housing. People were concerned about their  
8 communities' transition. Last winter we collected  
9 over 2,000 postcards from all over the Metro area,  
10 people from every walk of life that felt that  
11 affordable housing should be available in the  
12 District.

13 Those postcards were addressed to the  
14 Mayor and presented to the City Administrator, Robert  
15 Bobb. Also, early in the process we met with the City  
16 Council Chair, Linda Cropp, who has always been  
17 supportive and even spearheaded the introduction of a  
18 resolution to support mandatory inclusionary zoning in  
19 February that was passed unanimously earlier this  
20 month.

21 Families pay too much for housing. Since  
22 1999, housing prices have increased four times faster  
23 than income and the price of rental units have shot up  
24 three times faster. This community is looking for  
25 some relief from the skyrocketing housing boom here in

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1 the D.C. area.

2 As mentioned earlier, the rising cost of  
3 the newly developed housing is displacing long-time  
4 home owners because of increasing property taxes from  
5 development. We are not opposed to new development,  
6 but families cannot continue to be priced out of their  
7 homes.

8 D.C. has always been a melting pot for  
9 diverse living, but this is changing rapidly. We are  
10 looking gentrification that is taking place in D.C.  
11 and we are facing a city that will be developing  
12 neighborhoods that are exclusive, rather than  
13 inclusive, of various ethnic groups. Our long-time  
14 residents are being displaced. Many families are  
15 finding it difficult to make a choice between buying  
16 groceries, paying for medicine or paying their rent.  
17 The community is looking for a commitment to  
18 affordable housing that will help the District  
19 increase its base of taxpayers without displacing  
20 existing residents.

21 Evidence from jurisdictions coast to coast  
22 makes it clear that mandatory inclusionary zoning  
23 programs produce more affordable housing than  
24 voluntary policies. Washington, D.C. should adopt the  
25 mandatory policy given the clear benefit that we will

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1 be outlining today. Mandatory inclusionary zoning  
2 will foster mixed income communities by promoting  
3 balance and equitable housing development, ensuring  
4 housing for a diverse labor force, increasing  
5 opportunities for residents living in high poverty  
6 neighborhoods and designing consistent regulatory  
7 guidelines for developing affordable housing.

8 I am raising two grandchildren in fear  
9 that they will not be able to live in this area due to  
10 the outrageous cost of housing in the future. We must  
11 take this opportunity to make a difference in a  
12 housing crisis that is upon us in the D.C. area. We  
13 need to take care of all D.C. residents and not just  
14 those on the high end of the wage earnings.

15 The District of Columbia needs a policy  
16 that will foster mixed income communities and that  
17 policy is our proposal for mandatory inclusionary  
18 zoning.

19 Thank you.

20 MS. DASTUR: Good evening members of the  
21 Zoning Commission, my name is Nina Dastur. I'm a  
22 resident of Ward I. I live at 2363 Champlain Street,  
23 N.W., in Adams Morgan and I'm an Equal Justice Works  
24 Scholar at the Center for Community Change.

25 I'm very pleased to be here tonight to

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1 discuss the Campaign's petition and I'll start by  
2 giving you a quick overview of the issues that my  
3 fellow panelists and I will address in support of our  
4 proposal.

5 I'll briefly discuss the goals and  
6 principles on which our proposal is based, and why the  
7 Commission should adopt them as the foundation for an  
8 effective inclusionary zoning policy in the District.

9 Then Tad Baldwin will review the methodology that we  
10 used to generate the technical aspects of our  
11 proposal.

12 Cheryl Cort will discuss the benefits that  
13 more compact growth can create and why transit-  
14 oriented development is critical in the context of  
15 regional growth. And then Jim Campbell will critique  
16 the economic model used by the Office of Planning.

17 We'll end with Fred Allen who will  
18 describe the impact of the affordable housing shortage  
19 on low and moderate income workers and explain why  
20 this policy is critical to the continued growth and  
21 vitality of this city.

22 As we described more fully in the  
23 memorandum included in the supplemental materials we  
24 submitted to the Commission, we developed the  
25 Campaign's proposal based on three principles: first,

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1 to reach the deepest affordability levels possibility,  
2 that is to make units available to truly lower and  
3 moderate income households. In particular, we wanted  
4 to ensure that the program helped to preserve and  
5 create stable, mixed income communities by targeting  
6 affordable units to households otherwise priced out of  
7 the housing market.

8 Second, we wanted to maximize the number  
9 of units that would be produced. Inclusionary zoning  
10 is not a silver bullet that will solve the District's  
11 affordable housing crisis, but a strong IZ program, as  
12 part of a comprehensive housing strategy, can produce  
13 a significant amount of affordable housing at little  
14 to no public cost.

15 Third, we wanted to balance the costs  
16 associated with the program with some form of  
17 compensation. We appreciate the analysis conducted by  
18 the Office of Planning that supports the feasibility  
19 of providing bonus density as a form of compensation  
20 and support the adjustments to other zoning  
21 regulations that they have proposed in order to  
22 reasonably accommodate extra density in different  
23 zones across the city.

24 We believe that achieving these goals is a  
25 key to an effective inclusionary zoning program and

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1 just as importantly that in seeking to achieve these  
2 goals, an inclusionary zoning program should promote  
3 both transparency and consistency.

4 We urge you to use these principles as a  
5 basis for your evaluation of the two mandatory  
6 proposals before you today. Toward that end, I want  
7 to touch on a few areas where in our view the  
8 proposals depart from each other in achieving these  
9 goals.

10 First, our proposal reaches deeper levels  
11 of affordability. Half of all units created under our  
12 proposal would be accessible to families making less  
13 than 50 percent of the area median income, regardless  
14 of whether those units are constructed in low rise or  
15 high rise developments. The Office of Planning  
16 proposal only serves these families in low rise  
17 projects.

18 We also reached deeper affordability by  
19 providing a first right to purchase or rent up to 40  
20 percent of the units that are created to nonprofit  
21 housing developers or the D.C. Housing Authority.  
22 These entities can layer in additional subsidies to  
23 make inclusionary housing units even more affordable  
24 with the added benefit of maintaining the  
25 affordability of the units in perpetuity.

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1           A second significant difference between  
2 the two proposals is that the Campaign uses set asides  
3 to define as a percentage of the units in the  
4 development project while the Office of Planning uses  
5 square footage. While this makes it difficult to  
6 compare them exactly, our analysis suggests that the  
7 proposals could generate roughly the same number of  
8 affordable units.

9           That said, however, the Office of  
10 Planning's approach raises a number of related  
11 concerns that could ultimately undermine the  
12 effectiveness of an inclusionary zoning program, if  
13 not properly addressed. For example, it will be the  
14 responsibility of the City Council to pass legislation  
15 authorizing most of the administrative and enforcement  
16 aspects of an inclusionary zoning program.

17           It is critically important that the Zoning  
18 Commission adopt a program that will not be unduly  
19 complex or burdensome to implement and it lends itself  
20 to being rigorous, robust, transparent to the public  
21 and consistent both as it's applied to development  
22 projects and with other D.C. programs.

23           We've only been able to identify one other  
24 jurisdiction that bases set asides on a square footage  
25 formula, rather than as a percentage of units, so

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1 there isn't much learning available as to how such  
2 programs are best administered and enforced.

3 We also note that action that the Council  
4 has already taken to establish inclusionary housing  
5 requirements on the Anacostia waterfront and  
6 legislation that it is now considering to extend  
7 inclusionary housing requirements to all publicly-  
8 owned land are based on set asides by units, not  
9 square footage. It's unnecessary and unwieldy to ask  
10 that the Council craft separate administrative schemes  
11 to cover these programs.

12 If the Commission does consider adopting a  
13 formula based on square footage, we urge you to take  
14 steps to ensure that the program is designed to  
15 produce the maximum number of affordable units and  
16 that this application is again both transparent and  
17 consistent so that they can be monitored and enforced  
18 over the term of the affordability control period.  
19 This would include establishing minimum and perhaps  
20 maximum unit sizes and requiring that affordable units  
21 be produced of the same type by bedroom size, and in  
22 the same ratios as market rate units in the  
23 developments.

24 It will be necessary to translate the  
25 square footage requirements into the number of

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1 affordable units to be generated in each development  
2 project, to require developers to designate the units  
3 in the property that will be made affordable, and to  
4 designate the affordable units in public records and  
5 covenants recorded with the deeds on the property.

6 A final area in which our proposals differ  
7 significantly, particularly in promoting consistency  
8 in the application of requirements and transparency  
9 regarding compliance is in whether and when a  
10 developer may be permitted to build units off-site or  
11 otherwise seek a waiver from part or all of the  
12 program requirements. Our proposal contemplates that  
13 a developer that would suffer a significant economic  
14 hardship if required to comply with the inclusionary  
15 zoning program could appeal for an exception with  
16 alternative forms of compliance.

17 In cases where the developer demonstrates  
18 that the requirements would deprive him or her of all  
19 economically viable use of the property, the  
20 requirements could be waived all together.

21 To make this process faster and easier  
22 while ensuring transparency, we would support  
23 exempting the BZA's consideration of some waivers from  
24 the definition of contested case and permitting it to  
25 make a determination without a public hearing.

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1           Conversely, the Office of Planning  
2 proposal establishes a range of circumstances giving  
3 rise to different levels and standards of review. We  
4 are concerned that the complexity and discretion  
5 provided for in the Office of Planning proposal could  
6 undermine the program overall.

7           First, the Office of Planning proposal  
8 would assign a significant part of the waiver process  
9 to individual negotiation between developers and an  
10 administrative agency. This case by case review would  
11 provide little of the consistency that developers told  
12 us would be a key to their success in working under an  
13 inclusionary zoning program while remaining  
14 competitive in the development market.

15           Additionally, it would undermine  
16 transparency to the public in knowing where  
17 inclusionary units were to be built and the basis for  
18 granting a developer a variance or waiver from the  
19 requirements.

20           Finally, as a social policy, inclusionary  
21 zoning programs are intended to do more than just  
22 produce affordable housing. They're also designed to  
23 create and preserve diverse, vibrant, mixed income  
24 communities which is especially important in a city  
25 that is as divided along racial and economic lines and

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1 that is facing as overwhelming gentrification  
2 pressures as the District.

3           Toward those ends, it's important that  
4 affordable units be constructed on site to the  
5 greatest extent possible. Off-site development should  
6 be permitted only in exceptional circumstances and  
7 permitting developers to decide when to build  
8 affordable units on site will undermine this goal and  
9 can undermine the confidence of the community of the  
10 District's commitment to ensuring the development of  
11 mixed income communities.

12           So now I'll turn to Tad Baldwin, who will  
13 explain the technical components of our policy in more  
14 detail.

15           MR. BALDWIN: Good evening, Tad Baldwin.  
16 My address is 3507 Morrison Street, N.W., Ward 3. I'm  
17 a 45-year resident of the District and a retired  
18 developer of affordable housing.

19           I'll briefly explain the technical  
20 methodology upon which the CMIZ proposal is based. My  
21 primary role within the Campaign was number work; a  
22 secondary role, sharing useful insights from my long  
23 working experience with Montgomery County inclusionary  
24 zoning program.

25           First, our analysis had been built upon

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1 construction of soft cost numbers provided to us by  
2 the local building community. That analysis shows the  
3 developers of low rises will be able to make a profit  
4 on even the affordable units they are required to  
5 provide. The high rise affordable units are close to  
6 break even, with some developers needing to utilize  
7 part of their profit on bonus uses to make up for the  
8 difference in the cost and allowable sales rental  
9 prices of the affordable units.

10 Secondly, by way of example, you have  
11 several sheets behind my testimony that are in green.

12 If you would take a look at those. They provide a  
13 simplified example of an affordable two-bedroom garden  
14 apartment condo. The first phase provides components  
15 of the estimated building costs of such a unit which  
16 totals \$101,136 excluding land. The second sheet  
17 summarizes these costs again and then focuses on unit  
18 affordability by income level. A three-person  
19 household or 65 percent of the AMI, Area Median  
20 Income, spending 30 percent of their income for the  
21 sale of housing will end up after taxes, insurance and  
22 condo fees with \$11,172 for mortgage expenses. I've  
23 capitalized that payment stream with rates ranging  
24 from 7 to 8 percent and find that at 7.5 percent a  
25 mortgage of \$133,200 is supportable. This amount

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1 exceeds the unit cost noted above by \$32,000, allowing  
2 profit on even these affordable units in addition to  
3 the normal profit on a bonus market rate units.

4 This difference will also allow an  
5 affordability gap to be created if the maximum price  
6 charged if an affordable unit is reduced so that  
7 families at 5 or 10 percent below the maximum AMI can  
8 more easily afford to buy or rent.

9 Thirdly, one of our primary goals was to  
10 serve as low an income population as possible. We  
11 subtracted and then added 15 percent to the 65 percent  
12 of AMI level calculated above for affordability and  
13 recommend that half the affordable units be provided  
14 to households of 50 percent of AMI and half at 80. We  
15 believe it important to require the same mix for both  
16 low and high rise units for the following reasons:  
17 first, a sharper pencil in designing smaller  
18 affordable units permitted can improve on project  
19 economics making 80 percent too high an income target  
20 for all high rise units. Fewer affordable and more  
21 market rate bonus units are specified. This permits a  
22 portion of the normal profits from bonus units to be  
23 directed to cover a portion of affordable unit costs  
24 if break even on the affordable high rise unit is not  
25 achieved.

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1 Thirdly, using only the 80 percent measure  
2 for high rise structures, as OP recommends, will  
3 exclude those most in need of the more prestigious and  
4 higher cost areas of the city, weakening the income  
5 integration of such a key advantage of this program.

6 Housing choice vouchers only work for all  
7 unit sizes at 50 percent of the AMI, excluding their  
8 use in high rises, if the 80 percent only measure is  
9 accepted. Also, the 80 percent unit price level will  
10 be too high for the Housing Authority or nonprofits to  
11 purchase or lease these units, eliminating the ability  
12 to reach income levels even below 50 percent.

13 Third, a program with one set of basic  
14 rules is easier for consumers to understand and  
15 government employees to administer.

16 The fourth major point is we have  
17 recommended a 25 percent bonus of units in all cases  
18 and set the low rise requirement of affordable units  
19 as 15 percent. These same numbers are used widely  
20 nationally. Because of the added cost of high rise  
21 housing, we've reduced the affordable requirement of  
22 12 percent, thereby reducing the cost of providing  
23 these lower cost units and increasing the number of  
24 market rate and bonus units. Since substantial rehab  
25 is such an active element of the current D.C. housing

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1 scene, and those buildings rehabbed generally serve  
2 only higher income households, we've recommended a 7.5  
3 percent portion of those units also become part of  
4 this program. The OP proposal is silent on  
5 substantial rehab.

6 Fifthly, long controlled periods on both  
7 sale and rental housing are essential since the  
8 affordable housing crisis will always be with us, 20  
9 years on sale units and 50 years on rental are about  
10 mid-range nationally. Montgomery County has lost over  
11 7,000 of its 11,000 affordable units built under a  
12 similar program because of short price controls. This  
13 winter, they went to 30 years for sale units and 99  
14 for rental. The OP proposal is silent on controlled  
15 terms.

16 The D.C. Housing Authority and qualified  
17 nonprofits have the exclusive right to purchase or  
18 rent 40 percent of the affordable units produced.  
19 Utilized in Montgomery County also, this clause  
20 permitted additional outsized subsidies to allow  
21 households at even below 50 percent AMI to benefit  
22 from the program. This assures that the program will  
23 not cream off the top of the affordable housing need  
24 and also allows special needs serving nonprofits to  
25 provide affordable housing resources in diverse

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1 locations.

2 No less important is the fact that these  
3 units generally remain affordable in perpetuity, the  
4 expected length of need for affordable housing. The  
5 OP is silent on this point.

6 Thank you for the opportunity to share  
7 these thoughts and I turn to Cheryl Cort next.

8 MS. CORT: Thank you. My name is Cheryl  
9 Cort. I'm the Executive Director of the Washington  
10 Regional Network for Livable Communities. And I live  
11 at 1438 Florida Avenue, N.W., in Ward 1 where I have  
12 resided in the District of Columbia for 16 years.

13 Inclusion zoning is part of a strategy to  
14 create smart, equitable growth for the city and the  
15 region. Over the next 25 years, the Washington region  
16 will generate 1.6 million new jobs, 2 million new  
17 residents requiring over 800,000 new homes. Over  
18 three decades of decline and population loss -- I'm  
19 sorry, after three decades of loss in the District of  
20 Columbia, we're growing again. And for the first time  
21 in years, D.C., as the core of the region, has an  
22 opportunity to capture a share of the region's growth.

23 This is a good thing for D.C. and for the  
24 region. Growth in the core fosters more  
25 environmentally-friendly lifestyles as residents drive

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1 less than their suburban counterparts. Capturing more  
2 growth in the city reduces pressure to convert farm  
3 and forest lands into subdivisions and strip malls at  
4 the fringe of the region. All this offers reduced air  
5 and water pollution and conservation of natural  
6 resources. Existing infrastructure can be utilized  
7 saving the cost of building and extending and  
8 maintaining new public facilities.

9 As our region grows and the District of  
10 Columbia continues to attract new residents, strong  
11 demand for housing pushes housing prices up. To  
12 address this, we need more housing supply, in general,  
13 and we need more housing affordable to moderate and  
14 low income families who are running our economy. This  
15 is why inclusionary zoning makes so much sense.

16 Providing more housing opportunities in  
17 the city, especially near Metro stations and major  
18 transit corridors, offers many benefits to the city  
19 and the region. In particular, inclusionary zoning  
20 takes advantage of existing infrastructure, especially  
21 transit, but also sewer and water, schools, emergency  
22 services, libraries and other public services.

23 Inclusionary zoning strengthens the tax  
24 base to ensure that we can pay for and upgrade our  
25 infrastructure.

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1           Inclusion zoning strengthens neighborhoods  
2 by bringing people back to shop at local stores, walk  
3 community streets, ride transit and participate in  
4 civic life. More housing opportunities, especially  
5 near Metro and job centers, give households better  
6 transportation choices so that everyone is not  
7 dependent on automobiles to get around and thus  
8 reducing overall traffic.

9           More housing opportunities in walkable  
10 transit accessible neighborhoods, enables those who do  
11 not have access to a car transportation choices. This  
12 is critical because 37 percent of all D.C. households  
13 do not own a car. Even lower car ownership rates are  
14 found among walkable transit accessible neighborhoods  
15 where car ownership, where 50 to 70 percent of  
16 households do not own cars. Lower income families  
17 also tend to own fewer cars. More housing and  
18 walkable transit accessible neighborhoods helps  
19 families save on costs of car ownership and offers  
20 opportunities to invest in lasting assets such as home  
21 ownership.

22           Some neighbors have questioned if more  
23 housing in the city, especially near transit, is the  
24 best place to direct growth. Where else in the region  
25 is a better place? Where else can families save on

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1 car ownership and better use traffic-reducing  
2 alternatives of walking, bicycling and riding transit.

3 Inclusionary zoning supports important  
4 smart growth goals that help create compact, mixed use  
5 neighborhoods where people can walk, bicycle and ride  
6 transit to important destinations. Despite the rising  
7 amount of driving that most American families do, one  
8 quarter of all trips are less than a mile. Eighteen  
9 percent are less than one half mile.

10 If we can offer more households the  
11 opportunity to live in mixed use, walkable  
12 neighborhoods, many family members can have the choice  
13 to walk, bicycle, ride transit to accomplish most of  
14 their daily tasks.

15 Inclusionary zoning offers increased  
16 housing choices where there is high demand. Increased  
17 housing opportunities in the city for families at  
18 income levels -- of all income levels reduces regional  
19 traffic, uses public infrastructure more efficiently  
20 and gives all of us a cleaner environment.

21 MR. CAMPBELL: Good evening. My name is  
22 Jim Campbell. My address is 5516 Uppingham Street in  
23 Chevy Chase, Maryland. I'm principal of Somerset  
24 Development Company which is located at 4115 Wisconsin  
25 Avenue, N.W. and is active here in development and in

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1 other jurisdictions.

2 Somerset is a private, for profit  
3 developer, specializing in multi-family housing. In  
4 particular, we specialize in the preservation of  
5 affordable housing and in the development of market  
6 rate and mixed income housing in urban in-fill  
7 locations.

8 I bring over 27 years' experience in the  
9 development and the financing of multi-family housing  
10 and commercial real estate. Prior to starting  
11 Somerset, I worked for several years as the Chief  
12 Investment Officer of the AFL-CIO Investment Trusts.  
13 The trusts are probably the largest investor of  
14 pension funds in the new construction of multi-family  
15 housing in the country. Annually, we invested over  
16 \$500 million in new development projects in cities  
17 throughout the United States.

18 I have two key points that I'd like to  
19 address this evening. One, inclusionary zoning can  
20 work and if properly crafted with certain incentives  
21 such as the density bonus proposed, can produce  
22 affordable housing without impairing market incentives  
23 for development to go forward. This has been  
24 demonstrated in a number of cities around the country.

25 Two, a thorough analysis of the actual

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1 marginal costs of adding units under a density bonus  
2 and of the actual appropriate cost of capital or  
3 return on capital attributable to those increased  
4 costs would demonstrate that the Campaign's proposed  
5 affordability requirements are achievable and will not  
6 impair market decision to proceed with the project.

7 Inclusionary zoning can work. I've worked  
8 on inclusionary housing developments as a city  
9 planner, as a private developer, as a lender and as an  
10 institutional investor partner. I've participated in  
11 inclusionary zoning projects in Boston and in  
12 Cambridge, Massachusetts, in New York City, in San  
13 Francisco, in Baltimore and many other locations. In  
14 most cases, the inclusion of affordable units in an  
15 otherwise market development was the result of a  
16 negotiated process, building in appropriate incentives  
17 in various zoning approvals or other entitlements to  
18 offset loss associated with renting or selling the  
19 affordable units at below market. These projects all  
20 moved forward, were built and achieved market results.

21 In many locations, those cities have moved to  
22 formalize an inclusionary zoning program.

23 Measuring the financial impact of  
24 inclusionary zoning on a project, having gone through  
25 several deal by deal analyses of including affordable

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1 units in an otherwise market transaction, I've been  
2 able to gain strong understanding of the actual  
3 financial impacts. There are real soft cost and hard  
4 cost impacts, potential land cost impacts, opportunity  
5 cost impacts, potential profitability impacts and  
6 financeability impacts. Each of these needs to be  
7 understood when formulating the appropriate  
8 requirement for the number or percentage of affordable  
9 units and the level of income targeting.

10 I wanted to commend the Office of Planning  
11 for its very diligent and exceptionally professional  
12 work in this regard and for putting forward a very  
13 viable inclusionary zoning program.

14 However, the assumptions regarding the  
15 marginal costs and adjusted return on capital used in  
16 their model for determining the appropriate level of  
17 affordability, I believe are overly cautious and  
18 conservative, resulting in overly restrictive  
19 requirements for the inclusionary affordability  
20 levels.

21 OP's model does not change construction  
22 costs at all. It does not reduce the ratio of soft  
23 costs. A sharper pencil would reveal significantly  
24 lower real marginal costs of adding the additional 20  
25 percent of buildable area. A developer's total

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1 project budget includes literally dozens of line items  
2 and the construction budget includes maybe two dozen  
3 divisions each of which has a dozen or more subline  
4 items. A line by line review shows that the costs of  
5 adding the additional 20 percent of space is, in fact,  
6 significantly lower than that of the base 100 percent  
7 of space.

8 Costs associated with land acquisition,  
9 civil engineering, geotechnical engineering,  
10 environmental analysis, environmental remediation,  
11 schematic design, most entitlements, roofing, are all  
12 barely increased if at all. There are then very real  
13 economies of scale in design development, structural  
14 engineering, mechanical design, foundations, vertical  
15 transportation, utilities, electrical service, general  
16 conditions, contractor overhead and many other  
17 construction line items. The added space will  
18 typically also result in improvements in the  
19 building's overall efficiency ratio related to gross  
20 square feet to net square feet, meaning that the added  
21 space is typically more efficient than the base space.

22 You don't have to have proportionately larger  
23 lobbies, business centers, health centers and in many  
24 cases, you don't require additional vertical  
25 transportation, stairs, elevators, etcetera.

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1           Also, the lower cost of finishes for the  
2 affordable housing wasn't included at all in OP's  
3 analysis. This can be as much as \$30,000 lower per  
4 affordable unit in a high end condo project. It is,  
5 in fact, a very significant savings that the  
6 developer, believe me, takes into account.

7           Out of caution that one exception to this  
8 rule is the rare and unlikely case where the  
9 additional square footage would require a change in  
10 construction type. That is requiring change from  
11 stick built to steel or concrete, from low rise to  
12 high rise, but the relief proposed to be granted under  
13 this circumstance is appropriate.

14           In addition, situations might arise where  
15 other construction thresholds are crossed, for  
16 example, an additional elevator bank is required when  
17 an addition of below grade parking is necessary which  
18 may offset some of the marginal cost savings.  
19 However, these, I believe, we will find to be very  
20 rare and the unusual exceptions not the rule.  
21 Administrative relief could and should be considered  
22 in those circumstances.

23           There is some increase in the time  
24 required to complete the project, but I believe that  
25 it's less than may have been used in the Office of

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1 Planning model. In any case, significant portion of  
2 that time increase is associated with the initial  
3 processing which happens before any significant  
4 capital has been expended, so that the actual added  
5 capital costs of carry for the project as a whole, are  
6 minimal.

7 Also, it's very important in measuring the  
8 financial impacts to consider the costs of capital for  
9 the added space and the return on capital to be  
10 expected for that capital used for the added space.  
11 Cost of capital is related to the return of capital  
12 expected by the investing entity which is related to  
13 the risk profile of the investment. Obviously, for  
14 real estate development there are a number of risk  
15 factors that drive the cost of capital, zoning and  
16 entitlements risk, in construction risk, in mark risk,  
17 along with on-going interest rate risk. It is not  
18 necessarily the case that the return required for  
19 additional 20 percent inclusionary space has to be the  
20 same as the base project. In fact, two of the risk  
21 factors have been eliminated or substantially  
22 mitigated. There is no additional zoning entitlement  
23 risk associated with the 20 percent additions of  
24 space, and in particular, the market risk, which is  
25 probably the most significant risk factor taken into

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1 account for determining cost of capital is  
2 dramatically reduced for that square footage because  
3 of the substantial share of space being rented or sold  
4 below market into tremendous demand.

5 I'd like to conclude by restating that I  
6 believe that the Office of Planning inclusionary  
7 zoning proposal is workable. It achieves a certain  
8 level of included affordability without hindering  
9 market forces. However, I believe Campaign's  
10 inclusionary zoning proposal is both equally workable  
11 and represents stronger, more effective policy to  
12 address the severe affordability and workforce housing  
13 crisis that exists in the District today. The  
14 Campaign's proposal achieves even more affordability,  
15 while not hindering market forces and the proposal  
16 more than adequate compensates a developer for  
17 including the prescribed levels of affordability.

18 Thank you very much.

19 MR. ALLEN: Good evening, members of the  
20 Zoning Commission. My name is Fred Allen and I am a  
21 Board Member and the Treasurer of the Metropolitan  
22 Washington Council of the AFL-CIO which represents  
23 more than 150,000 members from almost 175 affiliated  
24 local unions in the Greater Washington, D.C. area.

25 In addition, I currently serve on the

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1 Committee on Political Education Chairperson for the  
2 District of Columbia and I am an elected member of the  
3 Democratic State Committee representing Ward 5.

4 I am pleased to appear before you today to  
5 speak in support of the Campaign for Inclusionary  
6 Zoning proposal, Case No. 04-33.

7 I would like to open my remarks by  
8 thanking this panel and all of the endorsing  
9 organizations for their hard work in getting us to  
10 this hearing. The Metropolitan Washington Council has  
11 joined with dozens of community and religious allies  
12 to form a campaign for mandatory inclusionary zoning.

13 We did so because we know that affordable housing is  
14 a serious issue affecting our members and working  
15 families as a whole. The issue is not going to  
16 resolve itself and we must implement measures to  
17 ensure that we don't run the working class away from  
18 this fine city.

19 Some 50,000 of our members live in the  
20 District of Columbia. They perform jobs and deliver  
21 services of every type and description from the most  
22 basic to the most sophisticated. Increasingly, as  
23 housing prices soar, one of their greatest concerns is  
24 whether they can afford to live in this city. Many  
25 nonunion working families share that same concern.

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1           It is certainly no secret that D.C. is  
2 undergoing a boom of unprecedented proportion in the  
3 price of residential housing. The high priced housing  
4 has some tangible benefits for the city in the form of  
5 increased property tax and transfer tax revenues. But  
6 as a result, middle and low income working families  
7 are being priced out of the housing market.

8           Currently a District family must earn  
9 \$85,000 to afford an average home here and \$72,000 to  
10 afford an average decent rental. But the medium  
11 household income is just over \$52,000 per year. The  
12 result is that each year many working families have to  
13 leave the District in search of affordable housing.  
14 For many of them though leaving is not an option, they  
15 must remain District residents as a condition of  
16 employment. Others, such as union retirees and their  
17 families must stay because leaving the city presents  
18 other issues such as difficulty in accessing  
19 transportation, shopping, health care or employment.  
20 So they find themselves in a Catch-22. They don't  
21 earn enough to afford decent housing here, but if they  
22 leave they lose their jobs or become stranded in  
23 suburbia, lacking the accessibility and convenience of  
24 this city.

25           The simple fact is that for working class

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1 incomes have not risen in tandem with housing prices  
2 in the District. From January 1999 to March 2003, the  
3 price of homes for sale here rose four times faster  
4 than income in the same period; the price for rentals  
5 rose three times faster.

6 What's more, the supply of affordable  
7 housing is dwindling and is being replaced by  
8 expensive condos and townhouses. The divide between  
9 the haves and the have nots grows greater. Yet, the  
10 very people and families that are priced out of the  
11 housing market are the very same facts who bring  
12 diversity, stability and vitality to the  
13 neighborhoods.

14 Something must be done to reverse this  
15 trend because I believe that our nation's capital  
16 should be a showcase for strong, diverse communities  
17 and neighborhoods. There's no single solution to the  
18 affordable housing crisis in the District. When the  
19 Metropolitan Washington Council first became involved  
20 on this issue, we relied upon think tanks such as  
21 Policy Link, a national profit organization for their  
22 insight on how other regions were attempting to  
23 resolve affordable housing issues. According to  
24 Policy Link, hundreds of jurisdictions from coast to  
25 coast, including our neighbors in Montgomery County,

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1 have used inclusionary zoning to help meet their  
2 community's affordable housing needs.

3 Based upon the national analysis that  
4 Policy Link conducted for us, we believe that our  
5 proposal, on mandatory inclusionary zoning is in  
6 accord with the most effective inclusionary zoning  
7 program across the country.

8 I encourage you to read this informative  
9 report which I'm hoping you will receive very shortly,  
10 if you have not already received it.

11 We in the labor movement are confident  
12 that mandatory inclusionary zoning will prove to be an  
13 important tool in maintaining and improving our city's  
14 prosperity and the quality of life for all of its  
15 citizens, not just for the privileged few. The Labor  
16 Council, and its 150,000 members, urge the Zoning  
17 Commission to act quickly in adopting the proposal  
18 developed by the campaign for mandatory inclusionary  
19 zoning. It is a well-researched, IZ proposal and it  
20 will help our city become stronger and more supportive  
21 of working families.

22 Thank you for allowing me to testify here  
23 today. The members of our panel would love to answer  
24 any questions that you may have for us.

25 CHAIRPERSON MITTEN: Is that it? That's

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1 great. You guys were very efficient in your  
2 presentation.

3 I just want to begin by congratulating you  
4 by bringing us to this day. I know you guys have done  
5 an awful lot of hard work and you've done a lot of  
6 outreach and you've gotten a lot of input from the  
7 community and support from the community, so I know  
8 you've been working really hard. So I hope you are  
9 satisfied with your efforts because this is an  
10 important day. I'm glad I could be here.

11 Okay, questions from the Commission.  
12 Okay, then I'll dive in. I'll go first.

13 One of the things that I was wondering,  
14 and there may be a very good reason for this and I'm  
15 just not smart enough to figure out what it is, in  
16 terms of limiting the number of or the percentage of  
17 inclusionary units that would be offered to the  
18 Housing Authority and qualified nonprofits, what's the  
19 thinking behind limiting it instead of opening it up  
20 for as many as they can afford to buy, given that for  
21 the reasons that you suggested which is that they can  
22 couple the affordability for the inclusionary zoning  
23 program with other things that go deeper and also it  
24 would alleviate some administrative burden perhaps on  
25 another section of the government, I don't know. So

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1 I'm just wondering why there's that limitation.

2 MR. BALDWIN: In the first place, there  
3 are not enough subsidy dollars to really handle even  
4 as much as 40 percent at this point in time. The  
5 subsidies that have been used by Housing Authorities  
6 and nonprofits come from normally housing trust fund,  
7 in the old days, Section 8 task credit program, what  
8 not. A lot of these programs are, in fact, shrinking  
9 and to date, the District's affordable housing  
10 community has made a recommendation that the Housing  
11 Trust Fund be used other new and rehabilitated  
12 properties, rather than pouring a huge amount of  
13 assets into this program.

14 The program, basically, is not intended to  
15 have all the units be at the lowest level and intended  
16 to be more a low, moderate workforce housing type  
17 program at its core. And that's important for  
18 political reasons as well, that the middle class has a  
19 lot of support politically, normally in most  
20 communities and is sometimes tired of more programs  
21 for the very low income, so in some cases it's a wise  
22 move to have a program that appeals more to that  
23 group.

24 CHAIRPERSON MITTEN: Okay, it's just that  
25 I've been in other hearings recently and there's just

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1 so much pressure on -- there's so few dollars to reach  
2 down to the very low income folks that I was just  
3 wondering if there was --

4 MR. BALDWIN: Just one further thought, in  
5 Montgomery County, the fact is that they've had this  
6 total for a number of years now, only about half the  
7 units are taken by the Housing Authority and  
8 nonprofit. Many of the rental units go by the wayside  
9 because there's not a program you can add on top of  
10 the rental program aside from the housing choice  
11 vouchers to bring in, unless you have a local housing  
12 subsidy program for rental which the District does not  
13 have at this point, I don't believe.

14 CHAIRPERSON MITTEN: So in Montgomery  
15 County, they offer 40 percent of the units and half of  
16 the ones that they make available are taken up by  
17 their --

18 MR. BALDWIN: Right.

19 CHAIRPERSON MITTEN: Okay, well, that's  
20 good to know. In terms of the units that are -- if  
21 they're for sale units and they have the affordability  
22 restriction on them for some period of time, is there  
23 some kind of covenant that runs with the land so that  
24 a lender would be aware of the fact that there was a  
25 limitation? How does that work?

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1 MS. DASTUR: The idea behind the proposal  
2 is that there would be covenants recorded against the  
3 deed. It would run for a period of 20 years on for  
4 sale units. Any time that the property is sold within  
5 that original 20-year period, it would have to be sold  
6 to an income qualified buyer and at an income  
7 qualified price. And our text amendment sets out the  
8 calculation for how you would determine the price.  
9 It's basically indexed to the CPI and you add in the  
10 value of any capital improvements that the current  
11 home owner has made to recapture.

12 If the unit is sold within the 20-year  
13 period, let's say I was the first owner of a for sale  
14 unit and I sold it to Jim within that 20-year period,  
15 Jim has to be income qualified. He has to be a low or  
16 moderate income household, depending on how the unit  
17 was originally designated. And I have to sell to him  
18 at a controlled price. If Jim tries to sell within 20  
19 years, that starts over, so, you know, if I sell in  
20 Year 10, Jim takes it subject to a 20-year control  
21 period. If he waits for an entire 20 years, he then  
22 gets to sell it to any potential buyer and at a market  
23 price.

24 But under our proposal, we would recapture  
25 half of the equity that's in the property that would

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1 go into something like the Housing Production Trust  
2 Fund. At that point, the unit is no longer restricted  
3 in terms of affordability. We're losing it out of the  
4 affordable housing stock and the idea behind equity  
5 sharing is to be able to provide some sort of subsidy  
6 to subsidize another affordable housing unit to try to  
7 maintain the affordable housing stock.

8 CHAIRPERSON MITTEN: Okay, and is there  
9 some kind of special -- are there any kind of special  
10 mortgage provisions that have to be built into it  
11 because there's -- you certainly wouldn't want a  
12 lender to foreclose and then I guess they'd be bound  
13 -- if a lender forecloses on it and then they want to  
14 lease it out or something, how do you ensure that it's  
15 owner-occupied?

16 If you have a for sale unit, the sale  
17 price is controlled. The sale price is controlled and  
18 the income level for the owner is controlled. But  
19 what dictates that that owner occupies the property  
20 and doesn't then turn around and rent it for some  
21 market rate?

22 MS. DASTUR: Our proposal requires that it  
23 be an owner-occupied property, and in fact, it would  
24 be a term of the deed that the owner has to actually  
25 occupy the property as his or her primary residence,

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1       except potentially in an extraordinary circumstance,  
2       such as if someone is in the military and they have to  
3       go away, they could apply for an administrative  
4       variance potentially to someone.     The Mayor would  
5       designate to allow them to basically sublet the unit  
6       while they're away.

7                 But the idea is that the owner has to  
8       occupy the property as a term of the deed.     And it  
9       would be executable by the District government,  
10      example, if the person did not live in the property.

11                CHAIRPERSON MITTEN:   Okay.   And then when  
12      someone decides that they want to sell within the  
13      control period, do they go -- they clearly just don't  
14      put an ad in the paper and sell it like a normal unit.

15                Do they go to some -- to the agency that administers  
16      this and seek a buyer that way?

17                MS. DASTUR:   It's sort of difficult to  
18      talk about this given the bifurcation between the  
19      control over the administrative aspects, I think that  
20      lies with the City Council and the Council will have  
21      to pass legislation authorizing how this program is  
22      going to be administered.     But that's precisely the  
23      scenario that mandates that there be a strong  
24      administrative     agency,     actually     centralized  
25      administration of this program because it's one thing

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1 for developers who are used to selling or leasing  
2 units to execute the original sale to an income-  
3 qualified buyer and at a controlled price.

4 It's another thing to be an owner, a  
5 single owner and have to market a property to somebody  
6 who is income qualified. That's the reason that we  
7 sort of suggested a centralized administrative agency  
8 that will qualify buyers, maintain a pool of qualified  
9 buyers so that if I'm selling my unit, I can go to the  
10 agency and say I'm getting ready to sell my unit, it's  
11 restricted to somebody at 50 percent of the AMI, tell  
12 me who I should sell it to. Or send people to me to  
13 look at the property and then someone in that office  
14 can help them with the administrative aspects of the  
15 closing.

16 CHAIRPERSON MITTEN: If we do the -- if we  
17 take your suggestion of having 50 percent of the  
18 designated units go to people that are at the 80  
19 percent level and then 50 percent go to 50, then that  
20 tracks to a unit.

21 MS. DASTUR: That's correct.

22 CHAIRPERSON MITTEN: It then becomes  
23 attached to a particular unit.

24 MS. DASTUR: That's right. That's why I  
25 was stressing in my testimony that even if you

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1 consider adopting the Office of Planning's approach  
2 which designates affordability based on square  
3 footage, at some point we're going to have to  
4 translate that square footage into number of units in  
5 a development project and which units in the  
6 development project are actually going to be  
7 controlled as affordable so that there can be  
8 appropriate covenants on the deed, so that we can  
9 properly monitor and enforce the affordability  
10 restriction.

11 CHAIRPERSON MITTEN: I was wondering if  
12 you can tell us from the experience of any other  
13 jurisdictions in some of the ways of getting  
14 administrative -- whether it's administrative or  
15 through the BZA. Already, even with this body, we  
16 have had reluctance to get fully engaged in economic  
17 analysis because we're not experts in that area and  
18 your proposal is at one end of the spectrum which is  
19 all economic use of the property would have to be  
20 eliminated by meeting the requirement or something --

21 MS. DASTUR: It's actually less than that.

22 A developer could demonstrate economic hardship and  
23 seek a variance from the requirements. That means in  
24 the first priority either we'd reduce the on-site  
25 requirement or we'd permit them to build off-site or

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1 we'd permit them to pay an in lieu fee to the Housing  
2 Production Trust Fund.

3 If the developer demonstrates that  
4 compliance with the program would deprive him or her  
5 of all economically viable use of the property, then  
6 the agent, the agency they would be appealing to would  
7 have the authority to waive the provisions all  
8 together.

9 CHAIRPERSON MITTEN: I guess the  
10 definition of economic hardship is a tough one and we  
11 really haven't seen people submitting a lot of  
12 analysis, even when that is an issue that has come up  
13 in some variance cases and so on. We haven't seen a  
14 lot of analysis, so then is that any degree of  
15 economic hardship or is that a significant degree and  
16 this is a difficult area for us to address at all.  
17 And then to have economic hardship as a general  
18 premise is difficult because this is not going to work  
19 the same way for everybody. People are going to have  
20 differences and some of them Mr. Campbell mentioned  
21 which is if you throw them into a different building  
22 type or something. But I think there's a certain  
23 degree of economic hardship that could be borne, as it  
24 is. There's economic hardships created by a variety  
25 of zoning provisions. So I guess I'm just looking for

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1 some guidance about how that works in other  
2 jurisdictions, if you are aware of that.

3 MR. BALDWIN: Let me just recount some of  
4 the recent Montgomery County experience on this. The  
5 decisions for this was left up to the Director of the  
6 Department of Housing Community Affairs which would be  
7 somewhat comparable to Office of Planning here. And  
8 this eventually led to some rather major problems  
9 because a lot of developers of high rise were coming  
10 in and saying they couldn't afford to build the units  
11 and as a result she was letting them buy out half the  
12 requirement for \$20,000 a unit which is significantly  
13 less than the value of the affordable units. County  
14 Council was quite upset. Executives were upset. They  
15 spent a two-year process revising this whole thing  
16 about how to make these decisions and basically form  
17 the triumpherant of the Director of Housing Community  
18 Affairs, and also somebody from the Housing  
19 Opportunities Commission and somebody from the  
20 Planning Board to try -- to rule on these decisions as  
21 to a gradual or complete buyout provisions.  
22 Developers have to come in with their full pro formas  
23 and prove their case financially. And the county  
24 keeps records of development costs and a whole lot of  
25 information and become fairly skilled at economic

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1 analysis of real estate in order to be able to  
2 respond.

3 CHAIRPERSON MITTEN: Okay.

4 MS. DASTUR: And I can say just from  
5 looking at the basic statutes that are municipal  
6 regulations that establish these programs in most  
7 jurisdictions, they do use language like significant  
8 economic hardship and I think what they realize is  
9 that they have to sort of back into defining on  
10 something of a case by case basis when someone comes  
11 in, exactly how much of a hardship it is, what the  
12 specific site requirements are or site limitations are  
13 on providing the affordable units or accessing  
14 something like bonus density.

15 But in most cases, what they say is that  
16 that should happen in rare circumstances. In other  
17 words, it shouldn't be at the developers election to  
18 decide that they just can't do it in this project and  
19 certify to the administrative agency that they want to  
20 build the units off-site or that they'd rather pay a  
21 fee. In almost every case, there is some level of  
22 administrative review and approval before that  
23 happens. I think it just tends to happen -- they tend  
24 to sort of define that based on what they see as Tad  
25 says, when the developers put the numbers in front of

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1       them about how realistic it is for them to comply with  
2       the terms of the program.

3                   CHAIRPERSON MITTEN:     Anything additional  
4       that you could submit for the record that would help  
5       us kind of nail this down would be helpful.

6                   A related matter for me is we have these  
7       housing linkage provisions right now and basically  
8       what they say is under certain circumstances you have  
9       to -- it's a little bit loosely worded, but you have  
10      to facilitate or support the development of housing  
11      offsite for certain kinds of development.    And what  
12      that has led to because we don't have good wording,  
13      good tight wording, is that instead of it being okay,  
14      if I was going to spend \$100 a square foot to build  
15      something here, an affordable unit here and instead  
16      for whatever reason I can get a waiver and I am going  
17      to build it off-site, I'm not necessarily going to  
18      spend that same \$100.    I'm going to find a nonprofit  
19      developer who needs some gap funds and I'm just going  
20      to support that and so I'm only out \$10 or \$20 instead  
21      of \$100.

22                   How do you or how do other jurisdictions  
23      guard against that or is that just a problem unique to  
24      the District?

25                   MS. DASTUR:     Well, most jurisdictions,

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1 particularly when you're talking about something like  
2 a set of formula for how it's going to be calculated  
3 and we adopted our proposal from what we've seen in  
4 other jurisdictions which is that it's basically the  
5 difference between the sale price of an otherwise  
6 market rate unit and an affordable unit. And that has  
7 to go into something like the Housing Production Trust  
8 Fund to build affordable housing.

9 I'll also note that I think -- I mentioned  
10 in my testimony that it's difficult to compare our  
11 proposal to the Office of Planning's proposal based on  
12 the set aside of units versus square footage, but to  
13 the extent we've been able to compare them, they seem  
14 to produce roughly the same amount, could produce  
15 roughly the same amount of affordable housing.

16 Because they use one of the sort of  
17 approaches that they use is a percentage of the bonus  
18 that's actually available, that could be translated  
19 into a formula to define what an appropriate on-site  
20 requirement would be, if someone, for example, can't  
21 take full advantage of a density bonus. You take  
22 advantage of whatever portion of the bonus density you  
23 could actually get and limit the requirements that  
24 way.

25 But there are definitely ways to be more

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1 strict than current law requires in the District about  
2 buyouts and I think we've laid out some very strong  
3 ones, particularly on the in lieu fees.

4 CHAIRPERSON MITTEN: I have a few more  
5 questions, but Mr. Hood?

6 VICE CHAIR HOOD: Madam Chair, first of  
7 all, let me echo the comments of the chair of getting  
8 to this day. I appreciate all the work that everyone  
9 has done.

10 Ms. Dastur, I believe, did I pronounce  
11 your name right?

12 MS. DASTUR: Dastur, but anything.

13 VICE CHAIR HOOD: I'm sorry. You  
14 mentioned about the difference in Campaign's model as  
15 opposed to the Office of Planning. Are those in  
16 negotiations, well, not negotiations, but the hearing  
17 process as started, but are you still having dialogue  
18 with Office of Planning, trying to get from the point  
19 of departure and kind of bridge the gap? Are you  
20 still working with Office of Planning, even though  
21 we're in the hearing process?

22 MS. DASTUR: Well, we have been. I think,  
23 I mean what I was trying to highlight in the  
24 differences was one, the difference in approach and  
25 how that can play out in terms of the administration

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1 of the program. And to highlight for you the kinds of  
2 issues that will be important for the Zoning  
3 Commission to address, if for example, you were going  
4 to go with the Office of Planning's approach.

5 In other words, I think it's certainly  
6 incomplete and it would lead us to have some concerns  
7 about the complexity and the administrability,  
8 especially when we look to the City Council and say  
9 they're going to be handling, they're going to be  
10 setting up an administrative scheme to deal with the  
11 Anacostia Waterfront affordability set-aside. They  
12 now have this bill in front of them that would  
13 establish inclusionary housing requirements on all  
14 publicly owned land that's disposed of in the  
15 District.

16 We want something -- the last thing we  
17 need in the District is more administrative complexity  
18 and three different programs to govern three different  
19 types of inclusionary housing programs.

20 So I think just to keep in mind when  
21 you're comparing the proposal is to think you're not  
22 passing this in isolation of other affordable housing  
23 programs in the District and the other sort of  
24 administrative burdens that will be on whatever agency  
25 gets delegated to run this program.

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1                   VICE CHAIR HOOD: Thank you. Madam Chair,  
2 I'd rather hear from all the people that are here to  
3 testify anyway, but when Mr. Allen mentioned about  
4 residents having to be faced with housing and keeping  
5 their jobs, that's an issue and that really hit home  
6 and I'm thinking, because I'm going to make the right  
7 decision and I'm going to ask for this early, so I  
8 hope my colleagues will agree that we have a  
9 comparison. That we have a comparison -- even though  
10 we have it here, but it's just all over the place, we  
11 have a comparison with what OP is recommending, what  
12 the Campaign is recommending, and whoever else.

13                   I want to make sure that I make an  
14 informed, intelligent decision because this is very  
15 serious and I hope my colleagues will agree with me at  
16 that point.

17                   CHAIRPERSON MITTEN: Absolutely.

18                   VICE CHAIR HOOD: Thank you. Thank you,  
19 Madam Chair.

20                   CHAIRPERSON MITTEN: Anyone else have  
21 questions?

22                   MR. HILDEBRAND: I do, just as a follow up  
23 to one of your questions earlier and that's the  
24 process of which your experience has been with  
25 foreclosures on affordable housing in your analysis

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1 and research with other jurisdictions, what is the  
2 percentage of foreclosures that occur with this  
3 program or these types of programs?

4 MS. DASTUR: I don't know the answer to  
5 that, but we can try to find out and get back to you.

6 MR. HILDEBRAND: I'm curious as to what  
7 the mortgage companies' reaction is. Do they go to  
8 the Housing Authority that's running the program to  
9 find candidates or are they forced on their own to  
10 come up with an appropriate buyer?

11 MR. BALDWIN: If I could just add one  
12 thing on that from the county experience here? The  
13 foreclosures have been very few, but one of the  
14 provisions they added on very early was that the price  
15 controls go off units when they go into foreclosure.  
16 It's something a lender has tended to insist on that  
17 they wouldn't lend into the program without it. So  
18 units were foreclosed on. The lender today will get  
19 back his full cost and not be constrained by the  
20 maximum selling price and they also can sell the unit  
21 for whatever the market would bear, but that's just  
22 one jurisdiction's experience.

23 CHAIRPERSON MITTEN: That seems almost  
24 like overcompensating. I mean it's one thing to get  
25 back your costs. It's another thing to be able to

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1 take advantage of whatever the market housing prices  
2 are.

3 MR. BALDWIN: Yes, I tend to agree.

4 MR. HILDEBRAND: I guess the other  
5 question I had is the concept that you could buy out  
6 of your affordable housing requirement at the  
7 difference between market rate and the sales price for  
8 the affordable housing. It's my understanding that  
9 that wouldn't always equate to being able to produce  
10 an affordable housing unit somewhere else.

11 But why isn't the provision more closely  
12 attached to the cost of providing another unit  
13 elsewhere?

14 MS. DASTUR: Well, there are legal  
15 considerations to that. In lieu fees can be  
16 considered an exaction and for exaction, there has to  
17 be a nexus between the price that's being exacted of  
18 the developer and the basis for the exaction in the  
19 first place. I think our analysis has been that what  
20 we're trying to do is basically replace the affordable  
21 unit and that that cost does cover that differential  
22 does cover the cost of the subsidy, so that the nexus  
23 is there if the program were to be challenged on that  
24 basis.

25 CHAIRPERSON MITTEN: Anyone else? I have

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1 a few more questions.

2 In the analysis on the green sheets that  
3 we have, and we also have some other analysis that's  
4 attached to the pre-hearing submission that you made.

5 So I'm aware of the fact that there's more  
6 documentation than we have on the green sheets. But  
7 did you say on Table 1 that the bottom line, the  
8 101,136 is excluding the land?

9 MR. BALDWIN: Excluding the land.

10 CHAIRPERSON MITTEN: Would you turn on  
11 your microphone for me?

12 MR. BALDWIN: I'm sorry, excluding the  
13 land cost. There is no land cost on these affordable  
14 units since they're built on price part of the density  
15 bonus. Right?

16 CHAIRPERSON MITTEN: Okay, that's  
17 presuming that whatever bonus we create is at least  
18 neutral for the developer, right?

19 MR. BALDWIN: Whatever bonus you create,  
20 creates some positive bonus units in addition to those  
21 that are affordable.

22 CHAIRPERSON MITTEN: Well, then it doesn't  
23 negatively impact the plan value?

24 MR. BALDWIN: Right, it doesn't negatively  
25 impact, yes.

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1 CHAIRPERSON MITTEN: Okay, okay. Mr.  
2 Campbell had mentioned a whole bunch of things that  
3 create basically economies of scale and other factors  
4 when you build -- when you have the bonus and you're  
5 building just a larger development. And then in the  
6 paper that you had given us from Policy Link goes on  
7 and it's on page 42 in Appendix C and about these  
8 different cost offsets that are included as well.

9 How has that -- how have those potential  
10 cost offsets been included in your analysis or have  
11 they been included in the analysis that you gave us?

12 Do you know what I'm asking?

13 MS. DASTUR: I think the answer to that is  
14 that the only cost offset that we actually included in  
15 our calculations was the bonus density, was  
16 compensation provided through a density bonus. We  
17 provide that if it seems that a developer can't comply  
18 with the terms of the program, and is seeking a  
19 variance, then it would be subject to negotiation to  
20 potentially vary parking requirements.

21 The District government could decide as  
22 part of the inclusionary zoning program to expedite  
23 processing, which is use of the form of compensation  
24 in other jurisdictions or to waive certain fees as  
25 they do, for example, in Denver, as the only form of

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1 compensation in San Francisco. But we didn't build  
2 any of those other costs or forms of compensation into  
3 the model that Tad developed.

4 CHAIRPERSON MITTEN: I appreciate that and  
5 maybe I was mixing two things up when I asked it. How  
6 have you incorporated the fact that the marginal cost  
7 of building additional units is not one for one? How  
8 have you incorporated that into the analysis?

9 MR. BALDWIN: Yes, I haven't really  
10 incorporated it very well. I made the costs of the  
11 marginal unit equal and so the potential of our cost  
12 being higher than they are.

13 CHAIRPERSON MITTEN: I just want to know  
14 how to take the information so the way we can look at  
15 it is what you show is that there is a sufficient  
16 consideration to the developer through the bonus  
17 density alone for the affordable unit and yet, in  
18 fact, there probably are other that your analysis,  
19 even your analysis is generous, relative to you were  
20 critiquing the Office of Planning as being  
21 conservative and so on. But there's even something  
22 built into your analysis that suggests that the bonus  
23 is more than sufficient. Is that a fair statement?

24 MR. BALDWIN: Yes, I think that's fair to  
25 say. In fact, what I am saying is for the low rise

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1 units, the developers are going to make a profit on  
2 the affordable units, let alone the bonus units.  
3 They'll more than break even on the affordable units,  
4 based on the low rise setting.

5 CHAIRPERSON MITTEN: I just have to ask  
6 this question, so why would you guys of all people be  
7 sort of advocating for that. Why wouldn't you go for  
8 deeper affordability or a higher percentage or  
9 something like that?

10 MR. BALDWIN: Well, there's a way to  
11 adjust that. You can come off the construction costs  
12 more directly than income. One of the reasons we came  
13 back to income level hitting 50 or 80, we thought it  
14 would be easier to administer and doesn't get you into  
15 an annual analysis of what building costs are and then  
16 go back and revise the whole program.

17 The way the county program has worked, it  
18 has come off more closely off costs and income level  
19 and you can do that. One other point that I think is  
20 important in the off-sets and things, we have tried to  
21 not be dependent on things that people have talked  
22 about including tax breaks for these units. We're  
23 trying to restrict the government costs of providing  
24 these units. And make it as close to a break even  
25 proposition for everybody involved as possible and

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1 that's been one of our other, I think, important  
2 principles in design.

3 CHAIRPERSON MITTEN: Did you want to say  
4 anything?

5 MR. CAMPBELL: Yes, I think just to follow  
6 up on that, one of the principles of the analysis done  
7 for the Campaign, I think, was less focused on the  
8 return on capital and the rates of return and internal  
9 rate of return as the OP model was. And so the  
10 relevance of that marginal cost analysis which I think  
11 is very rare and will bear out except in those unusual  
12 circumstances where there's some offset threshold, is  
13 that, in fact, the Campaign's proposal, is  
14 conservative in not having an impact negatively on the  
15 rates of return and the cost of capital, but expected  
16 to build that additional 20 percent of space?

17 So the analysis is to the extent that one  
18 of the key decisions that the Commission needs to make  
19 is what is the appropriate level of targeting for  
20 depths of income that's supported and the number of  
21 units or percentage of units and that both models need  
22 to incorporate that marginal analysis and need to  
23 incorporate the risk factor in the cost of capital  
24 analysis to get to a true impact on the development  
25 community. And it argues that you can't have a

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1 greater degree of affordability. You can have a  
2 deeper targeting of that affordability as the Campaign  
3 is proposing.

4 MS. DASTUR: Let me just echo a point that  
5 Tad made very quickly that's related to this in his  
6 testimony which is that we've targeted at an average  
7 of 50 percent, these units would be targeted at 50  
8 percent of AMI or 80 percent of AMI and there is a  
9 little bit of a cushion there. But that recognizes  
10 that we're not -- when the agency that's administering  
11 this program qualifies people, you're going to have a  
12 window, so people will be qualified, basically,  
13 between 45 and 50 percent of the AMI. So even though  
14 these numbers are based out or penciled out at 50  
15 percent of AMI, it shows that we'll be able to sort of  
16 provide for affordable housing for people a little bit  
17 less than that to open up a window. Otherwise, we'd  
18 be looking just for people who have incomes at 50  
19 percent of the area median income if it were drawn  
20 that finely.

21 CHAIRPERSON MITTEN: Thank you.  
22 Commissioner Jeffries?

23 MR. JEFFRIES: Mr. Campbell, I'm just sort  
24 of fascinated with this whole business of the cost of  
25 capital and what it sounds like you've recommended is

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1 some sort of blended rate that could be looked upon  
2 between the market rate component of the building and  
3 the affordable. Is that effectively what you're  
4 proposing?

5 MR. CAMPBELL: In effect. I mean I don't  
6 know if proposing is the right word, but in terms of  
7 analyzing the impact in the analysis, one of the  
8 things that was sought to be held constant was the  
9 rate of return in terms of the absolute profit to cost  
10 and then the IRR in OP's model for coming up with  
11 their analysis.

12 To the extent that that is the goal to try  
13 to hold that constant, I think is unnecessarily  
14 restrictive, because the rate of return, in fact,  
15 could be slightly less in a blended basis because the  
16 risk profile of the 20 percent additional unit is  
17 dramatically different than the risk profile of the  
18 other.

19 You're now going into a project where 10  
20 percent of your saleable square footable, you don't  
21 need to worry about. It is, in effect, a given that  
22 it's marketable, that it sold, and so you're sort of  
23 overall risk profile is improved every so slightly.  
24 So if the result is a reduction in IRR from 37 percent  
25 to 34 percent, as I think one of the examples

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1 demonstrated, clearly not going to inhibit the  
2 developer from either being able to raise capital,  
3 either on the equity side or the debt side, or their  
4 own motivation and incentive to go forward.

5           So I think it's not because it's -- if  
6 it's 50 percent of the additional 20 percent, then  
7 it's only 10 percent, is it 10 or 8 percent, I'm not  
8 sure of the numbers, but -- so it is blended, but it's  
9 not a huge impact, but it's a marginal impact and it  
10 just argues for being less conservative in setting  
11 that affordability guideline.

12           MR. JEFFRIES:     So in general, I mean  
13 obviously it's another point of departure from OP as  
14 it relates to, you just felt that they were generally  
15 pretty conservative as relate to a number of their  
16 assumptions.   Perhaps the cost of -- because of the  
17 component of affordability here, they could have  
18 looked at a lower number.

19           In your estimation, what would that delta  
20 be, roughly, I mean in terms of basis points or --

21           MR. CAMPBELL:   Basis points in percentage  
22 of affordability?

23           MR. JEFFRIES:   No, no, no, in terms of  
24 cost of capital.   It doesn't have to be on basis  
25 points.

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1 MR. CAMPBELL: It would be totally seat of  
2 the pants, I do not feel comfortable --

3 MR. JEFFRIES: Okay.

4 MR. CAMPBELL: But it's clear that it is a  
5 less, a lower threshold for what the cost of capital  
6 would be or the rate of return that the developer  
7 would expect, given that reduction. I think the  
8 larger issue is the issue of the marginal cost of  
9 actually producing those affordable units and the  
10 bonus units, both market and affordable and that that  
11 is a larger impact; secondary, the cost of capital;  
12 third, perhaps the carry of the capital for slightly  
13 less period of time, but the big one is really that,  
14 not taking into account the marginal cost of  
15 production.

16 MR. JEFFRIES: And another point in your  
17 testimony, you talked about the lower cost of finishes  
18 for the affordable units could be up to \$30,000, so I  
19 mean what are we talking about in terms of finishes,  
20 in terms of differences between affordable units and  
21 market rate? I mean what would account for the  
22 \$30,000?

23 MR. CAMPBELL: Just using -- that's the  
24 high end. That's a differential between the Ritz  
25 Carleton condos in Georgetown in which probably have

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1 bamboo hardwood floors, bamboo rails and treads on  
2 their stairs, 46-inch custom cabinetry with marble  
3 tops. It's just the floors alone is probably a \$10  
4 square foot differential versus a good moderate size  
5 carpeting and bamboo might be as much as a \$14 square  
6 foot, so you'd be able to -- 1500 square foot luxury  
7 condominium, that alone is a very significant --  
8 that's half of your \$30,000 right there.

9           So it's that kind of -- if the baseline  
10 for the affordable unit is sort of a builder's  
11 standard in terms of flooring, carpeting, formica  
12 laminate tops, vinyl flooring, tile flooring, that  
13 kind of differential, some minimum threshold for the  
14 affordability, but you could easily spend \$10,000,  
15 \$15,000, \$20,000, \$30,000 above that for interior  
16 finishes to sell a \$600, \$700, \$800 square foot  
17 condominium.

18           MR. JEFFRIES: Okay, thank you.

19           CHAIRPERSON MITTEN: Anyone else before we  
20 move on.

21           I hope you guys will stay with us through  
22 all the testimony, because at the end, we'll probably  
23 bring you back up to address some of the things. I  
24 don't mean at the end tonight, I mean at the end.

25           Thank you all.

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1           Let me just recap because we've been  
2 having people floating in and out. Very shortly,  
3 we're going to start into our witness list. I have a  
4 couple of -- I'm going to ask for government witnesses  
5 and I'll ask for anyone representing their ANC.

6           I just want to remind people that we're  
7 having another hearing on this subject on Thursday of  
8 this week at 6:30 and if you don't get to testify  
9 tonight, you don't have to have signed up to testify  
10 on a specific night. You'll be given the opportunity  
11 then, and we're also going to have a third night which  
12 is a week from tonight on Monday, August 1st, same  
13 time, 6:30. We're going to go about 10 tonight and we  
14 clearly aren't going to get through everyone's  
15 testimony, so I just wanted to remind folks of that,  
16 but we're very happy that you're here and listening to  
17 the testimony that's been given so far. So thank you.

18           Let me ask if there's anyone -- Office of  
19 Planning has agreed to defer their testimony so that  
20 we can hear from folks that are here tonight, but is  
21 there anyone representing a government agency that  
22 would like to testify before I ask for ANC?

23           (Pause.)

24           While we have this moment, I would just  
25 remind people when they come forward to testify, give

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1 your witness cards to the reporter before you testify  
2 so that he can track who's up.

3 (Pause.)

4 Okay, go ahead.

5 MR. SHEDLOCK: Good evening. My name is  
6 Jason Shedlock. I'll be submitting testimony for  
7 Council Member Adrian Fenty this evening who  
8 apologizes that he can't make it, but wanted to make  
9 sure that he got on the record on this very important  
10 issue and I'll be reading verbatim his statement.

11 Good evening. My name is Adrian Fenty,  
12 District of Columbia Council Member representing Ward  
13 4. I appreciate the opportunity to testify at this  
14 District of Columbia Zoning Commission public hearing  
15 on inclusionary zoning.

16 I'm pleased to be here to voice my  
17 unwavering support for mandatory inclusionary zoning  
18 in the District of Columbia. As the robust housing  
19 market in the District of Columbia continues to forge  
20 ahead, we must understand that increased housing costs  
21 are pricing low and moderate income residents out of  
22 their homes and out of the city. Throughout the  
23 country, and including neighboring Montgomery County,  
24 jurisdictions have been utilizing this concept of  
25 inclusionary zoning as an important tool to help them

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1 meet their affordable housing needs and build  
2 sustainable, mixed income communities.

3 It is time for the District of Columbia  
4 government to work to ensure that the District is a  
5 city that will not turn its back on our low and  
6 moderate income neighbors. In order for our city to  
7 truly flourish, we must facilitate development and  
8 foster the existence of our diverse neighborhoods. We  
9 must ensure that the District of Columbia remains a  
10 viable place for those of all income levels to live,  
11 work and play.

12 As the co-chairman of the D.C. Council's  
13 Task Force on Affordable Housing during the last  
14 council period, and as the lead proponent of reserving  
15 a significant portion of the Housing Production Trust  
16 Fund for low and very low income residents, I believe  
17 that we must support the adoption of a mandatory  
18 inclusionary zoning policy that requires new and  
19 rehabilitated residential developments to include  
20 housing units affordable to low and moderate income  
21 residents.

22 Thank you for this opportunity to testify  
23 on this important and far-reaching issue and I look  
24 forward to continuing to work to ensure that our low  
25 and moderate income residents of the District can

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1 continue to afford to call Washington, D.C. their  
2 home.

3 Thank you very much.

4 CHAIRPERSON MITTEN: Thank you. All  
5 right, on the witness list I have maybe one person who  
6 is designated to speak for their ANC which would be  
7 Charles Reed, who is the chair of ANC-2F. Is Mr. Reed  
8 here?

9 Are you speaking on behalf of the ANC?

10 MR. REED: Yes.

11 CHAIRPERSON MITTEN: Okay. Is there  
12 anyone else who has been authorized to speak on behalf  
13 of their ANC?

14 What's your name? Mindy Moretti, okay.

15 (Pause.)

16 Mr. Reed, you go ahead and we'll get  
17 everyone else settled down while you deliver your  
18 testimony. I need you to turn on your microphone,  
19 introduce yourself and tell us where you live. There  
20 you go, perfect.

21 MR. REED: Good evening, Ms. Mitten and  
22 members of the Commission. I testify in support of  
23 the Campaign for Inclusionary Zoning's proposal number  
24 04-33.

25 My name is Charles Reed. And my address

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1 is 1310 Q Street, N.W. I have lived there for 30  
2 years. I appear tonight in my own right and as  
3 chairman of Advisory Neighborhood Commission 2F which  
4 represents the Logan Circle area of Ward 2.

5 I have a graduate education in chemical  
6 engineering and in law. I was a law clerk to Justice  
7 Tom Clark at the United States Supreme Court. I  
8 practiced law in the District for nearly 40 years,  
9 including in the area of land use.

10 I've also been a developer of both large  
11 scale and small projects. I have, for example,  
12 developed both residential subdivisions and commercial  
13 projects, principally in Charles, Prince George and  
14 St. Mary's Counties. I have owned section 8 projects  
15 in the District, notably at Bates Street and I have  
16 also owned multi-family low income properties.

17 In view of my background, I believe I have  
18 some familiarity with the issues on tonight's  
19 discussion. I am an advocate for inclusionary zoning  
20 by virtue of my life experiences. In a sense, this is  
21 anomalous. I was born and grew up in Texas during the  
22 '30s, '40s and '50s. Texas was a heavily segregated  
23 state, both racially, as well as economically. And  
24 while I viewed myself as unprejudiced, it was  
25 nevertheless somewhat of a culture shock to arrive in

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1 the District during the most troubled times in the mid  
2 and late 1960s. Moving to Logan Circle within a few  
3 years of the 1968 riots, I found myself in the middle  
4 of the most affected area of those riots.

5 In the process of restoring a home,  
6 raising a family and integrating into a part of the  
7 city I have grown to love, the impelling need for low  
8 and moderate income housing became quite evident. I  
9 will leave for others a discussion of the technical  
10 and economic details of why this is so important and  
11 how we are to go about it to provide low and moderate  
12 income housing in the District. For me, the reasons  
13 are self-obvious and more personal. I have lived in a  
14 diverse neighborhood and it has enriched my life as  
15 well as that of the four children we have raised here.

16 With all of us working together, we have reclaimed  
17 the blighted area, reduced its crime, restored its  
18 grand buildings and created a community of vibrancy  
19 and character.

20 The Logan Circle area has historically  
21 been a diverse area from its inception in the 1870s.  
22 The bulk of the community wants it to stay so. We  
23 have seen its benefits. As president of the Logan  
24 Circle Community Association in the late 1970s, I and  
25 others in the community supported the DCRLA project in

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1 an innovative Section 8 program that greatly  
2 facilitated this goal.

3 The RLA sold city-owned decrepit  
4 properties in our area at below market prices and  
5 financing rates. These were sold mainly to upper,  
6 middle class professional couples who could  
7 demonstrate that they had the credit worthiness and  
8 managerial capability to restore the homes. The  
9 properties were typically these stunningly attractive,  
10 though very much decrepit, Victorian properties that  
11 abound in the area. The catch was that the purchasers  
12 had to agree to live in the homes for five years and  
13 this is the most important part, they had to build one  
14 or more units in the property for low income use and  
15 maintain them during that time. The program brought  
16 low income dwellers in day to day contact with  
17 upwardly mobile middle class owners of the properties.

18 Tragically, the program was killed, I assume by the  
19 high interest rate regime of the early 1980s, but  
20 while it worked, it worked well.

21 I recall one instance of a welfare mother  
22 who moved into one of the units with a child. She  
23 ultimately finished school, got a Ph.D. and as far as  
24 I know has been off the welfare rolls ever since. The  
25 program brought a quality of life to the neighborhood

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1 that transcends the pragmatic technical points that I  
2 have heard discussed here tonight.

3 Logan Circle has lost those low and  
4 moderate income residents from the dozen or so  
5 properties that were involved in the RLA program and  
6 we are losing more each day. The restoration of the  
7 area has brought many welcomed changes. Ours has  
8 become one of the most sought after residential areas  
9 in the city, but demand has driven up prices and  
10 without a mechanism to incentivize, protect and  
11 preserve affordable housing in the area, we will lose  
12 the character and perhaps the soul of the place where  
13 I live.

14 My view is not isolated. As I mentioned  
15 at the outset, I'm also here as the chairman of ANC-  
16 2F. My ANC has unanimously endorsed the CMIZ proposal  
17 with respect to rental housing and with but a single  
18 dissenting vote, endorses the provisions as it relates  
19 to for sale properties. I urge you to adopt the CMIZ  
20 proposal.

21 Thank you very much.

22 CHAIRPERSON MITTEN: Thank you, Mr. Reed,  
23 and if you'd just hold your seat until we finish the  
24 panel and then we'll see if the Commission has any  
25 questions. And I just want to remind people that we

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1 typically don't time ANC -- people who are testifying  
2 on behalf of an ANC, so when your time is up, I will  
3 be on you, to keep things moving. So that's why I  
4 didn't stop Mr. Reed.

5 Ms. Moretti, why don't we have you go  
6 next?

7 MS. MORETTI: Good evening, my name is  
8 Mindy Moretti. And I'm an Advisory Neighborhood  
9 Commissioner in Adams Morgan, ANC-1C. Washington,  
10 D.C. derives much of its strength from the city from  
11 its diversity and its many thriving mixed income  
12 neighborhoods. Adams Morgan has long been one of the  
13 most diverse neighborhoods in Washington. However,  
14 that diversity is being threatened on a daily basis as  
15 more and more single family homes and smaller multi-  
16 unit buildings are being replaced by hulking projects  
17 offering luxury lofts and condos starting in the  
18 affordable low \$400s as an example.

19 While the prices offered on the new luxury  
20 lofts and condos may be affordable for some, they are  
21 hardly affordable to the families that have made Adams  
22 Morgan the vibrant, diverse community it is today. As  
23 developers and real estate agents capitalize on the  
24 neighborhood's diversity as a selling point for their  
25 luxury units, the very folks who bring diversity to

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1 Adams Morgan, be it ethnic, racial or economic, are  
2 being driven from the neighborhood by ever-increasing  
3 rents and the skyrocketing real estate prices that put  
4 most of the property out of reach for low to moderate  
5 income families.

6 ANC-1C has taken a strong stand on a  
7 variety of housing issues including a resolution to  
8 support a request in 2004 for a revision of the Reed  
9 Cook overlay to change low and moderate income to very  
10 low and low income as the price level for affordable  
11 units. To date, we have heard nothing from the Zoning  
12 Commission regarding this request.

13 In February 2005, by a vote of 8 to 0,  
14 ANC-1C voted to support the inclusionary zoning  
15 proposal submitted to the Zoning Commission by the  
16 Campaign for Mandatory Inclusionary Zoning. We  
17 believe that mandatory inclusionary zoning is a  
18 critical tool for achieving the goals of producing  
19 affordable housing, discouraging displacement,  
20 creating opportunities for home ownership and  
21 maintaining and creating mixed income communities.

22 Without quick adoption of a text amendment  
23 submitted in Case 04-33 by the Campaign for Mandatory  
24 Inclusion Zoning, Adams Morgan, and in fact, all the  
25 District of Columbia is threatened by the very real

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1 possibility of becoming a city divided between the  
2 very rich and the very poor with no room in the  
3 middle.

4 CHAIRPERSON MITTEN: Thank you. Mr.  
5 Bjorge.

6 MR. BJORGE: Hello, good evening, members  
7 of the Commission. My name is Mark Bjorge. I  
8 represent ANC-2B. I'm the Commissioner for a Single  
9 Member District 2B05.

10 Our ANC has considered over a course of  
11 four meetings the mandatory inclusionary zoning  
12 proposal. We did not rush into our decision. We  
13 really did want to give it a fair and due  
14 consideration. After such consideration and  
15 consistent with our oath to the city as a whole, we  
16 passed the following resolution which I would now like  
17 to read to you. It's fairly brief.

18 At its regular meeting on June 8, 2005,  
19 the Dupont Circle Advisory Neighborhood Commission  
20 considered Zoning Commission Case No. 04-33, a  
21 mandatory inclusionary zoning proposal. With eight of  
22 nine Commissioners in attendance, a quorum as duly  
23 been noticed. And the Commission approved the  
24 following motion by unanimous vote 8 to 0. ANC-2B  
25 urges the Zoning Commission's expeditious review and

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1 approval of the mandatory inclusionary zoning as  
2 embodied in the principle outlined in Case 04-33, an  
3 amendment submitted to the D.C. Campaign for Mandatory  
4 Inclusionary Zoning on November 17, 2004.

5 ANC-2B further believes mandatory  
6 inclusionary zoning should include appropriate  
7 protections for historic districts. The Commission  
8 believes that such policies can produce thousands of  
9 units of affordable housing in the years ahead for  
10 moderate and low-income households whose members wish  
11 to both work and live in the District of Columbia and  
12 that mandatory inclusionary zoning will contribute  
13 significantly to the creation of vibrant, diverse  
14 neighborhoods throughout the District.

15 I'm speaking on behalf of our chair, Darin  
16 Bowie. He's included his contact information. I've  
17 passed copies of our resolution to your staff for  
18 review.

19 Thank you.

20 CHAIRPERSON MITTEN: Thank you. Ms.  
21 Moretti, I have to ask you to send again your  
22 resolution changing the provisions in the Reed Cook  
23 overlay because when we get correspondence that comes  
24 -- it's usually presented to us with our monthly  
25 meeting agenda and I do not recall and I don't know if

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1 any other Commissioners recall having that  
2 correspondence come to us and we would be more than  
3 happy to take it up.

4 MS. MORETTI: Okay, it was November, I  
5 believe, when we -- it may have been October when we  
6 passed the resolution, so I will make sure that you  
7 get another copy.

8 CHAIRPERSON MITTEN: We'll be looking for  
9 it this time.

10 Ms. Steingasser?

11 MS. STEINGASSER: Madam Chair, we do have  
12 a copy. It was actually filed as a case and it's in  
13 our status report and we discussed it with the  
14 Commission shortly after it was filed that we would  
15 keep it because of the economic analysis that this  
16 case would yield throughout that AMI without  
17 understanding its impact.

18 CHAIRPERSON MITTEN: Okay.

19 MS. STEINGASSER: It has been there. The  
20 Commission is aware of it.

21 CHAIRPERSON MITTEN: Great. Good. All is  
22 well again.

23 Does anyone have any questions for the  
24 panel? Okay, thank you all and thanks for bringing  
25 this up in your ANCs.

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1           Okay, now we're going to start plowing  
2 through our list of witnesses.

3           I'm just going to call people up in the  
4 order that I have you down and I believe this is the  
5 order that people had called. So we'll have a mixture  
6 of proponents and opponents sitting happily together  
7 at the table.

8           Audrey Ray, David Bowers, Jenefer  
9 Ellingston, Christopher Dyer. We're going to do  
10 panels of four. So Ms. Ray is going to get five  
11 minutes and maybe you'll tell us what group you're  
12 representing and Ms. Ellingston is going to get five  
13 minutes representing the Statehood Green Party and the  
14 other folks get three.

15           Ms. Ray, you're up.

16           MS. RAY: Good evening, Zoning Commission.  
17 My name is Audrey Marie Ray and I live in Ward 5  
18 which is the Ivy City neighborhood. My address is  
19 1830 Providence Street, N.E. and I am here in support  
20 of the Campaign for Mandatory Inclusionary Zoning  
21 Proposal Case No. 04-33.

22           I'm sorry, let me backtrack a little bit.

23 I'm here to represent the Historic Ivy City Cremell  
24 School Cooperative, as well as I'm a member of the  
25 Affordable Housing Alliance as well as I'm a member of

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1 Empower D.C. and I'm also here to represent Trinity  
2 Baptist Church.

3 CHAIRPERSON MITTEN: You have quite a  
4 collection of hats.

5 MS. RAY: There is an affordable housing  
6 crisis in D.C., especially for low income and moderate  
7 income people which can be eased with an adoption of a  
8 mandatory inclusionary zoning policy. The D.C.  
9 Housing Authority and qualified nonprofits should have  
10 the first right to purchase or rent up to 40 percent  
11 of inclusionary units. This component is essential  
12 for two reasons. Number one, it enables the  
13 inclusionary zoning program to reach even deeper  
14 affordability, potentially serving individuals and  
15 families at 30 percent AMI by increasing the stock of  
16 units that are affordable and accessible by voucher  
17 holders.

18 Number two, it is one of the only  
19 mechanisms to provide permanent affordability.  
20 Without this safeguard, D.C. will not be building up a  
21 stock of affordable housing and when the price control  
22 period ends, housing will again become unaffordable.  
23 Mandatory inclusionary zoning addresses the cost of  
24 affordable housing as well as its location, so it  
25 helps to create vibrant, mixed income, multi-racial

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1 communities that provide opportunities for community  
2 residents.

3 Affordability control periods and equity  
4 sharing are necessary to achieve the CMIZ goals of  
5 building a stock of affordable housing, encouraging  
6 neighborhood stabilization and promoting racial and  
7 economic diversity.

8 Owner-occupied affordable units are to  
9 remain affordable for 20 years and rental affordable  
10 units for 50 years. Owner-occupied housing sold after  
11 20 years will provide the seller with half the  
12 appreciated value of the home. The other half of the  
13 proceeds from the sale will flow to the Housing  
14 Production Trust Fund to support the production of  
15 affordable housing. It is essential that the  
16 affordable housing be constructed on site. The major  
17 reasons to favor on-site are: we want to create or  
18 maintain mixed income communities.

19 On-site development is the only way to get  
20 affordable housing into neighborhoods that are high  
21 cost or largely built out and the most valuable  
22 resource in housing development is land and affordable  
23 housing developers are having difficulty finding  
24 property to develop in today's market.

25 A contribution to the Trust Fund alone

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1 does not solve this problem, especially as land values  
2 escalate. Mandatory inclusionary zoning works.  
3 Success stories from across the country demonstrates  
4 that inclusionary zoning increases the availability of  
5 affordable housing. The benefits of inclusionary  
6 zoning could provide some important benefits to the  
7 District such as producing affordable housing for  
8 lower and moderate income workers, supporting the  
9 creation or preservation of mixed income communities,  
10 leveraging the expertise and capacity of the private  
11 market to develop affordable housing.

12 In conclusion, I would like to thank the  
13 Zoning Commission for the opportunity to testify and  
14 that the Zoning Commission will remember my words when  
15 deciding voting yeah or nay for this much needed  
16 proposal.

17 Thank you.

18 CHAIRPERSON MITTEN: Thank you, Ms. Ray.  
19 And I just ask everybody to hold their seats and we'll  
20 ask questions of the panel at the end.

21 Mr. Bowers?

22 MR. BOWERS: Good afternoon, Madam Chair,  
23 members of the Zoning Commission. My name is David  
24 Bowers and I'm a District resident at 1350 D Street,  
25 N.E. I currently serve as a Director of the

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1 Enterprise Foundation's Washington, D.C. office. I'm  
2 a former member of the Board of Real Property  
3 Assessments and Appeals and a current candidate for  
4 the Democratic nomination of City Council-at-Large. I  
5 am here to testify today simply as a concerned  
6 citizen.

7 I urge the Zoning Commission to adopt a  
8 proposal that adheres as closely as possible to the  
9 principles of the Campaign for Mandatory Inclusionary  
10 Zoning. First, adopt a proposal that maximizes the  
11 number of units that will be produced. Second, adopt  
12 a proposal that reaches the deepest levels of  
13 affordability possible. And finally, embrace the  
14 policy that balances any costs associated with the  
15 program of some form of compensation in order to  
16 mitigate any impact on developers and land owners.

17 Madam Chair, we must all admit that we  
18 have a housing crisis in our city. Increasingly, hard  
19 working families are being priced out of the market,  
20 thousands of units of affordable housing have been  
21 lost to condominium conversion and other market forces  
22 in recent years, with thousands of other affordable  
23 units in danger of being lost in the coming years.

24 As a person who works daily to direct the  
25 efforts of an organization committed to preserving and

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1 expanding the supply of affordable housing, I am  
2 acutely aware that there is no silver bullet solution  
3 to the affordable housing crisis we face in our city.

4 That said, I am confident that one necessary  
5 component of the response to the crisis is a strong  
6 and well thought out mandatory inclusionary zoning  
7 policy.

8 I applaud the Zoning Commission for making  
9 a decision to consider only mandatory inclusionary  
10 zoning proposals. The key now is to make sure we have  
11 a balanced policy that works in the market and one  
12 that will produce the maximum number of units serving  
13 those most in need to the greatest extent possible.

14 Specifically, I strongly encourage the  
15 Zoning Commission to consider whether the Campaign  
16 set-aside ratios and income targeting and the length  
17 of price controls. We live in a market where the  
18 reality is that many of our working families can't  
19 afford the average home for sale or apartment for rent  
20 on the market. Nurses, police, teachers, fire  
21 fighters, hotel workers and many entry level white  
22 collar employees make insufficient income to buy or  
23 rent in our city. Even if the market were to cool  
24 off, the reality is that market prices will continue  
25 to outpace incomes for the foreseeable future.

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1           The Commission needs to ensure that the  
2 maximum number of units are provided for at income  
3 levels that will help those most in need. We should  
4 learn the lessons from our neighbors in Montgomery  
5 County that affordable units gained can easily be lost  
6 when price controls expire. Many units that could  
7 have been produced in recent years were not produced  
8 because of the lack of a mandatory inclusionary zoning  
9 policy.

10           The lack of action that led to this  
11 reality is a sad one that we cannot only lament, but  
12 also learn from today. Let us not lose this  
13 opportunity to secure as many units as we can for as  
14 long as we can, now that the opportunity presents  
15 itself.

16           In addition, I encourage the Commission to  
17 ensure that the requirement for on-site affordable  
18 units is a strong one with clear provisions on what  
19 constitutes an unreasonable hardship for developers.  
20 That said, I also encourage the Commission to  
21 establish a reasonable system for developers to  
22 request waivers. There is no desire on my part to run  
23 developers out of town or out of business. Developers  
24 play a critical role in providing the housing that  
25 residents need. The Commission, advocates and

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1 developers should work to develop a system that allows  
2 developers to make appeals that will be considered by  
3 clearly defined guidelines in an expeditious manner.

4 CHAIRPERSON MITTEN: Thank you.

5 MR. BOWERS: Thank you.

6 CHAIRPERSON MITTEN: I know you were right  
7 at the end. So thank you.

8 Ms. Ellingston?

9 MS. ELLINGSTON: My name is Jenefer  
10 Ellingston. I'm a member of the Affordable Housing  
11 Alliance and I speak on behalf of 5,000 registered  
12 Statehood Greens.

13 My remarks are repetitious. I know that.  
14 But sometimes repetition in politics is very  
15 necessary.

16 CHAIRPERSON MITTEN: We're not a political  
17 body.

18 MS. ELLINGSTON: I know, I know.

19 (Laughter.)

20 MS. ELLINGSTON: Well, behind the scenes.  
21 And I understand that I'm not addressing the City  
22 Council, but the pure Zoning Commission. So we have  
23 to understand that.

24 D.C. has an affordable housing crisis.  
25 Crises are characterized by being sudden, unexpected

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1 and short term. This crisis not sudden, unexpected or  
2 short term. We've been in the crisis mode for four or  
3 five years, probably longer, but a serious crisis  
4 mode. We saw it coming. We recognize the tsunami of  
5 gentrification and at this very late date, we are  
6 taking small steps to stop the harm done to less than  
7 wealthy residents.

8 Our city government blindly embraces  
9 economic development, fueled by market forces. They  
10 regard displaced lives in its wake as collateral  
11 damage. They ignored the social obligation to secure  
12 a level playing field for all its citizens. Instead,  
13 our government gave its allegiance to trickle down  
14 economics. There was no trickle down.

15 Property prices and property taxes went  
16 up, but incomes did not. Until this year, the city  
17 government stood by, wrung its hands, but mostly  
18 ignored the disastrous reality. Naturally, they  
19 cheered the added revenue that came with the raised  
20 housing and property prices, never mind their  
21 obligation to spend the added revenue for public  
22 prosperity and public needs.

23 Consequently, citizen coalitions such  
24 those who are here this evening, formed to fight for  
25 affordable housing and elected officials came on

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1 board. With the election of 2004, new council members  
2 joined the defenders of the public interest and  
3 together we have made measurable advances in the  
4 housing sphere. Of course, that does nothing for the  
5 thousands who have been forced to sell or leave their  
6 homes.

7 This year, finally, enforcement and  
8 strengthening of laws already on the books has slowed  
9 the tied of displacement and reaffirmed that middle  
10 and low-income residents can afford to live here.

11 And that brings us to the issue on the  
12 table this evening, mandatory inclusionary zoning. It  
13 is one of the tools designed to enable middle income  
14 citizens to live in D.C. -- and lower incomes. City  
15 Council has declared its support for MIZ and of  
16 course, the Campaign for MIZ has offered in detail to  
17 the Zoning Commission all the explanations and  
18 arguments that show its validity.

19 Many of those arguments will be presented  
20 in testimony today and have been. I'm not myself  
21 aware of the arguments that oppose the Campaign for  
22 MIZ, but I'm sure you all hear them in proper time.  
23 The housing crisis is nationwide. D.C. is not  
24 breaking new ground. God forbid, the D.C. Council  
25 should ever be in the forefront of breaking new

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1 ground.

2 (Laughter.)

3 We are in the wake of many other cities  
4 who installed MIZ years ago. Now it falls to our  
5 Zoning Commission to vote in favor of opening the  
6 housing market to middle and lower income residents.

7 Thank you. Oh, and I live in the Sixth  
8 Ward.

9 CHAIRPERSON MITTEN: Thank you. Mr. Dyer?

10 MR. DYER: Thank you. My name is  
11 Christopher Dyer and I'm pleased to testify in favor  
12 of this Case No. 04-33. I live at 1420 N Street,  
13 N.W., in Ward 2. I am an ANC Commissioner in 2F,  
14 although I'm not the designated spokesperson, so I  
15 enter this testimony under my own name, but I wanted  
16 to sat that. It's important.

17 I'm testifying in favor of this case, in  
18 part as an ANC Commissioner, because I keep hearing  
19 that it's important to have affordable housing and  
20 this seems to be the only thing I've seen so far that  
21 makes sense. I know the devils are in the detail, but  
22 the attraction of this is that to me, it rewards  
23 developers to add housing stock to this city. The  
24 benefits of affordable housing are numerous. It's one  
25 of the keys, I think, to help lift people up and to

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1 level the economic playing field. A diverse housing  
2 stock is critical to the long-term sustainability of  
3 the city and inclusionary zoning in my opinion is a  
4 good step to starting this process.

5 As an ANC Commissioner in Logan Circle, I  
6 have witnessed a tremendous renaissance in the last  
7 five years. I actually bought in Logan Circle in  
8 1999. I was very fortunate. I chose to live in Logan  
9 because I enjoy walking to work. If I were to try to  
10 buy this property today, I wouldn't be able to afford  
11 it because of the increase in housing. I'm not alone.

12 I have a lot of younger constituents and a lot of  
13 friends who would make incredibly good long-term  
14 investors in the city, but they simply cannot afford  
15 to live in downtown and work in downtown. So I think  
16 that mandatory inclusionary zoning will help attract  
17 that kind -- will attract people like me and people  
18 like others to come into the city.

19 Finally, I grew up in Washington, D.C. In  
20 1975, we moved into Mount Pleasant which is one of the  
21 most diverse neighborhoods in the city and it's  
22 because of my experiences living in an economically  
23 diverse neighborhood that I think really helped me  
24 become the person I am today. And I'd love to see  
25 that opportunity offered to people all across this

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1 great city.

2 So as I said, for me, inclusionary zoning  
3 seems to be a simple thing. It works. It's easy and  
4 I strongly encourage you to support it.

5 CHAIRPERSON MITTEN: Thank you. Any  
6 questions for the panel from the Commission? Any  
7 questions?

8 Okay, thank you all.

9 Next up will be Michelle Victoria.  
10 Michelle Victoria, Janet Brown, John MacElwayne.

11 UNIDENTIFIED AUDIENCE MEMBER: John  
12 MacElwayne will submit written testimony. He's not  
13 able to be here this evening.

14 CHAIRPERSON MITTEN: Okay. Marta Beresin,  
15 B-E-R-E-S-I-N.

16 UNIDENTIFIED AUDIENCE MEMBER: She'll be  
17 here shortly. She's probably still putting children  
18 to bed.

19 CHAIRPERSON MITTEN: Okay. Carol  
20 Casperson. Carol Casperson, Habitat for Humanity.  
21 Craig Pascal.

22 UNIDENTIFIED AUDIENCE MEMBER: He'll be  
23 submitted written testimony also.

24 CHAIRPERSON MITTEN: Okay. Babak  
25 Movahedi. Okay, I think that gives us four.

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1                   Okay, Ms. Brown.

2                   MS. BROWN:     Good evening.     I'm Janet  
3 Brown.   I live at 1746 Q Street, N.W. and have been a  
4 resident of the District for the last 48 years.

5                   I'm here this evening speaking for the  
6 Affordable Housing Alliance which is made up of more  
7 than 35 organizations interested in preserving  
8 affordable housing and increasing the stock.   And we  
9 always emphasize that we most interested in working on  
10 the low end of the income scale where the greatest  
11 need is.

12                  The Alliance has been a very strong  
13 contributor to the work of the Campaign for Mandatory  
14 Inclusionary Zoning from the beginning and we consider  
15 this our proposal, as well.

16                  I want to discuss the differences between  
17 the DCOP proposal, as I understand them.   We haven't  
18 had it for very long.   And our own proposal.

19                  Number one, the DCOP inclusionary zoning  
20 alternative runs counter to our efforts to lower the  
21 income eligibility of renters and purchasers of  
22 property, especially in high rise buildings.   Eighty  
23 percent AMI is the allowance that they would offer and  
24 I'm not sure in waterfront properties whether there  
25 would be any affordable units at all.

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1           The problem here is that there's just a  
2 huge difference between the real median income of  
3 District residents and the area median income which is  
4 what these percentages apply to. The fact is that  
5 almost half of all D.C. residents have incomes below  
6 50 percent of the regional AMI. So when we talk about  
7 50 percent, we're not talking about really, really low  
8 income residents in the District. We're talking about  
9 half the population.

10           And in setting the eligibility at 80  
11 percent rules about almost three quarters of the  
12 population of the city. Now this is not, in our  
13 opinion, inclusionary. You'll mix up 25 to 30 percent  
14 of the highest income people in this city, that's not  
15 giving you a mixed income community.

16           Using the 80 percent figure ends the hope  
17 that we'll ever have any more really affordable units  
18 in the more expensive parts of the city. It means  
19 that we'll never have -- that the working class, the  
20 working people in this city will never have a chance  
21 to live where there's a glimpse of the Anacostia  
22 River, despite the amount of public infrastructure and  
23 expenditure that's going to go into the preparation of  
24 those sites.

25           Eighty percent does not even meet the

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1 requirements of DCPO's own vision of an inclusive  
2 city, the title for the comprehensive plan.

3 Secondly, under the guise of flexibility,  
4 the DCOP would allow several complicated and tricky  
5 exemptions, permitting developers to build 50 percent  
6 or more in some cases, of units off-site. Mixed  
7 income neighborhoods cannot be realized by building 10  
8 units somewhere else in the ward. DCOP would give  
9 developers extremely lucrative bonuses for these high  
10 rise buildings in return for building a few units at  
11 80 percent of AMI.

12 What's more, the exemptions will  
13 encourage, we believe, ongoing negotiations over each  
14 development. There will be arguments over the  
15 suitability of off-site locations, over the  
16 comparability of units, over the relative costs of  
17 sites. Six or seven developers with whom we vetted  
18 this proposal before we submitted the amendment in  
19 November, told us that if we had IZ in the city, it  
20 had to be -- the rules had to be clear and that the  
21 playing field had to be equal and the rules had to  
22 apply to everybody because that was the only way that  
23 it would work and it would be fair and that they could  
24 not afford to spend a lot of time negotiating every  
25 single project with the city administration.

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1           The advice from other jurisdictions also  
2 is that we should, in fact, take their experience into  
3 account. And Tom Perez, the chair of the Montgomery  
4 County Council at the forum in Washington here last  
5 month, said that we shouldn't do as they did, but we  
6 should do instead, make no exceptions.

7           DCOP in this respect, leaves too much  
8 discretion in the administration's hands and you will  
9 hear from people in the room this evening that have  
10 not a great deal of faith in allowing that amount of  
11 discretion and indeed, it has taken the administration  
12 four years to come up with their promise of  
13 inclusionary zoning.

14           CHAIRPERSON MITTEN: I need you to wrap  
15 up.

16           MS. BROWN: Which was made in April 2001.  
17 We call the DCOP proposal IZ Lite, half the calories,  
18 half the effect, half the units.

19           Thank you.

20           CHAIRPERSON MITTEN: Good closing line.  
21 I'm glad I didn't step on it too badly.

22           (Laughter.)

23           CHAIRPERSON MITTEN: No comment on OP, it  
24 was just a good line.

25           (Laughter.)

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1 Ms. Beresin.

2 MS. BERESIN: Thank you, good evening,  
3 Commissioners. My name is Marta Beresin and I live in  
4 the Glover Park neighborhood of Ward 3 with my husband  
5 and two children. I'm here to speak as a D.C.  
6 resident in favor of the mandatory inclusionary zoning  
7 text amendment that was submitted by the Campaign for  
8 Inclusionary Zoning in November.

9 We, my husband and I bought our rowhouse  
10 in 1998 for \$315,000 and it's now worth more than  
11 twice that amount which makes me feel extremely lucky  
12 that we bought it when we did, because today we would  
13 not be able to live in Glover Park.

14 We moved to Ward 3 because of its good  
15 elementary schools, safe neighborhoods, easy access to  
16 park lands, playgrounds, restaurants and supermarkets.

17 The amendment proposed by the Campaign will help  
18 ensure that Stoddard Elementary school teachers,  
19 Georgetown Hospital nurses and public interest lawyers  
20 like myself are able to live in Ward 3 and in all  
21 parts of the city. And I want the guy who fixes my  
22 roof and my dear nanny who cares for my two children  
23 to have access to good schools and safe communities  
24 just like I do.

25 Frankly, I'm here tonight because I think

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1 that good schools and safe communities should not be a  
2 luxury of just the very wealthy in the District. But  
3 right now, the fact is that unless you bought a home  
4 or an apartment a long time ago or you're a lawyer or  
5 a doctor, you can't afford to live, own or rent in  
6 most of Ward 3. And I can't imagine my neighborhood  
7 with no artists or college professors, elementary  
8 school teachers, police officers or fire fighters. I  
9 don't know about you, but I don't want to live in a  
10 community of professionals. I live in D.C. because I  
11 love the diversity that city life offers and from  
12 speaking with many of my neighbors, they feel the same  
13 way.

14 I also stand before you as a part-time  
15 lawyer for homeless families. When I'm not caring for  
16 my two small children, I work for a nonprofit called  
17 the Washington Legal Clinic for the Homeless. This  
18 work has made me keenly aware of the need for  
19 inclusionary zoning as one of the policy tools that  
20 the District can use to develop affordable housing.  
21 You may be surprised to hear this, but many of my  
22 clients work at full or part-time jobs in the  
23 District, but can't find rental housing in the  
24 District that they can afford. The fair market rent  
25 for a two-bedroom in D.C. is \$1,187 per month. Most

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1 of my clients earn the minimum wage and would have to  
2 work 152 hours a week or 21 hours a day to afford a  
3 two-bedroom unit. Mandatory inclusionary zoning is an  
4 important tool the District can add to its tool kit to  
5 increase affordable housing and created mixed income  
6 neighborhoods and it's a tool that costs the District  
7 very little financially because it leverages the  
8 expertise and capacity of the private market to  
9 develop affordable housing.

10 While it wouldn't resolve the housing  
11 problems of very low wage workers like my clients, the  
12 amendment proposed by the Campaign will contribute  
13 more substantially to the city's stock of affording  
14 housing than the alternative. It would do so by  
15 creating housing for folks earning between \$40,000 and  
16 \$70,000 a year, creating more moderately priced  
17 housing throughout the city, decreases the competition  
18 that my clients face in finding lower income units.  
19 This, in turn, creates more housing for the poorest of  
20 the poor and enables some of them to escape  
21 homelessness.

22 The bottom line is that while D.C. is  
23 largely an economically segregated city, most of us  
24 live here because we cherish diversity and believe in  
25 opportunity for all, but every day we're losing what

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1 little diversity we've got left because as the real  
2 estate market goes up and up, more folks are being  
3 priced out.

4 If you value --

5 CHAIRPERSON MITTEN: We'll have to make  
6 that be your final word. We have your written  
7 testimony for the last few sentences.

8 MS. BERESIN: Thank you.

9 CHAIRPERSON MITTEN: Thank you. Ms.  
10 Casperson.

11 MS. CASPERSON: Good evening. My name is  
12 Carol Casperson. I'm the Executive Director of D.C.  
13 Habitat for Humanity which is the nation's capital  
14 affiliate of Habitat for Humanity International.

15 I'm speaking in favor of mandatory  
16 inclusionary zoning. I live and for the last 26  
17 years, I've lived at 1423 and a half 22nd Street,  
18 S.E., yes, there was urban renewal back then.

19 D.C. Habitat builds homes with low income  
20 residents of the nation's capital and sells them at no  
21 profit, no interest on a 25-year mortgage. And I just  
22 wanted to say when I was listening to the other  
23 testimony that we wouldn't have any trouble finding a  
24 new owner for anybody that wanted to sell their unit  
25 in an inclusionary unit. We have over 8,000 people on

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1 our list who are wanting to buy a D.C. Habitat for  
2 Humanity home and I don't think that you could blame  
3 them when a three-bedroom monthly principal payment is  
4 about \$330. And then we escrow their taxes and  
5 insurance each month so that they can be paid at the  
6 end of the year.

7 For most families that buy Habitat homes,  
8 this is much less than they were paying to rent an  
9 apartment, even to rent a Housing Authority Unit. And  
10 according to the Joint Center for Housing Studies of  
11 Harvard University, nearly one in three American  
12 households spends more than 30 percent of their income  
13 on housing and more than one in eight spends upwards  
14 of 50 percent. Incomes have not kept pace with the  
15 cost of housing in the District, and as you've heard  
16 before, have increased four times faster than income.

17 In 2002, D.C. Habitat received several  
18 lots in Northeast D.C. at a discounted price from the  
19 Collins Family for \$5,000 each. Similar lots in the  
20 neighborhood were selling at that time for \$20,000  
21 each, so this was a great donation from the Collins  
22 family.

23 More recently, we tried to buy some of the  
24 same type buildable lots in the same neighborhood and  
25 the asking price was \$50,000. This is happening in

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1 Ward 7, where there was only one application for a  
2 building permit the year before we started our 53-home  
3 community in 2003.

4 Right now, you can go down 56 Place  
5 Northeast and see eight houses under construction  
6 between Blaine and Clay. We used to be the only  
7 people, the nonprofits used to be the only people  
8 building in Ward 7 and 8. This is just a small  
9 indication of what is happening all over this city.  
10 Every neighborhood is a hot neighborhood, a hot  
11 property. If something isn't done soon, there will be  
12 no land or vacant homes left to rehab for affordable  
13 homes.

14 I urge the Zoning Commission to use  
15 mandatory inclusionary zoning to meet affordable  
16 housing needs and help build vibrant, mixed income  
17 communities in the nation's capital.

18 Thank you.

19 CHAIRPERSON MITTEN: Thank you. Mr.  
20 Movahedi.

21 MR. MOVAHEDI: Good evening, Madam Chair  
22 an members of the Board. My name is Babak Movahedi  
23 and I am a Commissioner for Single Member District  
24 2B07, and I would like to thank you for the  
25 opportunity to speak to you tonight as a

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1 representative of our Dupont Circle community.

2           This June, our ANC unanimously voted to  
3 support the D.C. Campaign for Inclusionary Zoning -- a  
4 proposal that will bring much needed affordable  
5 housing to a city experiencing rapidly rising property  
6 costs.

7           Inclusionary zoning is not a unique  
8 solution. It has been used by hundreds of cities and  
9 counties across the country for almost 30 years to  
10 encourage developers to build mixed income housing and  
11 foster diversity. We believe mandatory inclusionary  
12 zoning will have the same success here in the District  
13 of Columbia. By promoting mixed income communities we  
14 are helping to create neighborhoods where residents  
15 live, shop and work within walking distance. In doing  
16 so, we keep more cars off our streets and reduce the  
17 demand on our public transportation.

18           As a real estate professional, I have seen  
19 first-hand the exponential growth and development of  
20 the housing market in the District. Neighborhoods are  
21 being renovated, property values are up, neighborhoods  
22 have been rebuilt, and an increasing number of high-  
23 income individuals are moving into Washington. Our  
24 city has benefitted from this trend. Our streets are  
25 cleaner, more employers are locating here, and the

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1 city coffers are filled with new tax revenue.

2           However, left behind and often displaced  
3 by this trend are our middle and low-income workers.  
4 Our workers are being displaced by skyrocketing rents  
5 and real estate prices. These workers are our  
6 teachers, firemen and police. They are the clerk at  
7 the local grocery, the single mothers, and the young  
8 professionals. I believe mandatory inclusionary  
9 zoning will make more housing available to  
10 Washington's working families.

11           In closing, I have three requests, one  
12 that was suggested by ANC 2B and two that were not  
13 brought before the ANC at the time of its meeting.  
14 One, that properties in historic districts remain  
15 protected. Two, that the Commission keep the income  
16 requirements at the level suggested by the Campaign  
17 for Inclusionary Zoning. And three, I strongly  
18 believe that the offsite development should be  
19 restricted. The purpose of inclusionary zoning is to  
20 promote neighborhood diversity. By not absolutely  
21 restricting offsite developments, the benefits of  
22 inclusionary zoning will be lost.

23           Thank you for your time.

24           CHAIRPERSON MITTEN: Thank you. Any  
25 questions for this panel from the Commission? Thank

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1 you all for coming down and taking the time to prepare  
2 some testimony for us.

3 Stephen Wade, George Rothman, Leslie  
4 Steen, Rosemarie Flynn. Is Leslie Steen here? Okay.  
5 Naomi Mitchell. Naomi Mitchell? Charles Barber.

6 You can be the pioneer in the opponents  
7 are. So please, have a seat.

8 Mr. Wade? Let's have you go first.

9 MR. WADE: Good evening. Thank you for  
10 this opportunity to testify, Commissioners. My name  
11 is Stephen Wade. I'm Program Associate for the  
12 Washington Regional Network for Liveable Communities  
13 and I've been closely associated with the Campaign for  
14 Mandatory Inclusion Zoning. But tonight, I'm  
15 testifying on behalf of myself as a resident of D.C.

16 I live at 1701 Park Road, N.W. in Mount  
17 Pleasant in Ward 1.

18 I live in one of D.C.'s great  
19 neighborhoods. The neighborhood is racially and  
20 economically diverse, the streets are safe because  
21 they are vibrant and alive with people walking, biking  
22 and riding buses. The stores are local, eclectic and  
23 successful because of this same vibrancy.

24 Unless this diversity and intensity of  
25 activity is maintained, diversity of race, income,

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1 interests, background, language, music, Mount Pleasant  
2 will no longer have the characteristics that make it  
3 the safe and special community that it is.

4 I see the Campaign's proposal as an  
5 essential policy that will help my neighborhood and  
6 many others like rapidly changing Columbia Heights  
7 retain their uniqueness while growing and changing  
8 during this unprecedented development boom.

9 The Campaign's proposal reaches lower  
10 income families. The people who work in my apartment  
11 building and community should be able to live in the  
12 neighborhood. Also, the Campaign's proposal requires  
13 that the affordable housing be built on-site. It is  
14 important to me that people of various income levels  
15 live next to each other, not just down the street.  
16 This relationship and exchange represents and  
17 important principle for the District.

18 Since my neighborhood has a number of  
19 older residential buildings, I want rehabilitated  
20 buildings to be included in this policy and so that a  
21 reasonable number of them can be offered for moderate  
22 and low-income households. I want more people living  
23 in my neighborhood, more people walking on my street.

24 Most importantly, I want everyone to have the choice  
25 and opportunity to live in my neighborhood.

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1                   Please endorse the Campaign's policy to  
2 help make this happen. Thank you for your time.

3                   CHAIRPERSON MITTEN: Thank you, Mr. Wade.

4                   Mr. Rothman?

5                   MR. ROTHMAN: Good evening, Commission  
6 Members. I'm George Rothman, president and CEO of  
7 Manna, Inc., a 23-year-old nonprofit developer and  
8 builder of affordable home ownership housing  
9 throughout D.C.

10                   I'm here today on behalf of our staff and  
11 aspiring lower income home buyers to strongly support  
12 the proposed mandatory inclusionary zoning text  
13 amendment, put forth by the Campaign, with certain  
14 provisions and changes.

15                   The changes we propose are limited to for  
16 sale affordable housing and are based on many years of  
17 experience as practitioners. They're also based on  
18 the express desires and needs of our many aspiring  
19 first time lower and moderate income buyers. The  
20 changes we propose are based on fairness and  
21 workability.

22                   Home ownership has always been a primary  
23 way lower income people have had to overcome poverty.

24                   It's not to permit a quick windfall, nor is it to  
25 provide substantial equity as a gift. Ideally,

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1 beginning with settlement, the affordable buyer should  
2 have the same opportunity to enjoy the financial  
3 remarks of home ownership as others.

4 Now I'd like to address the specific  
5 topics.

6 Eligible incomes and percent set aside  
7 that must be devoted to that population. Based on  
8 costs and market forces for home ownership, it's  
9 unrealistic to require a 50 percent set aside for  
10 those with incomes up to 50 percent of AMI. And  
11 remember, this testimony is being presented by an  
12 organization which strives to serve incomes as low as  
13 possible on the affordability spectrum.

14 We believe the program will be more  
15 successful and feasible with the more relaxed  
16 standard. Fifty percent set aside at 80 percent of  
17 AMI with the remainder negotiable, depending on the  
18 project and the current status of the economy.

19 In today's market, a 50 percent set aside  
20 for 50 percent AMI could be too stringent, I regret to  
21 say. Condo fees make a big difference in the ability  
22 of low income persons to qualify for mortgages. Lower  
23 prices and low interest rates won't provide the  
24 requisite help if condo fees are high. Therefore, to  
25 make IZ units affordable, we suggest that condominium

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1 projects subject to IZ regulations be required to  
2 calculate condo fees by the PAR value method, rather  
3 than the square footage method. And furthermore, that  
4 the PAR value method bear substantial relationship to  
5 the proposed selling prices in the public offering  
6 statement.

7 Furthermore, initial condo fees on  
8 affordable units should be adjusted in the future to  
9 coincide with the expiration of the of the control  
10 period.

11 Pricing methodology. It's unrealistic to  
12 limit sales such that monthly payments cannot exceed  
13 30 percent of gross income. This provision shows a  
14 lack of understanding about affordable home ownership  
15 and the mortgage loan process. There should be no  
16 limitation on percentage of income devoted to housing  
17 costs for home ownership. That should be determined  
18 by the seller and lender. In high cost cities such as  
19 Washington, it could be and often is necessary to pay  
20 over 40 percent of gross income for housing costs and  
21 IZ should not limit that. It could hurt those who  
22 want and need affordable housing and are willing to  
23 pay for it and have good credit. A 40 to 42 percent  
24 guideline is more realistic and workable.

25 Control period. In short, we propose a

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1 recapture of public subsidies, both direct and  
2 indirect through personal covenants and a reasonable  
3 limit of 5 to 15 years on any type of sharing of  
4 capital gains. In projects where there is a  
5 government subsidy, that subsidy should be recaptured  
6 and revolved back into the Housing Production Trust  
7 Fund or similar vehicle so that benefits can continue  
8 into the future for affordable housing.

9 And home ownership as opposed to rental,  
10 this is more preferable than excessive control periods  
11 which just discourage buyers and discriminate against  
12 the low income folk home ownership is supposed to be  
13 benefit.

14 A provision called renewability where a  
15 new owner has to sell to a second owner in the same  
16 income category ignores the reality of enforcement.  
17 While theoretically DHCD or the Housing Authority  
18 could administer this, in reality, say 10 years after  
19 the initial closing, there's a high probability that  
20 virtually no one will remember the project financing  
21 or want to get involved with the program they know  
22 nothing about. This is a reality that we often  
23 encounter as people come and go in D.C. government  
24 agencies.

25 Relief from requirements. Manna's

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1 position today, as it has been consistently for years,  
2 is to maximize the production of affordable units and  
3 preservation of existing units. That means not  
4 requiring developers of buildings in the downtown core  
5 of the city to build affordable units on site. The  
6 owners and developers of downtown real estate should,  
7 by right, be able to opt for in lieu of fees to the  
8 Trust Fund or off-site development in neighborhoods  
9 all over the city. It means being able to build an  
10 all affordable project.

11 We do believe in and support the principle  
12 requiring trade offs to occur in certain near downtown  
13 neighborhoods like Shaw and Columbia Heights.  
14 However, it's possible that there may be no sites  
15 available and then developers should be able to go to  
16 other neighborhoods in the city to fulfill their  
17 requirements for affordable homes.

18 Eligibility requirements for persons  
19 seeking housing made available through the program.  
20 The public person option is a wonderful idealistic  
21 notion, but is out of touch with reality. In general,  
22 government agencies don't have the nimbleness to  
23 administer or manager a scattered site program and  
24 nonprofits then have the resources or the property  
25 management ability to undertake the risk.

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1 Thank you.

2 CHAIRPERSON MITTEN: I'm impressed that  
3 you got that just down to the bell.

4 I know we're going to have questions for  
5 you, Mr. Rothman.

6 Ms. Flynn. Would you turn on your  
7 microphone for me?

8 MS. FLYNN: Good evening. My name is  
9 Rosemarie Flynn. I live in Bethesda, Maryland, but  
10 I'm speaking for the Gray Panthers of Metropolitan  
11 Washington which has been active for more than 30  
12 years, chiefly in the District in very many housing  
13 and other economic and social advocacy sessions.

14 The Zoning Commission hearing Case No. 04-  
15 33, as we all know, is on the Campaign for Mandatory  
16 Inclusionary Zoning. We are pleased to testify in  
17 favor of this. The approval of this amendment will  
18 provide a means for the District of Columbia to  
19 increase so-called workforce housing in new and  
20 rehabilitated buildings in all parts of the District,  
21 since half of the set aside units would be affordable  
22 to households earning 50 percent of the area median  
23 income and half at 80 percent of AMI.

24 Since an important part of the proposal is  
25 to provide integrated and diverse communities, it is

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1 not appropriate to limit the set aside units in  
2 highrise buildings only for those at 80 percent AMI.  
3 The opportunity for the D.C. Housing Authority and  
4 qualified nonprofit groups to purchase or rent half  
5 the set aside units or 40 percent, I guess it is. so  
6 that housing choice voucher users can also benefit  
7 from IZ is another important part of this proposal.

8 The proposed text amendment has been  
9 carefully worked out after consideration of best  
10 practices found in other communities which have IZ  
11 requirements. Compensation to developers and  
12 alternatives have been discussed with developers in  
13 the area and a strong attempt has been made to ensure  
14 fair treatment for developers. The exact percentage  
15 of set aside units is varied according to type and  
16 height of developments and it had been decided that a  
17 unit set aside requirement would be more practical and  
18 more easily monitored and enforced than a square  
19 footage requirement.

20 IZ has been criticized because it does not  
21 solve all housing problems. There is no single  
22 solution to a situation which has been years in the  
23 formation, but it is one piece in an array of  
24 programs. We urge the Zoning Board to move forward on  
25 this proposal so that it can join rent control, set

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1     aside requirements in buildings developed on public  
2     land and use of housing production trust fund money in  
3     increasing and maintaining affordable housing so badly  
4     needed in the District of Columbia. We do not want to  
5     lose long time residents of D.C. and we want those who  
6     teach in the schools, provide for public safety, or  
7     provide any services to the other residents of D.C. to  
8     be able to move back to the District.

9                   CHAIRPERSON MITTEN:     Thank you.     Mr.  
10     Barber.

11                   MR. BARBER:     Good evening.     My name is  
12     Charles Barber. I'm co-chair of the Legislative and  
13     Governmental Affairs Committee of D.C. Building  
14     Industry Association.

15                   Some of you may know me as senior counsel  
16     at George Washington University. I'm not here tonight  
17     representing G.W., although G.W. is a member of DCBIA.

18     It has relatively modest views on this subject and  
19     what views G.W. has will be submitted through the  
20     Consortium of Universities through a separate  
21     document.

22                   Tonight, I'm representing DCBIA. DCBIA  
23     comprises some 400 firms related to real estate in the  
24     District of Columbia, developers, architects,  
25     engineers, attorneys. All of them are directly

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1 involved in the housing development in the city.

2 DCBIA strongly supports affordable  
3 housing. Let me emphasize that. Many of our members,  
4 both nonprofit and for profit groups are directly  
5 engaged in the production of affordable housing and  
6 have produced thousands of affordable homes in the  
7 District of Columbia over many years and we are  
8 interested in programs that advocate and promote  
9 affordable housing.

10 DCBIA and a number of its members have  
11 cooperated with D.C. Chair Linda Cropp during the past  
12 several weeks and participated in numerous discussions  
13 initiated by her and coordinated by the Office of  
14 Planning. Our members were generous with their time  
15 and shared significant amounts of information about  
16 their business, their livelihood, their production of  
17 housing, with all parties in the discussion, including  
18 several representatives of the Campaign for  
19 Inclusionary Zoning for the District of Columbia.

20 Notwithstanding these discussions, DCBIA  
21 has substantial concerns about the means selected for  
22 increasing affordable housing in the District of  
23 Columbia, i.e., the mandatory inclusionary zoning  
24 proposal before the Commission today including the  
25 recommendations of the Office of Planning.

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1           Now during this hearing there are others  
2 who will follow me who are -- including several  
3 residential developers, who will address specific  
4 concerns about the MIZ proposals. The following is a  
5 more general view of DCBIA as a whole.

6           My first broad point is that the  
7 Commission should exercise extreme caution in adopting  
8 any type of mandatory inclusionary zoning policy.  
9 Mandatory inclusionary zoning has been adopted in less  
10 than 5 percent of the local jurisdictions around the  
11 country, state and local jurisdictions.

12           CHAIRPERSON MITTEN: Can I just ask you  
13 since you seem to be going directly through your pages  
14 and you're going to run out of time.

15           MR. BARBER: Do you want me to highlight?

16           CHAIRPERSON MITTEN: Yes.

17           MR. BARBER: All right, first of all, let  
18 me point to the attachment which explores the  
19 experience of other jurisdictions. Basically, we have  
20 found that the gains they have made in affordable  
21 housing are modest at best and they're far more  
22 difficult to achieve in urban environments.

23           Mandatory inclusionary zoning implies a  
24 blanket mandate which leads to regulatory regime which  
25 is costly, complex and uncertain an outcome. The

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1 basic premise is that the cost and the risk is placed  
2 on the housing developer. And in theory, the  
3 additional density to compensate to developer, but as  
4 a practical matter, striking the balance among all the  
5 inter-related variables the developer faces can  
6 ultimately act as a disincentive to the development of  
7 housing, not only affordable housing, but market rate  
8 housing as well.

9 This difficulty of one size fits all  
10 approach is what led DCBIA to opt for more flexible  
11 approach, an incentive-based approach. And if we're  
12 really serious about affordable housing and we've  
13 taken a look at this, there really should be a more  
14 community-oriented approach that has a broad base  
15 funding mechanism to provide for more affordable  
16 housing.

17 A greater range of incentives, as well as  
18 a streamline of existing programs. The program you  
19 have today, unfortunately, is too limited in scope and  
20 will involve substantial cost and complexity, far  
21 outweighing the meager results it's likely to achieve.

22 If a mandatory program is adopted and  
23 that's the second part of presentation, I will hit the  
24 highlights. They're in my testimony and there are  
25 others who will speak to these issues as well.

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1           But if a mandatory program is adopted,  
2 there is a variety of moving parts and they're all  
3 interrelated, but let me hit some of the problems that  
4 have been put on the table.     Application to  
5 substantial rehabilitation, we do not believe that any  
6 mandatory program should include substantial  
7 rehabilitation where the results can only be  
8 counterproductive to the preservation of older  
9 properties.

10           The amount of affordable housing.  
11 Seventy-five percent of the bonus density or 10  
12 percent of the matter of right density for lower  
13 density buildings, we think it cuts it too close.  
14 It's a problem of one size fits all because they may  
15 work in some substances, but not in others.     DCBIA  
16 recommends a program that considers ratios less likely  
17 are to threaten the current revival of residential  
18 development in the District.

19           The length of affordability.     You've heard  
20 various terms, length of time, how long an affordable  
21 unit should remain under price controls.     For sale  
22 units, DCBIA recommends that there be incentives for  
23 affordable housing to feel and act like owners.     I'll  
24 conclude with this point.     This can be accomplished,  
25 for example, by a 10-year affordability requirement

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1 with a gradual increase over time of the percent of  
2 equity, in percent of the equity that the affordable  
3 owner could retrain.

4 CHAIRPERSON MITTEN: And we'll have to  
5 read the rest of what you have submitted.

6 MR. BARBER: Yes.

7 CHAIRPERSON MITTEN: Questions for this  
8 panel? I had a question for Mr. Rothman.

9 You mentioned and then I don't think you  
10 specifically addressed that there should be a  
11 distinction between rental and for sale housing and  
12 I'm wondering are you suggesting that we need to  
13 mandate what someone is going to build or are you  
14 saying we need to treat the property --

15 MR. ROTHMAN: I'm saying for regulatory  
16 standpoint or from specifications or from provisions,  
17 whatever you want to call it. Rental should be  
18 treated differently from for sale and we're here  
19 speaking about home ownership. Rental, as far as  
20 we're considering, can be 100 years of affordability,  
21 but we favor a situation where low income people are  
22 encouraged to and can accumulate equity in their  
23 houses, so they can trade up later, so they can borrow  
24 money through second trusts or home equity loans, send  
25 their kids to college. So that's how we differ from

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1 the proposal on the table.

2 CHAIRPERSON MITTEN: Okay. And I guess I  
3 don't know how the mission of your organization might  
4 differ in some ways from some of the others, but one  
5 of the goals, as I understand it of this and other  
6 programs is to preserve the affordability where it is,  
7 so that not allow someone to basically have the unit  
8 and benefit from it and then possibly move -- to  
9 actually capture that equity, move away and then the  
10 affordability -- the idea is to have people that are  
11 at lower income levels remain in the community, not  
12 give them an incentive to move.

13 MR. ROTHMAN: I'm not talking about giving  
14 them an incentive to move. We're talking about  
15 treating them fairly and making, doing something  
16 that's workable. Suppose a person buys a unit as a  
17 single and gets married and then wants to have a  
18 family? What do you suggest they do? They won't be  
19 able to trade up because they will not have built up  
20 any equity, so what are they to do?

21 CHAIRPERSON MITTEN: These are challenging  
22 points.

23 MR. BARBER: Could I add to that point?

24 CHAIRPERSON MITTEN: Sure, why not?

25 MR. BARBER: It's similar to the point we

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1 were making, particularly for a sale unit, you want  
2 people to act and feel like owners and so to give them  
3 more of an incentive, a share in the upside. Now you  
4 can talk about certainly they shouldn't capture all of  
5 the upside. There should be some kind of sliding  
6 scale, but it has to do with the attitude of the  
7 people there that they have a vested interest here and  
8 they're not just here for a period of time and they're  
9 not going to remain stuck where they are in terms of  
10 their economic status.

11 MR. ROTHMAN: I would like to go back to  
12 something I said before and that's to recapture the  
13 public subsidy, whether it's direct or indirect. That  
14 could be 80 to 100,000 per unit in the form of a  
15 covenant, so that you can get big chunks of money  
16 coming back to the city for affordable housing in the  
17 future, if it's done right.

18 CHAIRPERSON MITTEN: I guess one of the  
19 underlying premises of this is that the market  
20 continues to go up which may, in fact, not be true. I  
21 mean I hope that it slows down a little bit at some  
22 point, but I'm just concerned about the loss of the  
23 affordability where it is, where we intend it to be to  
24 integrate it into the communities, and then just  
25 providing -- I don't know if we had a different

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1 standard, are we providing an incentive for more -- I  
2 think there should be a balance between rental housing  
3 that's being provided through this program and for  
4 sale housing and then if there were sort of early  
5 shorter provisions would we be providing an incentive  
6 for people to build more for sale housing. This is  
7 not something that Mr. Rothman would be against,  
8 certainly. Right?

9 MR. ROTHMAN: If you're recapturing the  
10 subsidy, I mean the subsidy, that's the difference  
11 between the market rate and the effective price being  
12 charged to the buyer. That's a huge amount of money  
13 to come back into affordable housing. It's not an  
14 incentive for them to buy. It's an incentive for them  
15 to stay, really. In other words, they're on a level  
16 playing field with the market rate buyer, the  
17 affordable buyers -- I mean under the way we would  
18 like to see it, be on a level playing field at  
19 closing.

20 CHAIRPERSON MITTEN: But recapturing the  
21 -- taking the subsidy back and plowing it back into  
22 more affordable housing, the biggest problem that we  
23 have right now is the supply of land to build on and  
24 that's not going to change. So just recapturing it  
25 means that there's going to be fewer opportunities to

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1 integrate affordability into neighborhoods where land  
2 is scarce now.

3 MR. ROTHMAN: Well, that's true, but you  
4 know, we think about people too and what they deserve  
5 and how they view their future and would like to  
6 accomplish, otherwise, you're creating a permanently  
7 depressed lower income class in the city. How are  
8 they going to get out of that? How are they --

9 CHAIRPERSON MITTEN: I'm not unsympathetic  
10 to your position. I'm just trying to explore it.

11 MR. ROTHMAN: Sure.

12 CHAIRPERSON MITTEN: Commissioner  
13 Jeffries?

14 MR. JEFFRIES: Yes, thank you. Mr.  
15 Rothman, I appreciate your comments and that's sort of  
16 what I got from what you were saying that effectively,  
17 you really want to give people some of the benefits of  
18 home ownership and wealth creation, and let them move  
19 on and become market rate individuals. You don't want  
20 to keep this class of subsidized individuals just for  
21 the sake of having a diverse neighborhood.

22 My question is have you thought about --  
23 we talk about supply and we talk about limited land,  
24 but there are -- and I'd like for you to comment on  
25 it. There are possibilities for increased supply of

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1 housing in the District in a number of large-scale  
2 developments.

3 Do you see the possibility that it's  
4 possible that in some of these other areas where  
5 there's land that we could look to -- maybe look at  
6 some off-site, more off-site development such that  
7 some of the units that would be affordable could  
8 eventually become market rate and we can sort of  
9 stagger it into some of the other locations, like  
10 Reservation 13, McMillan Reservoir, those places?

11 MR. ROTHMAN: Yes, we would like to see  
12 that. We would also like to see provisions made  
13 whereby nonprofits could -- as opposed to getting a  
14 certain percentage of the affordable units in a  
15 disposition project, get a piece of land on which to  
16 develop their own projects, because we could bring  
17 them in, I think, a lot cheaper than the large-scale  
18 developers.

19 MR. JEFFRIES: Also, did you have -- how  
20 extensive were your conversations with the Campaign  
21 for Mandatory? Did you speak, did you spend a lot of  
22 time?

23 MR. ROTHMAN: We were involved early on,  
24 but we sort of butted heads on a few particular  
25 issues.

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1 MR. JEFFRIES: Okay, and then my last  
2 question for Mr. Barber. In terms of this whole  
3 notion that that there was not -- you didn't find in  
4 other municipalities that there was a lot of increase  
5 in affordable housing were these all mandatory  
6 inclusionary zoning programs or were they just  
7 incentive-based? What was the breakdown?

8 MR. BARBER: There were a variety. There  
9 were a number of mandatory ones. And you kind of have  
10 to go beyond what they say on the face. For example,  
11 in Boston, it's set up as I suppose discretionary  
12 because it's tied to requested zoning relief, and so  
13 it looks like a PUD, but then you need a zoning relief  
14 for almost everything, so it acted more like a  
15 mandatory. So there were a number of mandatory  
16 programs, but notably there are a number who opted for  
17 more incentive-based, I think, New York City, in  
18 particular.

19 MR. JEFFRIES: Okay --

20 MR. BARBER: I'm sorry, in trying to  
21 answer your question, in terms of the modest gains, I  
22 think it was true for the mandatory program as well,  
23 particularly if they're in a more urban environment.  
24 In the earlier days of Montgomery County, when there  
25 was more -- land was available, you saw greater

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1 increases in affordable housing. That became more of  
2 a challenge as the area became more built up.

3 MR. JEFFRIES: Okay, and so some of these  
4 municipalities in terms of -- they didn't have the  
5 height restrictions and things of that sort. Are we  
6 looking apples to apples as it relates to the  
7 District?

8 MR. BARBER: The District carries that  
9 problem of an urban dense environment even a step  
10 further because it is a very constricted area because  
11 of some of the things you named: historic  
12 preservation, height restrictions. It's tough to get  
13 the extra density. For example, I think it's in  
14 Cambridge, Cambridge allows a 30 percent density and  
15 strikes the balance that way. The District probably  
16 couldn't do that. There's just not that much density.  
17 Twenty percent is going to be a challenge in many  
18 areas.

19 MR. JEFFRIES: So we have to look very  
20 carefully in sort of making, sort of comparisons  
21 between the District of Columbia and other  
22 municipalities as we take, as we look at this whole --

23 MR. BARBER: Very much so.

24 MR. JEFFRIES: Thank you.

25 CHAIRPERSON MITTEN: For Mr. Barber, you

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1 mentioned a couple of different times about how  
2 costly, complex and uncertain an outcome mandatory  
3 inclusionary zoning measures are. When you say it's  
4 costly, it's costly to whom?

5 MR. BARBER: I hear there needs to be a  
6 strong administrative enforcement. And depending upon  
7 how it works, we have some suggestions to make it less  
8 costly, but the extent in which you have to have  
9 another government entity or a significant increase in  
10 authority on the government to administer this  
11 program, particularly if they're going to come and  
12 take some of the housing units, the government is  
13 going to spend a fair amount of money. The government  
14 and the taxpayer will spend a fair amount of money.

15 Again, how much affordable housing units  
16 you get from this type of program will be relatively  
17 modest. There is a tension between maximizing  
18 affordable housing in a manner in which like Manna is  
19 talking about in which you can do in other areas of  
20 the city and the notion of economic diversity. A  
21 laudable notion, but you lose a number of affordable  
22 housing units when you try to build them in a single  
23 market rate housing unit downtown. You just don't get  
24 the same number of units. And so the cost per unit  
25 will be higher in terms of the administrative burden

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1 overall.

2 CHAIRPERSON MITTEN: I appreciate that,  
3 but I think, the message that I've been given in a  
4 number of different ways, both -- well, from the  
5 Council is I was recently testifying about another  
6 matter, but I posed the question to the chair about  
7 the fact that there is going to have to be the Council  
8 is going to have to fund this effort. And her  
9 response was I'm prepared to do whatever it takes.  
10 The city knows that we're in crisis and it's clear,  
11 but I think the City Council is willing to step up and  
12 put forward whatever they need to do to accomplish  
13 this.

14 I guess I'd be more interested if you  
15 thought that the incentives that were the bonus  
16 density and so on is inadequate.

17 MR. BARBER: That's right.

18 CHAIRPERSON MITTEN: And that's a greater  
19 concern, I would say. We want to hear that from the  
20 development community.

21 MR. BARBER: I appreciate that and I  
22 really should address that and there will be certainly  
23 other developers behind me who will address it in  
24 great detail.

25 But yes, we think the way both the

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1 Campaign and the Office of Planning have cut the bonus  
2 density on how much additional affordable housing is  
3 to be required, can injure developers. Can some  
4 developers make these numbers work? Yes.

5 The market as a whole, the question will  
6 be significant, what kind of impact it will have. Now  
7 and as the market inevitably changes. We think 75  
8 percent of the bonus density for lower -- for smaller  
9 buildings and then a one for one, a 50 percent ratio  
10 for larger buildings is cutting it close. There are  
11 many people, developers in our group who have taken a  
12 look at these same numbers and say we need -- perhaps  
13 we can do a third of the bonus density without doing  
14 injury to the production of housing, so that 2 to 1,  
15 however you phrase the figure, but a third of the  
16 bonus will go towards affordable and the rest, of  
17 course, goes towards marketing.

18 I would urge you to listen to those people  
19 who do this for a living, who have taken a hard look  
20 at these numbers and have come out in a very different  
21 position from Office of Planning on this 75 percent or  
22 50 percent ratio. Of course, it is tied to the level  
23 of AMI. If you go up the AMI scale, you can be a  
24 little bit more generous on the amount of affordable  
25 housing. Conversely, the tighter the AMI, the harder

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1 it's going to be to hit those affordable housing  
2 goals.

3 CHAIRPERSON MITTEN: I hear you and I'm  
4 also glad you included in your testimony if it's going  
5 to be adopted, then what because that's probably a  
6 good way to look at what's going to happen.

7 MR. BARBER: I thought it might be.

8 CHAIRPERSON MITTEN: But one of the  
9 things, the tension that we have to deal with is on  
10 the one hand, we've heard over and over again in this  
11 and other cases that they want a predictable mechanism  
12 and consistently applied and all that and on the other  
13 hand, you're advocating for -- you're advocating a one  
14 size fits all approach doesn't work.

15 So we're trying to strike a balance so  
16 that at least you know what's expected. And this  
17 idea, if you think mandatory programs don't result in  
18 much, try a voluntary program. I mean that's not  
19 going to cut it. So --

20 MR. BARBER: Well, that's not on the  
21 table. Our sense of a voluntary program has adequate  
22 incentives that goes beyond the bonus density. I  
23 think that can get you there. But that's not on the  
24 table, so I won't waste a lot of your time with that.

25 But if you're going to go through a

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1 mandatory system, then I think it sounds like doctors.  
2 You have to first do no harm. You want to increase  
3 the affordable housing, you certainly do. But you  
4 don't want to hurt the housing development industry  
5 because housing developers do have choices. I mean  
6 there are hot markets outside the District of Columbia  
7 and you don't want to do injury to the market.

8 At the same time, we recognize that  
9 affordable housing is a significant need and so we do  
10 want to join the effort to find that proper balance.

11 CHAIRPERSON MITTEN: Okay, does anyone  
12 else have questions for this panel?

13 Mr. Hildebrand?

14 MR. HILDEBRAND: I guess one thing that  
15 I've been grappling with is the idea of long-term  
16 maintenance on affordable housing. I know one of the  
17 things that's in the OP proposal is in R-4, looking at  
18 individual townhouses as for saleable, affordable  
19 housing units.

20 And as anyone knows, there's a shelf life  
21 to certain aspects of a home. You have to paint it so  
22 often. You have to replace the roof in 15 years.  
23 What is your experience with the building association  
24 as far as the maintenance aspect of affordable  
25 housing? Have you looked at that all?

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1 MR. BARBER: I'd have to defer, quite  
2 frankly, to some of the people who have more hands on  
3 experience with that.

4 Let me address it in this way in terms of  
5 my knowledge. It comes out in condominium fees which  
6 is the idea of collecting to preserve the common  
7 areas. That's going to be a problem in an affordable  
8 housing regime. Do you charge the same condominium  
9 fees for the affordable unit? There are some legal  
10 problems about charging different fees. In that  
11 narrow area, there is a concern. But I will also  
12 defer to some of the specific developers who have more  
13 of the hands-on experience about the long-term  
14 maintenance needs of affordable housing.

15 MR. HILDEBRAND: I'd be interested to hear  
16 more about that and the impact on low-income home  
17 owners of what the significance to maintenance fees  
18 could be.

19 CHAIRPERSON MITTEN: Okay, anyone else?  
20 Okay, thank you very much.

21 Sir, in the back room, I'm going to ask  
22 you to lower that sign for us. When your turn comes  
23 to testify, you can show us that sign. I've been told  
24 that we've been joined by Council Member Mendelson and  
25 we typically extend the courtesy to have you testify.

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1 Oh, there you are.

2 MR. MENDELSON: Thank you and good  
3 evening. I'm Phil Mendelson, an at-large member of  
4 the Council. I am here to express my support for  
5 mandatory inclusionary zoning. Mandatory inclusionary  
6 zoning is an essential tool that will enable an  
7 increase in the supply of affordable housing for  
8 residents in the District of Columbia.

9 I come to this issue with several  
10 perspectives. First, as a long-time resident of  
11 McLean Gardens, I experienced first hand the success  
12 and failure of inclusionary housing with the  
13 development of a PUD at that location, along Wisconsin  
14 Avenue in the 1980s. As part of the developer's  
15 effort to win community support for the development of  
16 over 500 housing units, the developer promised that in  
17 return for discounted HFA financing, it would set  
18 aside 20 percent of the units for low-income  
19 residents. I was both an active resident at and ANC  
20 Commissioner for the McLean Gardens area at the time.

21 The inclusion of 20 percent low-income housing  
22 created not a ripple of concern or opposition in the  
23 community. Low-income residents live side by side  
24 with market-rate residents.

25 As a result, the community received a dose

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1 of mixed incomes, a supply of housing was made  
2 available to low-income residents. And there were  
3 none of the ills associated with low-income housing  
4 when its location is concentrated in one location such  
5 as with the traditional public housing project.

6 On the other hand, the requirement for  
7 inclusionary housing at McLean Gardens was tied to the  
8 financing. About 10 years after construction,  
9 ownership changed to a government pension entity that  
10 did not need the benefits of HFA financing. After re-  
11 financing, the inclusionary housing was discontinued  
12 and there was great upset with the displacement of  
13 scores of low-income households.

14 I have seen firsthand that inclusionary  
15 housing can be successful, but that it's provision  
16 through zoning must be mandatory, rather than  
17 voluntary.

18 My second perspective is as a regional  
19 leader at the Council of Governments. There is an  
20 enormous shortage of housing in the Washington  
21 metropolitan region. This shortage is immediate.  
22 Yet, the region is expected to grow by over 2 million  
23 people and by almost 1.4 million jobs in the next 25  
24 years. The projected growth has enormous  
25 implications, most of which will be adverse, if we

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1 cannot concentrate more housing in the city and close  
2 in suburbs.

3           The adverse consequences include greater  
4 urban sprawl, environmental impacts such as on air  
5 quality and a degraded transportation system. If we  
6 cannot provide more housing in the District,  
7 especially housing that is affordable to the lowest  
8 income worker or attainable to the typical middle  
9 income worker, then we will find ourselves in the  
10 perverse situation where those least able to afford  
11 it, will pay the most to commute and will be living  
12 farther and farther from the region's core, forced to  
13 commute three to four hours daily to their meager  
14 jobs.

15           The Council of Governments has identified  
16 the need to increase the supply of affordable housing  
17 as one of the region's highest priorities.  
18 Inclusionary zoning is a necessary tool to meet this  
19 goal.

20           My third perspective is as an at-large  
21 Council Member. A need to maintain and increase the  
22 supply of affordable housing is one of the greatest  
23 concerns among District residents. Many fear they  
24 will be forced out of their homes and communities if  
25 we do not do something more to increase the supply.

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1 Others are concerned that we are becoming  
2 a very polarized city economically, which also has its  
3 implications racially. Whether it is out of good  
4 policy, public policy or out of fear, I hear the  
5 demand constantly across the city.

6 The proposal before by the Campaign for  
7 Mandatory Inclusionary Zoning is the best land use  
8 proposal to meet the demand for more affordable  
9 housing.

10 In this regard, I wish to make several  
11 additional points. First, inclusionary zoning must be  
12 mandatory, not voluntary. Otherwise, we will not see  
13 a substantial increase in supply.

14 Second, inclusionary zoning must be  
15 provided on-site, not off-site. Third, the  
16 affordability control period must be substantial,  
17 equal at least to the estimated useful life of the  
18 unit before renovation or rehabilitation.

19 Fourth, the zoning regulation must be simple, not  
20 complicated.

21 Let me elaborate briefly on a couple of  
22 these points. Allowing exceptions to inclusionary  
23 housing by permitting payments into the Housing Trust  
24 Fund or permitting off-site construction at a  
25 specified location, defeats many of the benefits. The

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1 experience at McLean Gardens was laudable because the  
2 housing was provided on-site.

3 Further, creating possibilities for  
4 exceptions means administering and/overseeing the  
5 regulations will be complicated and therefore more  
6 expensive and less productive with the possibility of  
7 less compliance.

8 Finally, you know that the Council  
9 recently adopted resolution 16-218 in support of  
10 amending the zoning regulations to include mandatory  
11 inclusionary zoning. The details of the Council's  
12 position are found in Section 3 of the resolution and  
13 are not substantially inconsistent with my testimony.

14 I appreciate your providing me with this  
15 opportunity to comment.

16 CHAIRPERSON MITTEN: Thank you. Any  
17 questions for Council Member Mendelson?

18 Thanks for coming down.

19 MR. MENDELSON: Thank you, thank you very  
20 much.

21 CHAIRPERSON MITTEN: Okay, next up is  
22 Jeffrey Gelman, Don Deutsch, Merrick Malone, Jeremy  
23 Rubenstein.

24 (Pause.)

25 CHAIRPERSON MITTEN: Okay, I noticed that

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1 some of you have submitted lengthy written testimony  
2 and I appreciate that and we like to read lengthy,  
3 written testimony, but we'd like you to keep your oral  
4 remarks to five minutes.

5 So Mr. Gelman?

6 MR. GELMAN: Thank you. Those were  
7 exhibits.

8 CHAIRPERSON MITTEN: Okay.

9 MR. GELMAN: Good evening, members of the  
10 Zoning Commission.

11 I am Jeff Gelman, a real estate and  
12 housing attorney with the law firm of Greenstein,  
13 DeLorme and Luchs. I have devoted the majority of my  
14 time during the past 20 years focusing on the creation  
15 and preservation of low-income housing. I have  
16 volunteered thousands of hours of time assisting  
17 nonprofits and associations to provide housing and  
18 supportive services to the homeless and lower-income  
19 families and individuals. And I've served on many  
20 advisory groups, committees, task force on housing  
21 policy, housing programs, economic and community  
22 development and public housing. I've worked  
23 extensively with most of the housing programs that  
24 have existed during the past 20 years, both locally  
25 and nationally and I have experienced what works and

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1 what does not work in creating and preserving  
2 affordable housing.

3 I am extremely concerned that mandatory  
4 inclusionary zoning, as currently proposed, will not  
5 work in the District of Columbia for many reasons. I  
6 will use my few minutes to focus on my remarks  
7 concerning the misconceptions and on the experience of  
8 other jurisdictions and the conclusion that  
9 inclusionary zoning as a means of creating of  
10 affordable inclusive housing has had extremely mixed  
11 results and is at best, inefficient and an excessively  
12 expensive way of creating a relatively small number of  
13 affordable units compared to other more effective  
14 housing programs.

15 I know I don't have enough time to read my  
16 testimony, so I'm going to hit some of the more  
17 important points.

18 One of the main determinations in other  
19 jurisdictions is other than those few IZ units that  
20 are created, the uncompensated costs to development of  
21 those housing units go to push up the cost and prices  
22 of all other housing units. That is well documented  
23 and there is in my submission I have some very recent  
24 studies by some professors who made very extensive  
25 studies of the fact.

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1           It's ranged from \$22,000 to more than  
2 \$100,000, pushing up the price of other housing. So  
3 the objective is not to make this a city of rich and  
4 poor. We should put our effort in traditional, proven  
5 housing programs that will produce tens of thousands  
6 of units, not a few hundred in jurisdiction to  
7 jurisdiction.

8           There are about maybe 200 plus IZ programs  
9 in the country over the last 32 years, producing about  
10 100,000 units; 11,000 in Montgomery County. For a  
11 county of that size, over a 32-year period, it only  
12 produced 300 to 350 units a year, most of which were  
13 in the early years where there was more developable  
14 land. So you have to look at these reports.

15           Now my point is the studies and experience  
16 in other jurisdictions is inconclusive and it's really  
17 what your perspective is. And I want to be very  
18 candid here. If you want to be optimistic and believe  
19 it's going to work, you're going to believe it's going  
20 to work. If you want to believe it's not going to  
21 work, you're going to believe it's not going to work.

22           The information out there from other  
23 jurisdictions will support whatever conclusion you  
24 want to reach. And all we're saying is you must be  
25 very, very deliberate. We have met with the Campaign

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1 for Inclusionary Zoning dozens of times since they  
2 submitted their text amendment and not one comma has  
3 changed. And we are very, very disappointed because  
4 as an industry, we came to the table. We said we  
5 think we make a program work for this city. We need  
6 to have some adjustments, some flexibility, some  
7 fairness and not one comma has changed.

8 So I'm here, frustrated and disappointed  
9 that after dozens and maybe hundreds of hours of  
10 effort in the last year and I've been working on this  
11 for four years, that we haven't come closer on  
12 resolving many of these issues. How do we deal with  
13 historic properties? How do we deal with substantial  
14 rehab in a distressed property that's getting  
15 government subsidies? Why won't they exempt otherwise  
16 affordable housing projects? Because they want credit  
17 for those affordable units under their IZ program.

18 I mean there are other government policies  
19 involved here that are going to be interfered with,  
20 very important government policies and we think the  
21 program will work, but it needs to be a flexible, fair  
22 program and it's got to be one unique to the District,  
23 not one based on Montgomery County or a large county,  
24 Orange County of California. It needs to be something  
25 that is tailored to D.C. from the experience of

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1 developers, housing professionals, government  
2 officials. We have a very lack of the government  
3 housing experts at the table. We're mostly working  
4 with planners and zoning experts, which is important,  
5 but we need to broaden this debate to bring in more  
6 administration representatives from DHCD, HFA, the  
7 Housing Authority, the Deputy Mayor's Office.

8 This is going to be one of the most  
9 dramatic policies for this city -- okay, I'll conclude  
10 with that.

11 CHAIRPERSON MITTEN: Thank you. We'll  
12 just go down the line. Mr. Malone.

13 MR. MALONE: Good evening and members of  
14 the Zoning Commission. I'm Merrick Malone. I'm a  
15 principal in Metropolis Development Company which is  
16 developing in Logan Circle and on the 14th Street  
17 corridor. I am also president of Harris and Malone  
18 Development that's currently doing Home Again  
19 Initiatives, doing redevelopment of the city's Home  
20 Again Initiative.

21 I also have served simultaneously as the  
22 District's Deputy Mayor for Economic Development and  
23 the Director of Housing and Community Development.  
24 And throughout my private and public sector career  
25 I've built, renovated, financed and developed and

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1 implemented policies to create more affordable housing  
2 in the District of Columbia and I can say that what a  
3 difference a decade makes. It's interesting. The  
4 people you've talked to, I've done private/public  
5 partnerships, created a lot of affordable housing  
6 units in this city when, as George pointed out, only  
7 the nonprofit developers were doing housing. We  
8 couldn't give away funding to private developers to  
9 come in and develop at the time, and don't talk about  
10 financing in Anacostia, because the same people who  
11 now want to develop there, CARR couldn't even go  
12 across the bridge back then, so I'm saying to you I  
13 understand affordable housing. I've done it. I would  
14 not take a back seat to anyone in terms of this.

15 I think George's point was correct. Back  
16 then our whole notion was to take people who were in  
17 rental properties of low income or moderate income and  
18 make them homeowners, part of the American dream, and  
19 help them build their net worth. So that was the  
20 point back then. The market has, in fact, changed and  
21 of course, there's a shortage of affordable housing.  
22 So we had to put this in context. At one point, we  
23 were begging as a city and administration just to have  
24 market rate housing. That has now happened in a huge  
25 way, but in the process, the downside of it was that

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1 it created a shortage of affordable housing.

2 In the following time that I have I want  
3 to talk about a couple of things. One, the goal of  
4 affordable housing in the District is increasing and  
5 requires this comprehensive, interrelated, coordinated  
6 effort from all branches of government. You are  
7 actually asking, being asked to essentially create or  
8 mandate housing policies actually without the benefit  
9 of the analysis that everyone is wrestling with, the  
10 intricacies and the vagaries of implementation and the  
11 knowledge that's required for the human and financial  
12 resource to administer such a program.

13 And don't feel bad because everybody is  
14 wrestling with that right now and therein lies the  
15 problem. There are major consequences. When we talk  
16 about an administration that's going to have to  
17 administer this program, it's very complex. It's  
18 interagency relationship and we're talking about  
19 certain agencies that have problems administering the  
20 current Housing Production Trust Fund. This is a very  
21 complex issue and if it's not done right and one of  
22 the proponents mentioned and I think it's true, it has  
23 to be properly crafted and implemented, not to impair  
24 the market.

25 I also talk about a couple of things. I

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1 want to actually commend OP and their staff for really  
2 bringing us together and thoughtfully looking at this,  
3 but understanding there are a number of devil details  
4 that are still out there and the vagaries and  
5 uncertainties create anxiety.

6           Whenever you impose some overlay, I think  
7 about the downtown development overlay which had a  
8 goal to develop housing, residential, mixed use in a  
9 vibrant kind of downtown and that was a similar  
10 imposition. And essentially that was done, I think,  
11 in the late 1970s or early 1980s and that was supposed  
12 to promote this. And what happened, there were so  
13 many things in that aspect of it it really was a  
14 disincentive and you don't have to believe me. You  
15 just have to kind of look at the marketplace. There  
16 are some -- and you can debate it. But there are some  
17 parcels right now that are only being developed and  
18 those parcels -- and I see Steve looking at me, but I  
19 remember when I was the Deputy Mayor and we were  
20 looking at Gallery Place when you did the value of the  
21 land, which we did, you take the overlay off of it,  
22 the land had a \$100 million value. With the overlay,  
23 it was reduced to \$65 million. I'm just saying that  
24 we need, when we start imposing things, we need to  
25 look at those consequences and get them done

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1 correctly. What really happened there was the fact  
2 that you also had another parcel that was underneath  
3 that overlay that is now just being developed and  
4 that's the Was Museum. It was included as part of  
5 that, but it didn't happen before the market was ready  
6 for it to happen.

7 We just have to be very careful, as we  
8 craft the policy, so there's no harm done.

9 CHAIRPERSON MITTEN: Thank you. Mr.  
10 Deutsch.

11 MR. DEUTSCH: Thank you. I actually  
12 thought I had three minutes, so I can speak much more  
13 slowly.

14 Thank you for the opportunity to speak  
15 tonight on the subject of inclusionary zoning. My  
16 name is Don Deutsch and I'm the senior managing  
17 director of Fayer and Associates and I live at 400  
18 Mass. Avenue, Northwest.

19 We are active multi-family developers in  
20 the District and have completed and have under  
21 construction over 800 units representing an investment  
22 in this market of well over \$300 million. Like most  
23 of the developers that will speak tonight, I choose to  
24 support the goals of inclusionary zoning. We have  
25 built affordable housing as part of the development in

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1 Adams Morgan and have been involved in many of the  
2 discussions that have preceded this hearing tonight.

3 While we share the goal of increasing the  
4 availability of affordable housing in the District, I  
5 do have a number of concerns with an approach that  
6 essentially places the resolution to this issue at our  
7 doorstep.

8 First let me state the results of our  
9 efforts and the risks that we take every day are  
10 evident in the \$1.2 billion surplus that the District  
11 now enjoys. These surpluses are paid for to a large  
12 extent by the taxes generated by the increase in  
13 property values that result from our developments and  
14 the 10 percent franchise tax that we pay on our  
15 profits.

16 We simply do not understand the logic of  
17 additionally burdening the one group that has already  
18 contributed substantially to the financial health of  
19 the District. If affordable housing is a social goal  
20 and we believe that it is, why does the District of  
21 Columbia not use some of the gains that result from  
22 our investment in this city to address this need,  
23 rather than driving away investment with this ill-  
24 considered resolution?

25 I believe the resolution is ill-considered

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1 in a number of areas. First, we question the economic  
2 assumptions of the OP report. We simply disagree that  
3 one affordable unit for each market rate unit of bonus  
4 density is an acceptable tradeoff for the substantial  
5 losses that we will incur on each affordable unit.  
6 Our calculations show that in many instances,  
7 particularly with high rise construction, as opposed  
8 to stick built, we would need two to three market rate  
9 units to pay for the cost to develop one affordable  
10 unit, though our analysis has been largely ignored.

11 I'm happy to test the advocates'  
12 assumptions. They can buy all of the bonus units,  
13 market and affordable at a one to one ratio at our  
14 cost. If there's a profit, they can have it. Of  
15 course, they won't do this because it is more fun to  
16 let somebody else bear the cost of one's assertions.

17 Second, the assumptions in the OP report  
18 are based upon current cost and sales assumptions. We  
19 currently enjoy a strong market environment. This  
20 will not last. All markets cycle. The only stressing  
21 of the assumptions in the OP numbers was to assume  
22 that interest rates rise one percent. That is hardly  
23 a stress and all of us remember far more difficult  
24 markets in a 7.5 percent interest rate environment.

25 The problem with the OP recommendation is

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1 that it is inflexible. This is a policy that assumes  
2 a stable market and one that does adjust when the  
3 market environment changes. Who would ever invest in  
4 a business in which the profitability was assured only  
5 in the best of cases?

6 Third, given that we believe this will  
7 have a negative impact on our overall profitability,  
8 there's likely to be a negative impact on land values  
9 in the District. Just the risk of this occurring  
10 should give the Zoning Commission pause to enact this  
11 program. To the extent that one analyst in the Office  
12 of Planning is wrong in his assumptions and there will  
13 be a lot of smart people parading in front of you that  
14 explain why he is, there will be an enormous  
15 consequence to the tax base in the District.

16 Fourth, and finally, there exists in the  
17 District an economic system of transferrable  
18 development rights. The TDR system has been in place  
19 many years and many developers and land owners have  
20 enormous investments in these rights or have vested  
21 rights that are assets that may be severely undermined  
22 by this legislation. There's nothing in the OP report  
23 that addresses this issue. Has any consideration been  
24 given to the undermining of this economic system and  
25 the potential liability the city will have as these

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1 assets become far less valuable as demand for these  
2 rights evaporate.

3 To conclude, we have had a few years of  
4 success that has greatly benefitted the tax base of  
5 the city, but this will not always be the case. The  
6 market will slow and interest rates will rise, but  
7 this policy will still be in place, making residential  
8 development in the District increasingly difficult and  
9 property values increasingly lower.

10 This policy assumes a permanently strong  
11 housing market and there is no such thing. Use the  
12 gains that we generate to further the goals of  
13 affordable housing. Do not destroy them by which  
14 these surpluses were created.

15 Thank you.

16 CHAIRPERSON MITTEN: Thank you. Mr.  
17 Rubenstein.

18 MR. RUBENSTEIN: Yes, thank you very much.

19 My name is Jeremy Rubenstein and I'm president of  
20 Metro Properties. We have developed several hundred  
21 together and with partners units, condominium units in  
22 the District of Columbia. I'd like to thank the  
23 members of the Zoning Commission and although I  
24 disagree with the recommendation, I would like to  
25 commend the members of the Office of Planning for

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1 their hard work.

2 I'm going to try to hit the highlights of  
3 this thing and try and do the best I can.

4 I think -- when I was listening to some of  
5 the advocates for mandatory inclusionary zoning, I was  
6 struck by the tension between two assertions. One was  
7 they're going to get more than enough for this, I mean  
8 they're going to make money on this, there's lots of  
9 incentive. They don't need any more of the ratio. On  
10 the other hand, it's got to be mandatory or they won't  
11 get built. Now I submit to you that these two things  
12 cannot both be true. Okay? And the fundamental issue  
13 with a mandatory program as opposed to a voluntary  
14 program, an incentive-based program, is that it is  
15 inflexible. And anyone who tells you that this thing  
16 is going to be easily administered and that it's going  
17 to get simpler over time, and that it is not going to  
18 have a substantial delaying effect on development  
19 process in the District of Columbia is simply giving  
20 you pie in the sky. It ain't gonna be that way.

21 Now the issue is whether there is going to  
22 be enough juice, enough economic vitality in the  
23 system that's going to override all of that stuff and  
24 I think Don put it exactly right. We are in a  
25 tremendous boom market. Peculiarly, it's gotten to

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1 the point where despite the fact that the market is  
2 doing very well, it's a much more difficult market to  
3 develop in right now. I echo what people have said  
4 about the coffers of the District of Columbia have  
5 been filled by development activity and people should  
6 be very careful.

7 We must also remember the few thousand  
8 units of condominiums that we have developed in the  
9 District of Columbia over the past few years did not  
10 cause this affordable housing crisis. I mean the  
11 interest rates and market forces caused this  
12 affordable housing crisis. I have tremendous sympathy  
13 for people in the District of Columbia who have  
14 difficulty affording housing. At the same time,  
15 however, the question is what is a solution?

16 Now real estate is very cyclical. I've  
17 gone into it, but right now the risk of developing the  
18 District of Columbia because we don't know how much  
19 froth there is in there. We've got crazy people  
20 coming in from out of town bidding up prices on the  
21 land and in a very speculative way. We have a huge  
22 number of condominium purchasers that are purchasing  
23 for investment, that are purchasing with dangerous  
24 types of mortgages. We can't stop that. But the  
25 notion that everything is always going to be the same

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1 is crazy.

2 Now I don't know. It could be five years.

3 It could be 10 years. Everything could work out  
4 fine. Who knows? But there is a lot of risk in the  
5 system right now.

6 A mandatory system would discourage  
7 development under many circumstances. Now it may be  
8 that right now there is so much juice that it's not  
9 going to do anything, but you guys should take a look  
10 at the report. It's cited in my testimony that was  
11 done by the Fuhrman Center for Real Estate and Urban  
12 Policy, the New York University School of Law. It's  
13 entitled "Reducing the Cost for New Housing  
14 Construction in New York City" and their chapter on  
15 inclusionary zoning which has much more stress tested  
16 models in there states that the financial mode shows  
17 that the financial feasibility under IZ mandates is  
18 very much a function of market conditions and a  
19 mandatory regime that is financial feasible today may  
20 become infeasible in the future.

21 I'd also like to highlight the fact that  
22 there is so much site-specific -- there are so many  
23 site-specific issues that you have to deal with and to  
24 be thrown into a bureaucratic administrative procedure  
25 where you've got to prove your economic hardship or

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1 viabilities is just going to mean you're going to  
2 walk. If I've got dig another level of parking, if  
3 there's environmental costs to that, there's all kinds  
4 of times when it just is not going to be worth it.

5           And finally, I'd just like to note that  
6 there are so few units that we're talking about.  
7 According to Delta Associates, something like 3,000.  
8 Maybe that's an understatement, but very few units of  
9 3,000 new condominiums were done in D.C. in 2004. Any  
10 way you want to slice those numbers, you're not going  
11 to get the solution to the housing crisis off of this,  
12 but you may screw up D.C.'s financial renewal.

13           And finally, I think it's really  
14 interesting to note that the one jurisdiction in the  
15 D.C. area that has something akin to a mandatory  
16 zoning requirement, Montgomery County, has produced  
17 far less units. In the Delta Report, and I'll end on  
18 this, in 2004, new condominium sales in all of  
19 suburban Maryland totaled 952 units or less than one  
20 third of that in the District of Columbia which was  
21 over 3,000 and less than one fifth of that in Northern  
22 Virginia. You mess with this stuff and you make it  
23 mandatory as opposed to flexible, voluntary system, at  
24 your peril.

25           CHAIRPERSON MITTEN: Okay.

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1 MR. RUBENSTEIN: Was that clear? Do you  
2 wonder how I really feel?

3 (Laughter.)

4 CHAIRPERSON MITTEN: Since Mr. Gelman, in  
5 particular, has a lot of attachments to his testimony,  
6 what would be really helpful for us, we don't take, we  
7 do not take our responsibility lightly. We know that  
8 we're tampering with the financial situation, but  
9 what's happened so far is we have the Campaign's  
10 proposal and then as I understand it, OP has been kind  
11 of the conduit for mediating between the two sides.  
12 So I don't know what level of specificity you've  
13 gotten into and Mr. Deutsch confronted a couple of  
14 specific issues, but if you have things that you  
15 specifically object to and you want to make your case  
16 in the alternative, then having specific numbers like  
17 they've been put in front of us by the Campaign and as  
18 they have been put in front of us by OP is really what  
19 I think it's going to take to convince us that your  
20 position is a credible one.

21 So I encourage you, if you haven't already  
22 done that through your attachments to do that to the  
23 extent you feel that you can.

24 Are there questions from the Commission  
25 for the panel?

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1           The one thing that I'd like to say,  
2 especially since, Mr. Malone, you used the downtown  
3 development district overlay as an example, I really  
4 admire the people on the Commission that put the DD  
5 overlay in place in the first place. And I admire  
6 them not because they got it perfect because we had to  
7 go back and we had to tweak a whole bunch of things  
8 because the market conditions weren't right to really  
9 create the incentive to build housing and it was a  
10 requirement, but what it did is it didn't miss the  
11 opportunity. We didn't lose the chance to have  
12 residential development in the DD overlay area. So  
13 while I doubt we'll get this perfectly right the first  
14 time, we need to stop losing the opportunity is my  
15 view. So whatever you all can do to convince us of  
16 what the right mix is in terms of having incentives,  
17 that would be very helpful to the Commission, instead  
18 of having -- which I'm not invalidating your concerns,  
19 but if they're abstract, it's hard for us to deal with  
20 the more specific proposals that have been put in  
21 front of us.

22           So Mr. Jeffries?

23           MR. JEFFRIES: Just a quick question, Mr.  
24 Rubenstein. I just wanted to know, you stated that  
25 there were about 3,000 market rate units that were

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1 produced in the District in 2004?

2 MR. RUBENSTEIN: I'm citing the 2004 Delta  
3 Report. As I stated in my written testimony, I'm sure  
4 that these numbers leave out a lot and they're not  
5 exact. But the point --

6 CHAIRPERSON MITTEN: You know what, your  
7 mic is not on. I'm sorry, we've been missing --

8 MR. RUBENSTEIN: I'm sorry. The point --  
9 most people can hear me regardless.

10 CHAIRPERSON MITTEN: He can't and that's  
11 the guy we care about.

12 MR. RUBENSTEIN: The point is that even if  
13 it's wrong by a factor of two, you really are not  
14 talking about significantly solving the issue or even  
15 having really a significant impact. You're just  
16 taking a lot of risk on the tax dollars that are  
17 generated.

18 MR. JEFFRIES: Did that Delta Report talk  
19 about the amount of affordable housing that was  
20 produced in 2004?

21 MR. RUBENSTEIN: No, it did not break out  
22 between affordable and nonaffordable. I'm sure a  
23 certain number of those units because of the PUD  
24 process and the District's land disposition process  
25 did include some affordable.

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1 MR. JEFFRIES: So effectively, you don't  
2 think the system is really broken. I mean you talk  
3 about the voluntary program. I mean if we decided not  
4 to go the mandatory route, what are we doing?

5 MR. RUBENSTEIN: Actually, we actually  
6 produced, we're one of the few -- I think our company  
7 is the only developer that actually used the Uptown  
8 Arts District zoning that has an incentive base that  
9 allows you to produce something, it was a 2 to 1  
10 ratio. Most people don't use it because in the Uptown  
11 Arts District there are many different types of things  
12 that are bonuses and some of which are required, such  
13 as ground floor retail at certain locations. So in  
14 many situations people didn't bother because it's not  
15 a huge bonus to begin with and also they were doing it  
16 otherwise. But we found it made sense on a 2 to 1  
17 ratio.

18 It's not that I don't think that things  
19 are going well, I just -- in terms of affordable  
20 housing, but I think the notion that you're somehow  
21 going to repeal the tsunami of market forces by this  
22 mechanism as opposed to use the tax revenue that's  
23 generated from the real estate market and address it  
24 directly like Jeff has stated, is foolish and that  
25 it's better to take a slightly lower percentage and do

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1 it on a voluntary basis, eliminate all of the horrible  
2 problems of administration. And anybody who tells you  
3 that it's not going to be horrible just needs to look  
4 at rent control.

5 MR. JEFFRIES: It might be interesting and  
6 maybe this has already been done, but you spoke about  
7 the incentive-based programs that exist. We might  
8 have those numbers and I've just missed them, but it  
9 will be interesting to know what those numbers look  
10 like and how much sort of affordable housing has been  
11 produced and --

12 MR. RUBENSTEIN: In D.C. or elsewhere?

13 MR. JEFFRIES: In D.C.

14 MR. RUBENSTEIN: I think virtually none.  
15 Aside -- at least in the Uptown Arts District,  
16 virtually none has been done. I mean in terms of  
17 downtown and some of the other units, I don't know.  
18 And we can certainly -- I think the DCBIA can get  
19 together and we can get some of that.

20 MR. JEFFRIES: Thank you.

21 CHAIRPERSON MITTEN: Anyone else? Okay,  
22 we look forward to reading all of the nice attachments  
23 you've given us.

24 Okay, we're going to take one more panel  
25 before we close it out for tonight and I'm just going

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1 to remind everybody we're going to reconvene on  
2 Thursday at 6:30 and then we'll have another session  
3 on Monday, the 1st at 6:30.

4 Ernie Marcus, Michael Huke, Bradley  
5 Fennel, Kenneth Rothschild.

6 (Pause.)

7 CHAIRPERSON MITTEN: So we don't have  
8 Bradley Fennel here, right? Courtney Kyles. So we'll  
9 start with Mr. Marcus. Go right ahead.

10 MR. MARCUS: I'm Ernie Marcus of Marcus  
11 Asset Group, an LSDBE firm in the District and I'm a  
12 resident of Ward 4. In a number of capacities, I'm  
13 involved in affordable and market-rate housing in the  
14 District, both for sale and rental. I'm a certified  
15 general appraiser in the District and perform  
16 considerable number of reports for DCHFA and nonprofit  
17 housing providers, tenant groups, as well as private  
18 developers.

19 Secondly, as a partner in Triangle  
20 Ventures, I'm involved in the ground up development  
21 and substantial rehabilitation of for sale and rental  
22 housing in the District, including mixed income  
23 condominiums and mixed use sites.

24 I am in favor of providing a framework in  
25 which developers must provide affordable housing in

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1 new developments and under specific circumstances,  
2 substantial rehabs. But I do have a number of  
3 concerns over some provisions in the proposals put out  
4 by OP and the Campaign.

5 Broadly, if the program is not fair and  
6 predictable with workable incentives, I am concerned  
7 that the IZ regulations could decrease housing  
8 activity and hurt the production of housing,  
9 particularly when the market returns to a more normal  
10 level of production and appreciation.

11 The following touches on just a few of my  
12 concerns. The economics of providing affordable  
13 housing at a specific site vary widely based on a  
14 myriad of factors so that an inflexible and/or  
15 cumbersome process could be a roadblock to desired  
16 development.

17 Again, each site is unique so that the  
18 amendment must reflect possible economic hardship for  
19 individual owners. Factors that might impact some  
20 sites, but not others might include physical  
21 underground issues such as underground subway tunnels  
22 which we're actually building over one. Poor soil  
23 bearing capacity or contamination. The presence of  
24 rock. The need for deep sheeting and shoring. The  
25 size and shape of sites can have a significant impact.

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1 Sites below a certain size can be much more expensive  
2 to both construct vertical improvements and  
3 underground parking. And the efficiency of each floor  
4 can be significantly impacted.

5 Physical issues that can make producing  
6 smaller size units as has been suggested in some of  
7 the proposals, because of light and air issues can be  
8 nearly impossible.

9 If an affordable one-bedroom unit can sell  
10 for only a fixed amount, then if the unit has to be  
11 larger, it will have a significantly greater impact on  
12 the developer. I would also note locations in  
13 historic districts as has been mentioned, can have a  
14 dramatic impact.

15 The relevance of all of these factors are  
16 several. First, project may not be able to be built  
17 to the currently allowed FAR, much less accommodate  
18 additional density. We have found that in our Park  
19 Triangle project because of the presence of the subway  
20 tunnel, we were not actually able to build all the  
21 density that we could build under the existing zoning,  
22 so if we had been forced to provide additional  
23 density, we would not have been able to do it.

24 The factors that were listed above can  
25 also significantly decrease the profit margin of the

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1 developer, again, these extra costs that I talked  
2 about, so that the cost of providing affordable units  
3 is much greater on these impacted sites than a site  
4 that does not have these issues.

5 A developer -- I might note that a  
6 developer whose site does not accommodate additional  
7 density because of these factors I've mentioned,  
8 should not then be required to pay for affordable  
9 housing on site or off site if he does not have a  
10 corresponding or offsetting benefit.

11 A couple of other sort of side factors,  
12 I'd like to mention that the selection of the  
13 affordable units within the project is very important.

14 We're building a project now where we're 20 percent  
15 affordable. It makes a significant difference how big  
16 those units are, unit mix, the finishes and the  
17 location within the projects. For instance, if you  
18 were required to have across the board, you may end up  
19 with units that have thousand square foot decks on the  
20 top, if you were spreading it equally across the  
21 building. I would just urge flexibility on these  
22 types of points.

23 Finally, I'd like to point out that the  
24 general confusion in the city over the setting of  
25 prices of affordable dwelling units which I've

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1 observed really all over, a lot of people ask me these  
2 questions and I'll tell you this confusion that the  
3 city, nonprofits, developers, everyone is confused.  
4 There's no set way to look at it and how you treat the  
5 use of HPAP funding, VPAP, debt ratios, all can have a  
6 major impact on the supportable price.

7 Manna was here earlier and I would  
8 certainly say they're a good resource for you in  
9 thinking about those issues.

10 In summary, I would urge the Commission to  
11 enact amendments that strike an appropriate balance.

12 CHAIRPERSON MITTEN: Thank you. Mr. Huke.

13 MR. HUKU: I'm Michael Huke, Chief  
14 Executive Officer of the CIH Companies with over 30  
15 years of experience in residential real estate. Over  
16 the past several years CIH has developed more than  
17 2300 condominium and cooperative, rental and single-  
18 family homes. In addition, CIH currently manages a  
19 portfolio of approximately 4,000 homes affordable for  
20 very low to moderate income renters and home owners.  
21 As an aside, I'd like to say I've been building and  
22 developing in Ward 7 and 8 for 20 years, finishing a  
23 project right now that includes units affordable to  
24 those with 25 percent incomes equal -- incomes equal  
25 to 25 percent of area median income. So I'm certainly

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1 a proponent of affordable housing.

2 That's our business. We concentrate on  
3 areas within the beltway and concentrate within the  
4 District of Columbia.

5 I would like to begin by suggesting a  
6 general note of caution your consideration of the  
7 inclusionary zoning proposal that's now before you.  
8 My experience indicates that the successful production  
9 of affordable housing in high cost markets inevitably  
10 requires some form of substantial public subsidy to  
11 make the economics work. IZ, however, attempts to  
12 avoid the costs of that public subsidy by shifting it  
13 to the housing market. To prevent any resulting  
14 slowdown in residential development, IZ programs  
15 usually offer so-called density bonuses, but such  
16 bonuses are rarely structured as true incentives.  
17 Instead, they are devised to provide just enough of a  
18 cost offset to keep local housing markets humming with  
19 any shortfall absorbed by market rate buyers.

20 Unfortunately, market conditions change  
21 and the bonus formula, if it ever worked, breaks down,  
22 at which point the humming stops, in the absence of  
23 true incentives, little affordable housing gets built,  
24 as the experience of other jurisdictions so clearly  
25 demonstrates.

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1 I'd like to point out in the Office of  
2 Planning position paper it said that estimates of  
3 buyer mortgages were conservative even if they were  
4 100 basis points or 1 percent over the then market.  
5 In the past week and a half, that's been cut in half.

6 So right now its projection is half a percent over  
7 the existing market. It shows you how rapidly the  
8 market changes.

9 I would like to now turn to more specific  
10 comments that really affect the sort of work I do  
11 regarding substantial rehabilitation in the current  
12 zoning proposals. Applying inclusionary zoning  
13 requirements to properties that are undergoing  
14 substantial rehabilitation simply will not work.  
15 There is typically no way to economically and  
16 practically expand the physical side of existing  
17 structures to accommodate density bonuses. In fact,  
18 given the smaller apartment sizes often found in older  
19 properties, units are typically reconfigured and  
20 combined and substantial rehab, reducing the number of  
21 available units within the existing building envelope.

22 Renovating older properties to make them  
23 competitive in price and features with new properties  
24 requires avoiding the complexity and costs of  
25 modifying base structures. Attempting to add bonus

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1 density units then would add excessive costs, delays  
2 and risks undermining the economic feasibility of the  
3 project.

4 The application of IZ requirements will  
5 only retard major rehabs, resulting in a continued  
6 decay or demolition of older properties instead of  
7 their preservation and renewal as much needed  
8 additions to the District's stock of decent and  
9 affordable housing.

10 I would also like to mention something not  
11 in my written testimony, that I would strongly  
12 encourage any IZ requirements to exclude projects  
13 built to be affordable such as the projects I do, to  
14 exempt them from the burdens and costs of IZ  
15 regulations and allow us to produce cost-effective  
16 affordable housing.

17 I also in the question period would have  
18 an answer to the issue of maintenance on home  
19 ownership in the townhouses that were questions asked  
20 earlier.

21 CHAIRPERSON MITTEN: Okay. Thank you.

22 MR. HUKÉ: Thank you.

23 CHAIRPERSON MITTEN: Mr. Rothschild?  
24 Would you turn on your microphone for me?

25 MR. ROTHSCHILD: I would like five

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1 minutes. I said I was speaking for the D.C. Coalition  
2 for Rent Control.

3 CHAIRPERSON MITTEN: I'm sorry, we didn't  
4 have you on the list for that.

5 MR. ROTHSCHILD: I saw that I wasn't and I  
6 don't know why.

7 CHAIRPERSON MITTEN: Okay.

8 MR. ROTHSCHILD: I may not need the five.

9 CHAIRPERSON MITTEN: Okay.

10 MR. ROTHSCHILD: But I would like to speak  
11 to some of the things that have come up. I'll try not  
12 to repeat everything. But as far as -- I'm Kenneth  
13 Rothschild. I live at 3900 16th Street and I'm  
14 speaking for the D.C. Coalition for Rent Control.

15 In the past, in the 1970s, I served as ANC  
16 Commissioner in the Dupont Circle area for two and a  
17 half terms and had substantial experience with PUDs.

18 I noticed with the PUDs, a lot of times  
19 when we went back to check the amenities and the  
20 improvements that we were supposed to get for the  
21 added densities, it never seemed to turn out the way  
22 we thought it would. You get a little statue or  
23 something in the middle of a park that you could  
24 hardly find and so I'm very concerned.

25 I don't know whether the administration

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1 will come under your jurisdiction, but I find this the  
2 forum to speak about it because the administration of  
3 the final zoning terms will be a very important part  
4 and I think it should be important that it gets off to  
5 a good start because it's hard to change things once  
6 it gets established. It's hard to move people out of  
7 their homes and out of their -- okay, so that's  
8 important.

9 I think there should be some penalties  
10 provided in whatever is considered because without  
11 penalties nothing works. There has to be a way to say  
12 this wasn't done properly or it wasn't done in the way  
13 in which we agreed to, so penalties should be there.

14 One of the things I'm concerned about is  
15 that whatever you pass, everybody is going to be  
16 looking for loopholes, so there probably should be a  
17 periodic review by an outside agency of some type to  
18 see how well whatever is finally accepted and is in  
19 place, how well it's working and that ought to be  
20 reviewed periodically to see that there are not gaping  
21 loopholes being established because there will be a  
22 tendency to look for that.

23 And by the way, when I said penalties, I  
24 mean that for residents as well as developers. I  
25 think people should be hiding their incomes and things

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1 like that, so we should be very determined to  
2 administer this thing justly from both sides, both for  
3 developers and for residents.

4 Also, I think that the term period for the  
5 sale for homes should be longer than 20 years, the  
6 reason being is sure we want families to be considered  
7 as home owners and so forth, but the bottom line in  
8 this is available housing and there should be housing  
9 established now and there should be housing for people  
10 who need it in the future.

11 Now people whose family circumstances  
12 change can reapply. There can be provisions for  
13 families that grow, but I don't think a windfall  
14 profit to those who are lucky enough and we know this  
15 is going to be a small amount of units no matter what  
16 we do, that profit to the residents should be a major  
17 consideration. I think the housing aspect is far more  
18 important now and in the future.

19 I also would like the Commission to  
20 consider, the Board to consider the effect that this  
21 will have on tenant purchases. There may be some  
22 special considerations that are necessary when tenants  
23 actually purchase buildings and so forth. So those  
24 type of deals are not made unprofitable, so tenants  
25 actually will be able to purchase their units.

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1           And basically, if everybody looks at -- if  
2 anybody looks at the projections for population growth  
3 in this metropolitan area, sure there may be a slump  
4 in the housing situation for a while, but it's  
5 unlikely that housing and development of housing in  
6 this area is going to go away any time soon. So what  
7 I think we should do is titrate this thing, those of  
8 you who are familiar with chemistry, and find that  
9 point where we can really get some good affordable  
10 housing out of the value of the metropolitan area  
11 which is not due to the developers, which is due to  
12 the development of the Metro and the federal buildings  
13 and all the other things that have come to our area.

14           So developers are an important part of  
15 this area, but so are the workers and the people whose  
16 salaries are not keeping up. Thank you.

17           CHAIRPERSON MITTEN: Thank you very much.

18           Ms. Kyles?

19           MS. KYLES: Good evening and thank you for  
20 the opportunity for me to testify. My name is  
21 Courtney Kyles and I reside at 3003 Van Ness Street,  
22 Northwest. I am a summer law clerk of the Coral  
23 Moring Affordable Housing Initiative at the Washington  
24 Legal Clinic for the Homeless. As a part of my work,  
25 I assist a staff attorney in representing tenants at

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1 risk of losing their homes, generally through the  
2 termination of a federal subsidy.

3 In addition, I help educate tenants about  
4 their rights under the D.C. Housing Codes. I will  
5 read my testimony as it is and I would like to later  
6 submit a longer written testimony before the close of  
7 the hearing record, if that's okay.

8 From my legal studies and work experience  
9 at the Washington Legal Clinic, I have decided to do  
10 public interest work that will allow me to actively  
11 give back to my community on a daily basis. For me  
12 and many others, doing legal public interest work, the  
13 monetary downside in pursuing this work is that I will  
14 not make anywhere close to the six figure salary of  
15 around \$125,000 of some of my fellow classmates who go  
16 on to work in private law firms.

17 With the ongoing depletion of affordable  
18 housing, the large increases in the cost to purchase a  
19 home and my need to pay back my student loans, it  
20 seems the only way I can pursue my career of choice is  
21 to live outside of D.C.

22 That is an unfortunate result for a Howard  
23 University School of Law graduate. I am here tonight  
24 to urge the Zoning Commission to adopt the mandatory  
25 inclusionary zoning text amendment to help assure that

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1 affordable housing is maintained in the District of  
2 Columbia. I am here because I want the neighborhoods  
3 in the District of Columbia to continue to be diverse,  
4 with residents of all financial backgrounds, not just  
5 a neighborhood full of persons with six figure  
6 salaries such as doctors, lawyers and investment  
7 bankers.

8           Currently, many of the clients at the  
9 Washington Legal Clinic cannot afford rental housing  
10 in the District. In 2003, there were 55,000 renter  
11 households in D.C. with incomes below \$20,000 and only  
12 24,000 apartment units affordable to them at \$500 per  
13 month. In addition, this year, Congress underfunded  
14 the voucher program by almost \$570 million which means  
15 that about 80,000 vouchers will not be available to  
16 low-income people in need of housing assistance.

17 Given the loss of low rent affordable housing through  
18 condominium conversions and the loss of subsidy  
19 housing, the city must institute a plan to counter  
20 this loss.

21           Currently, many nonsubsidized, low-income  
22 residents are competing for the same apartments as  
23 those who earn between \$40,000 and \$70,000 per year.  
24 The fair market rent currently on a two-bedroom  
25 apartment in the District is \$1187 per month and the

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1 hourly wage to afford this rent is \$22.83 per hour at  
2 40 hours per week.

3 Many of our clients at the Legal Clinic  
4 earn the minimum wage of \$6.60 per hour and will have  
5 to work approximately 138 hours per week in order to  
6 afford a two-bedroom unit in the area of fair market  
7 rent which demonstrates that they have a greater need  
8 for the \$500 per month apartment. Although this  
9 amendment does not address the problem of affordable  
10 units for those persons earning minimum wage, the  
11 amendment will lessen the competition for rental units  
12 which are affordable to low wage workers.

13 In addition, Commissioners, I urge you to  
14 consider the character of the neighborhood without  
15 mandatory inclusionary zoning. A neighborhood's  
16 character is what makes D.C. so appealing. Soon,  
17 without this measure, the District will only be filled  
18 with individuals who make six figure salaries and  
19 everyone else will be displaced.

20 In the past five years, the median house  
21 price in the District of Columbia has risen 107  
22 percent to \$385,000. It is doubtful that a person  
23 making \$40,000 to \$70,000 per year would be approved  
24 by a bank to purchase a home at that median price. If  
25 all residents in each neighborhood are comparably the

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1 same economically, there is nothing as to distinguish  
2 each neighborhood from the others in the District.

3 Inclusionary zoning would aid and decrease  
4 in the vast economic divide between areas in the  
5 District which tends to lead to a racial divide as  
6 well.

7 Thank you, Commissioners for your  
8 attention and I hope that you take my comments under  
9 consideration. Thank you.

10 CHAIRPERSON MITTEN: Thank you very much.  
11 Questions from the Commission for this panel?

12 MR. HILDEBRAND: You said you could speak  
13 a bit to the maintenance issue?

14 MR. HUKÉ: Yes, I could.

15 CHAIRPERSON MITTEN: Would you turn on the  
16 mic for me?

17 MR. HUKÉ: Certainly. I think you were  
18 asking about a question of maintenance of row houses  
19 or townhomes and houses really do have an economic  
20 life and a difficulty and I have experienced this by  
21 observation and trying to help a number of  
22 communities, that when you have the burdens of home  
23 ownership without the benefits, the burdens become  
24 excessive.

25 Through the country, you may be familiar

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1       anecdotally that maybe the best model might be  
2       comparing that sort of situation to limited equity co-  
3       ops where the advantage to the home owner is very  
4       limited. Typically, a home owner might put something  
5       like \$500 down and the return is limited to something  
6       like a 5 percent increase per year which would be \$25  
7       plus the return of their investment. And so it does  
8       not put folks typically in a home ownership mode.

9               And across the country, limited equity  
10       cooperatives are failing and HUD is becoming very,  
11       very aggressive with enforcement procedures in  
12       foreclosures. They seem to have concluded that  
13       limited equity cooperatives often don't work very  
14       well.

15              One of the things I do is help limited  
16       equity cooperatives, as well as tenant associations  
17       with projects that are facing foreclosure, so I've  
18       seen this up close in a number of instances. So I  
19       would agree with George Rothman that financial benefit  
20       of home ownership is extremely important. It  
21       certainly can be shared with the jurisdiction that's  
22       providing some of the benefit and very much to the  
23       benefit of all parties.

24              I think there's a real problem in mixing  
25       tenure within a single community in a single building

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1 and that's mixing rental with home ownership. I think  
2 you can see that evidenced by FannieMae, FreddieMac  
3 requirements that limit the number of renters within  
4 their condominium or townhouse projects. So I think  
5 there's a real serious problem, if there's not  
6 benefits of home ownership. And when you take a  
7 limited equity cooperative, turn it into a market rate  
8 cooperative, you can keep it affordable for the  
9 existing members and boy, a lot of the problems just  
10 disappear like magic.

11 CHAIRPERSON MITTEN: Thank you. Thank you  
12 all for coming down tonight. And thanks to the rest  
13 of you for being patient and we'll look forward to  
14 seeing you either this Thursday or next Monday. And  
15 we're adjourned for tonight. Thank you.

16 (Whereupon, at 10:14 p.m., the public  
17 hearing was adjourned, to reconvene Thursday, July 28,  
18 2005 at 6:30 p.m.)

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