

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF :

TEXT AMENDMENT--

CONCRETE AND ASPHALT PLANTS IN
CM ZONE

Case No.

01-32TA

Monday,
June 24, 2002

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

The hearing convened at 6:33 p.m., Carol J. Mitten
presiding.

COMMISSIONERS PRESENT:

- CAROL J. MITTEN, CHAIRPERSON
- ANTHONY J. HOOD, VICE CHAIRPERSON
- JOHN G. PARSONS
- PETER G. MAY
- JAMES H. HANNAHAM

STAFF PRESENT:

- ALBERTO P. BASTIDA, Secretary, ZC
- SHARON SANCHEZ, Office of Zoning
- JENNIFER STEINGASSER, Office of Planning
- KAREN THOMAS, Office of Planning

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and Asphalt Plants in the CM Zone)

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

6:33 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Monday, June 24, 2002. My name is Carol Mitten, and joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May and John Parsons.

The subject of this evening's hearing is Zoning Commission Case No. 01-32TA. This is a request by the Office of Planning for a text amendment to add a provision to Title 11 DCMR, which would be a new Section 802.17 that provides for special exception review of concrete and asphalt facilities in the CM zone districts.

Notice of today's hearing was published in the D.C. Register on May 10, 2002 and in the Washington Times on May 15, 2002. This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3021, the procedures for rule making hearings.

Copies of today's hearing announcement are available to you and are located at the door.

The order of procedure will be as follows. Preliminary matters, followed by the presentation by the Office of Planning, reports of other government agencies, reports of any affected ANCs, organizations and persons in support, organizations and persons in opposition.

1 The following time constraints will be maintained
2 in this hearing. Organizations will have five minutes, and
3 individuals will have three minutes. The Commission intends to
4 maintain these time limits as strictly as possible in order to
5 hear the case in a reasonable period of time. The Commission
6 reserves the right to change the time limits for presentations,
7 if necessary, and notes that no time shall be seeded.

8 All persons appearing before the Commission are to
9 fill out two witness cards. These cards are located on the table
10 near the door. Upon coming forward to speak to the Commission,
11 please give both cards to the reporters sitting to my right.

12 The decision of the Commission in this case must be
13 based on the public record. To avoid any appearance to the
14 contrary, the Commission requests that persons present not engage
15 the members of the Commission in conversation during a recess or
16 at any other time.

17 The staff will be available throughout the hearing
18 to discuss procedural questions.

19 Please turn off all beepers and cell phones at this
20 time so as not to disrupt these proceedings.

21 At this time, the Commission will consider any
22 preliminary matters.

23 Mr. Bastida, do we have any?

24 SECRETARY BASTIDA: The staff has no preliminary
25 matters Madame Chairman.

1 CHAIRPERSON MITTEN: All right. Then we will
2 proceed to the presentation by Ms. Thomas from the Office of
3 Planning.

4 MS. THOMAS: Good evening, Madame Chair, all
5 Members of the Commission. I'm Kerry Thomas from the Office of
6 Planning, and at this time we would like to send out a report of
7 record with the exception of a few amendments received from other
8 agencies that we received today.

9 CHAIRPERSON MITTEN: All right.

10 MS. THOMAS: Okay. We decided to delete the
11 previous Section I, and that is in the new copy presented to you.

12 It's italicized in Appendix A. That will be Appendix A and it's
13 italicized. That will be your new -- it was deleted, the
14 original I was deleted where it said the facility shall control
15 releases that may have an adverse impact on human health. That
16 has been deleted based on comments from Hazardous Waste Division.

17 The other change that was made is where the
18 Applicant shall submit a stillwater management plan, pursuant to
19 the District Regulations as outlined, and it should just read in
20 21 DCMR Chapter 5. And this was due to the proposed changes to
21 the chapter, so they just wanted to have it a general statement.

22 Currently, they outlined in Sections 531, 538
23 through 44 in 21 DCMR. So that was the only change.

24 In the original Section L, we had also to correct
25 the reference to the titles, correct reference titles. So we

1 changed reference to 21 DCMR to 20 DCMR 6211 and 6212. That
2 should be changed to reference 21 DCMR Sections 1150 through
3 1199.

4 And the soil quality should be through compliance
5 with EPA's Region 3 residential risk based on EPA's concentration
6 table. And that was quoted to us because they said that the
7 District doesn't have any comprehensive regulation for soil
8 quality and the suggestion is to apply EPA's regulation and those
9 were the changes.

10 CHAIRPERSON MITTEN: Okay, let me just interrupt
11 you briefly and say that I'd like the record to reflect that
12 we've been joined by Commissioner Hannaham now.

13 So and the change that you just outlined, Ms.
14 Thomas, is in the new letter K in your appendix A.

15 MS. THOMAS: Yes, that's correct. And italicized.
16 Everything.

17 CHAIRPERSON MITTEN: And is there something about
18 this map that you'd like to tell us?

19 MS. THOMAS: No, not really. It's just an updated
20 version. The previous map was district-wide and basically what
21 happened was we couldn't regenerate it again. It got lost in the
22 service shuffle. So we just had an opportunity to do that new
23 one today, just reflecting the most affected areas in which would
24 be Wards 4 and 5.

25 CHAIRPERSON MITTEN: All right. So now you're just

1 going to take questions from us? Is that how you'd like to
2 handle it?

3 MS. THOMAS: Thank you.

4 CHAIRPERSON MITTEN: Questions from the Commission
5 for the Office of Planning.

6 VICE CHAIRPERSON HOOD: Madame Chair, I just have
7 some comments. I've asked -- what's her last name -- Ms. Thomas.
8 I didn't want to call you by your first name, Ms. Thomas.
9 Anyway, being of the -- where this mentions there shall be no
10 truck access or queuing to the site from residential streets,
11 and you all state now as defined in the functional classification
12 of streets in the District of Columbia. I would like to see us
13 be more specific. You're going by a definition, and when I look
14 at the regulations I don't see anything. I would like us to
15 really define what that is, so when a case like that comes up we
16 won't have to search for that definition.

17 Another thing is, and I'm just looking at what you
18 handed us this evening. You mentioned about you took out I, you
19 made some changes, you took out I.

20 MS. THOMAS: Yes. The original I. Yeah.

21 VICE CHAIRPERSON HOOD: Why was that deleted? Or
22 is it somewhere else with the same effect?

23 MS. THOMAS: No. This was deleted based on
24 comments we received just today from the Hazardous Waste Division
25 that -- I don't know if you, I don't think you guys received

1 that.

2 CHAIRPERSON MITTEN: We don't have that in the
3 record.

4 MS. THOMAS: And they requested that it was
5 incorrect. Those are the citations that we had for 4420.

6 VICE CHAIRPERSON HOOD: Okay. The reference was
7 incorrect.

8 MS. THOMAS: Right, so we had to delete that.

9 VICE CHAIRPERSON HOOD: But I guess my question is,
10 I want to see is the effect somewhere else in the regulations
11 that you're proposing.

12 MS. THOMAS: Well, insofar as site restoration is
13 concerned. It was reiterated again where there is that
14 groundwater quality.

15 VICE CHAIRPERSON HOOD: Also K. I'm trying to
16 speed read. I'm trying to see if we're still getting the same
17 effect where it says, I'll just read the last sentence or so.
18 "Descriptions shall be accompanied by the facilities
19 specifications as follows. The ventilation systems, odor, smoke,
20 and pollution abatement systems, and dust control systems." Is
21 that over here in what you're proposing, that language?

22 MS. THOMAS: Yes. K stays in.

23 VICE CHAIRPERSON HOOD: Okay, it's just a different
24 format.

25 MR. THOMPSON: Yeah.

1 VICE CHAIRPERSON HOOD: Okay. I'm sorry.

2 CHAIRPERSON MITTEN: K is now J.

3 MR. THOMPSON: K is now J.

4 VICE CHAIRPERSON HOOD: Okay, we moved up. I was
5 looking for it.

6 The other thing that I'm concerned about, and I
7 think this is the best time to raise it. Give me one second.

8 In your analysis, we talked about processing,
9 manufacturing -- light manufacturing, processing. Here it is.
10 After discussions in your report on page six, you said "after
11 discussions with the Zoning Administrator's Office, it was
12 determined that a concrete plan would be considered as any light
13 manufacturing, processing, fabricating, or repair establishment."

14 I can assure you, that statement has gotten us into a lot of
15 trouble in the past. I don't even know if it's up for even
16 proposal. But it's here, in the report. I really think that
17 needs to be more specific. Because any light manufacturing,
18 processing, fabricating, or repair establishment is just too
19 broad as far as I'm concerned. I think we need to be more
20 specific.

21 CHAIRPERSON MITTEN: It sounds, Mr. Hood, in the
22 absence of a definition or a -- definition of a concrete or
23 asphalt facility, and given the litany of uses that are contained
24 as permitted uses in the CM zone, I think that's what they would
25 have defaulted to, but I think you're right. We need to add

1 that.

2 This would, in effect, add it as a special
3 exception instead of a matter of right use, but maybe we also
4 need to define the use in Chapter 1 so that we're clear about
5 what we're trying to get our arms around when we talk about
6 concrete and asphalt facilities so there is no misunderstanding
7 with the Zoning Administrator who might inadvertently categorize
8 a similar use, but not one that we defined in this other category
9 that's permitted as a matter of right.

10 How difficult is it to craft a definition to
11 capture the uses that we want to include?

12 MS. STEINGASSER: I don't think it will be that
13 difficult, Madame Chair. We'll draft something and have Office
14 Corporation Counsel take a look at it. We could also return it
15 to the Commission for your review.

16 CHAIRPERSON MITTEN: I think we're probably going
17 to have to advertise that separately. But I think, while we're
18 at it, we at least should, it might end up being a two-step
19 process because we have to advertise that, and I don't know the
20 ins and outs. I'm sure Mr. Bergstein will be able to inform us.

21 But I think it's important that we do define these uses as
22 specifically as possible.

23 SECRETARY BASTIDA: Madame Chairman, if we were to,
24 if you were to have a definition and adopt it on the July
25 meeting, then we can probably resolve all in one clean sweep and

1 have a final adoption, if you're going to do it that way or the
2 September meeting.

3 CHAIRPERSON MITTEN: That's fine. I just want to
4 make sure we don't have to separately advertise our definitions.

5 SECRETARY BASTIDA: We will have to, but there is
6 enough time to do it. That's what I'm saying. Sorry if I wasn't
7 clear.

8 CHAIRPERSON MITTEN: Okay. Mr. Hood, I'm sorry. I
9 interrupted you.

10 VICE CHAIRPERSON HOOD: I just also wanted to make
11 a comment on the Langon overlay in your reports. You also
12 mentioned the LO, which is the Langon Overlay. And what I see
13 here in the CM Zoning, you're trying to offer some buffer in
14 between the residential area as opposed, for example, it may be
15 right across the street from a CM one, two, or three district or
16 zone.

17 Will this be grandfathered -- the ones that already
18 exist, for example, in the Langon Overlay, will those concrete
19 plants be required to come up under this new regulation? Or will
20 they be grandfathered? And if they are grandfathered, will they
21 be required then to come up with a landscape plan, or are they
22 grandfathered in to the point where they don't have to even abide
23 by what's in front of us here?

24 MS. STEINGASSER: They would be grandfathered as an
25 existing use and they would not be required under these

1 provisions to come forward with an additional landscape plan.

2 VICE CHAIRPERSON HOOD: Also in the report, and
3 this is my last question. In the report, you mention about truck
4 traffic on residential areas. I know we're going to try to
5 define, come up with a definition, but what we call a residential
6 street, or residential street that were supposed to be
7 off-limits. But my concerns are how is that going to be
8 enforced? Or do we know?

9 MS. STEINGASSER: We don't know beyond the standard
10 police patrols and the conditions of any approval that would be
11 the conditions of the Zoning Administration type of enforcement.
12 There's no special enforcement included in this provision.

13 VICE CHAIRPERSON HOOD: Madame Chair, I really
14 think that while I appreciate what's in front of me, we can sit
15 down here and pass this all day long and I'm a living witness
16 that it's not going make a difference if we don't have any
17 enforcement, which is natural.

18 So I think for us just to pass it and say that we
19 have it on the books, I don't think it's good enough. But I'm
20 glad to see that we're now making an attempt to put something on
21 the books. But I think we have a 50 percent completion. We
22 still have 50 more percent and that's to make sure what we sit
23 here and pass and talk about in our rule making, that something
24 comes up, it just doesn't sit there. Because I can tell you the
25 Langon Overlay, which was passed by this Commission, has been a

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1 big disappointment. If you go look where the Langon Overlay is
2 proposed, it has not worked. And I think we're going down the
3 same road. Thank you.

4 CHAIRPERSON MITTEN: Thank you, Mr. Hood. Any
5 other questions for the Office of Planning?

6 Mr. Hannham?

7 COMMISSIONER HANNAHAM: I'm just glad to see it. I
8 read through it and it made sense to me. It was just surprised
9 that so much new language here was necessary. I thought
10 something like that would have already been on the books. But I
11 have no real questions with regard to the traffic. I was curious
12 about whether we could get a copy of this map that included Ward
13 7 and Ward 8. We got a piece of the property district.

14 MS. THOMAS: Yeah, I did do. There
15 is a complete map.

16 COMMISSIONER HANNAHAM: There is? I only see a
17 piece that's Ward 4 and 5.

18 MS. THOMAS: I don't know if we have.

19 CHAIRPERSON MITTEN: There was an attached to a
20 February 26.

21 COMMISSIONER HANNAHAM: I see it. I've got it now.
22 Thanks. That's fine. Madame Chairman, I didn't have any
23 further questions.

24 CHAIRPERSON MITTEN: All right. Just a couple
25 things I'd like to clarify. It seems there are numerous

1 provisions in these regulations that are somewhat redundant with
2 other sections of the DCMR and I'm wondering why are we calling
3 out these other sections and saying you must be in compliance
4 with this section regarding noise. You must be in compliance
5 with this section regarding, you know, stormwater management.
6 You must be in compliance with these various and sundry other
7 sections. What are we -- what's the -- what are we trying to
8 accomplish by including that in a land use ordinance when it's
9 handled in another ordinance?

10 MS. THOMAS: Well, based on my comparative analysis
11 with other jurisdictions, these types of regulations are included
12 in these certain ordinances, and they have much greater effect on
13 these types of plants and for industrial areas than separated by
14 themselves.

15 Plus it also provides some, I don't know if you
16 would call it comfort level, to residential homeowners and people
17 who live near -- close-by to these types of industrial plants to
18 know that there is some place in the zoning regs., or when they
19 see certain types of infractions taking place they can quote the
20 zoning ordinances.

21 As it stands, the District, there seems to be no
22 tie-in of these types of environmental regulations within our
23 ordinance land-use regulations.

24 Environmental aspects are part of land use
25 requirements as well. And there's always been a disconnect in

1 our regulations as far as environmental matters are concerned.

2 CHAIRPERSON MITTEN: I think I understand what your
3 motivation is. My concern is that we often have had folks before
4 us who are proposing a project and community people want us to
5 then become the
6 gatekeeper on these other regulations, whether it's noise, or
7 groundwater, or where the truck traffic will be going, and so
8 forth. And we don't have jurisdiction over those, so I'm
9 concerned about sending out a message that this is going to be
10 the great savior of -- we're going to enforce all regulations
11 here. It's all DCRA, you know, it's just a question of who in
12 DCRA.

13 But given that there is this review process, people
14 are going to view that coming before the BZA and the special
15 exception, for special exception, is somehow going to be more
16 inclusive of these other regulations. And I don't want to give
17 the false impression that the BZA is going to be able to do
18 something related to the noise ordinance or whatever
19 environmental ordinances and so forth. And I don't know if you
20 all have discussed that, but I just don't want to give a false
21 impression.

22 And I guess also on the point in letter e, which I
23 don't think has changed in 802.17 proposed letter e, where it
24 says "the use shall not have unacceptable adverse impacts on the
25 character of the neighborhood due to noise, traffic, dust," blah

1 blah blah.

2 Well, let's just isolate noise for instance. Does
3 that mean noise over and above the protections of the noise
4 ordinance, or does that mean consistent with the noise ordinance
5 related to traffic, since we don't regulate and maybe if we can
6 address Mr. Hood's concern, we'll go a little bit farther to
7 regulating where these trucks can travel and where they may not
8 travel. But we do not have input to the routes that are
9 authorized for these trucks to take. That's DDOT. So is this
10 over and above that provision?

11 And some of these others, I guess I'm just
12 wondering -- are we suggesting that there's some control over and
13 above other ordinances? And maybe that's a question that you'll
14 need some time to ponder and answer later.

15 I also wanted to suggest that there's numerous
16 things that we say we will be reviewing for. Specifically, I
17 guess M is the catch all. The new M, which was the old N. And I
18 think we need to have a list of items that an Applicant would
19 have to submit in order to get their special exception, in order
20 to qualify as having a completed application for special
21 exception review. For instance, we already talk about the fact
22 that they have to submit a landscape plan, storm water management
23 plan, plans and specifications that include how they're going to
24 handle ventilation, odor, smoke, and pollution abatement and dust
25 control, but it seems to me that we should also -- and we should

1 call that out.

2 There should just be a list that says this is what
3 it takes to have a complete application for concrete or asphalt
4 facility and here's what they are. And then also since we're
5 talking about fencing, we would need whatever you would call it,
6 a screening plan or something, but if there's going to be any
7 aesthetic review of the fence, we'd have to have that.

8 We'd have to have a lighting plan if the BZA is
9 going to be reviewing for whether there will be adverse impacts
10 related to lighting. Talking about signage --we're going to need
11 a signage plan. Noise. I think we need some kind of general
12 operations plan so that Applicants know up front what's expected
13 of them in order to meet the test for special exception review of
14 this type.

15 MS. STEINGASSER: We'd be happy to go on that route
16 and reorganize this chapter to include the specific types of
17 plans.

18 This particular section, and E as well, were drawn
19 directly from the Standards for Intermediate Recycling
20 Facilities, and it might be advantageous when we do so to specify
21 that as well so the two reflect.

22 CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER PARSONS: Whoa, what did you just
24 agree to there? You got some regulations in place for other
25 facilities. They base these regulations on those which are

1 equally if not more so obnoxious. And you're suggesting that if
2 we make some changes here, we ought to go back and revisit the
3 others?

4 CHAIRPERSON MITTEN: I believe that what Ms.
5 Steingasser said we're just, in terms of organizationally, we
6 would call out to an Applicant if you are going for a special
7 exception review for concrete or asphalt facility, or
8 intermediate recycling facility, here's what the ordinance
9 already implies that you have to produce. We're just going to
10 make a nice list for you so that it's very clear what you must
11 submit.

12 COMMISSIONER PARSONS: Okay, I thought you meant to
13 go back and revisit the other.

14 CHAIRPERSON MITTEN: No, I wouldn't suggest that.

15 COMMISSIONER PARSONS: Thank you very much. My
16 confusion.

17 VICE CHAIRPERSON HOOD: It wouldn't hurt.

18 CHAIRPERSON MITTEN: Let me just make sure, Ms.
19 Steingasser, that we're on the same wavelength.

20 COMMISSIONER PARSONS: It's only Parsons who is off
21 the wavelength. But I'm cool. I'm all right.

22 CHAIRPERSON MITTEN: Mr. Parsons has declared
23 himself cool, so --

24 (Laughter.)

25 COMMISSIONER MAY: I second that motion.

1 CHAIRPERSON MITTEN: I have a few questions for
2 you. Oh, you've changed it. H is now, maybe I'll just point
3 that out as well. The landscaping plan used to be -- letter H
4 used to have a third point to it, and that's been eliminated
5 which is good as far as I'm concerned. That was submitting it to
6 DCRA for review by their Soils Resources Branch.

7 MS. THOMAS: Right. That was suggested by counsel.

8
9 CHAIRPERSON MITTEN: That's good. I endorse the
10 elimination of that.

11 There was something under the restoration
12 requirements that I just didn't understand what it meant, under
13 the new K. About one sentence prior to the italicized part, near
14 the end of the sentence, it says "and delineation of flood plans,
15 if any, to be maintained in open usage."

16 What does that mean?

17 MS. THOMAS: That you can go back, well, to
18 delineate if they were in a flood plain area and that area you
19 can go back in to develop within that flood plain. It should
20 preserved as open space.

21 CHAIRPERSON MITTEN: We don't have any regulations
22 that are land use regulations, that prohibit development in flood
23 plains.

24 Do we have other regulations that prohibit
25 development in flood plains?

1 MS. THOMAS: I can check that for you. If it
2 doesn't, we could -- I'll look at it. We'll get back to you.

3 CHAIRPERSON MITTEN: All right. Under L where
4 review is anticipated by various different departments and
5 agencies, including the Office of Planning, typically, Office of
6 Planning is sort of our coordinator for all these and there are
7 requirements for responses. Not that we hold things up, but okay
8 as of this date, if we don't get your response we can move along.

9 And I don't know -- that doesn't seem to be captured here and I
10 wouldn't want anyone to be able to hold up an application saying
11 well, we're still waiting to hear from the Department of Health,
12 if the Department of Health just doesn't respond in a timely
13 manner for instance.

14 (Pause.)

15 And I did have one additional question about Mr.
16 Hood's question related to the classification of residential
17 streets, which I think you discussed in your report that has to
18 do with the level of traffic.

19 (Pause.)

20 Yes, on page six. And I don't know if all the
21 streets in the city are classified as either residential
22 principal arterial, minor arterial, and collectors and they
23 periodically are reevaluated or if it's based on, well, let's see
24 what the traffic count is and that will tell us what kind of
25 street it is.

1 Do you know how that works?

2 MS. STEINGASSER: I don't know how they update
3 their functional categories but we'll be happy to get further
4 detail on that as well.

5 CHAIRPERSON MITTEN: Because one of the unfortunate
6 consequences, may be that a street is intended to be a
7 residential street but because of cut-through traffic or
8 something like that, that traffic volume increases so much that
9 it becomes another kind of street that was never intended. And I
10 think that we don't want to lose the streets that we're really
11 trying to protect through some miscategorization or using the
12 wrong type of categorization.

13 MS. STEINGASSER: Okay.

14 CHAIRPERSON MITTEN: Those are all the questions I
15 have.

16 Anybody else have anything else?

17 So I think what this is going to take is a little
18 more study and then another pass at maybe making some proposed
19 changes.

20 Let's just get through the rest of the agenda and
21 then we'll talk about the best way to proceed with that.

22 There was a report that you had mentioned a
23 reporter to -- you had gotten some feedback from some other
24 government agencies and I wondered if you were planning on
25 submitting those for the record because I don't think we'll have

1 anyone testifying on behalf of any government agencies.

2 MS. STEINGASSER: We received reports this morning
3 via e-mail. They are addressed to the Director of the Office of
4 Zoning, however we understand they were never delivered. Neither
5 are they signed. One is from Gregory Hope, Chief of the Water
6 Quality Control Branch. And the other is from Mark Hughes, who
7 is a biologist in the Hazardous Waste Division. It is their
8 response they provided in these letters that caused us to make
9 the modifications here. We will ask them to provide a signed
10 copy to your record directly.

11 CHAIRPERSON MITTEN: Thank you. And Mr. Hughes was
12 from where? I'm sorry.

13 MS. STEINGASSER: Hazardous Waste Division, also
14 the Department of Health.

15 CHAIRPERSON MITTEN: Thank you. Is there anyone
16 here representing any ANC? Want to testify in support? In
17 opposition? Okay. Great.

18 Well then I guess we'll figure out now how we will
19 proceed. I don't know how much time you folks think you might
20 need to respond to the issues that we've raised.

21 MS. STEINGASSER: In all honesty, with the line-up
22 of public hearings we have coming Monday, Thursday, Monday,
23 Thursday, it would be very, very difficult for us to get
24 something to you next week for your July meeting. We would
25 request September.

1 CHAIRPERSON MITTEN: All right.

2 VICE CHAIRPERSON HOOD: I just have a question. We
3 passed emergency legislation for 120 days.

4 CHAIRPERSON MITTEN: Yes.

5 VICE CHAIRPERSON HOOD: I guess we might have to do
6 that again if we're going into September.

7 CHAIRPERSON MITTEN: I think that's probably right.

8

9 Isn't that right, Mr. Bastida?

10 SECRETARY BASTIDA: That is correct, and there is a
11 reluctance from Corporation Counsel to go to a third emergency
12 legislation. It says that it would be very difficult to justify,
13 and I was pondering the Office of Planning timetable would be in
14 order to submit the changes that the Commission had requested.

15 CHAIRPERSON MITTEN: Let me just ask a question
16 first, which is when does the emergency expire?

17 SECRETARY BASTIDA: The emergency expires some time
18 in September. I cannot tell you the exact date. But if we don't
19 have final legislation by September, we will have to, if you
20 wanted to keep it on the books, we'll need a third extension.
21 And there is a tremendous reluctance, as I said, for corporation
22 counsel to do that, and it was discussed very extensively with
23 both Mr. Bernstein and Mr. Buffel.

24 VICE CHAIRPERSON HOOD: Madame Chair, have we done
25 this three times? This will be our third time?

1 CHAIRPERSON MITTEN: This would be our third time.

2 SECRETARY BASTIDA: So let me just throw something
3 into the pan. If the Office of Planning believes that they can
4 provide us their recommendations by a week from today, on Monday,
5 we can have it on the October 8th agenda. The problem with the -
6 -

7 CHAIRPERSON MITTEN: Wait a second. Don't you mean
8 July?

9 SECRETARY BASTIDA: I'm sorry -- July 8th agenda.

10 CHAIRPERSON MITTEN: I think they've already said
11 they cannot accommodate that.

12 Here's the thing. We had three emergencies on the
13 EEFs. Not to say that I'm recommending that, but there is a
14 level of complexity here that is not, I mean, when you just talk
15 about it as oh, we're just talking about concrete plants and
16 special exceptions in the CM Zone. Sounds very simple, but it's
17 not. It's quite complicated. So, I mean --

18 SECRETARY BASTIDA: That is correct. The problem
19 is the reluctance that I have for Corporation Counsel. What I'm
20 trying to look at right now, it would be since we have so many
21 hearings this month, if perhaps there is a hearing date that it
22 will not be too difficult by which we can have a special meeting,
23 adopt that. Because if that's the case, than I can polish and I
24 would have enough time to have it in the September meeting for
25 the final action.

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1 CHAIRPERSON MITTEN: All right. That's you.
2 Office of Planning.

3 MS. STEINGASSER: I think we can meet that. Yes,
4 ma'am. I'm looking at July 25 is the United House of Prayer,
5 which I do not believe to be a contentious case whatsoever and we
6 could definitely have something to you a week ahead of that on
7 the 18th of July.

8 CHAIRPERSON MITTEN: Okay, Mr. Bastida?

9 SECRETARY BASTIDA: Let me -- I'm looking at that
10 because I have to make sure I have the 30 days publication time
11 that it would be a short hearing, but if it's adopted that's on a
12 Thursday. If I can have it in such a fashion that I can take it
13 to the Register on Friday, then I would have the time because the
14 next Friday would be the 2nd, so I would have the 30 days.

15 CHAIRPERSON MITTEN: Let me just interject
16 something which is given that Corporation Counsel has voiced
17 strong reservations about having a third emergency on this and
18 given that the Office of Planning is not -- their expertise is
19 not in drafting legal language, that if we're going to be able to
20 accommodate the schedule that you've outlined, then Corporation
21 Counsel and Office of Planning are going to have to work together
22 to get what's put in front of us on July 25th in pretty final
23 shape. Not that they're here to defend themselves or speak for
24 themselves.

25 Would you turn on your mike before you --

1 SECRETARY BASTIDA: You are correct. It's still --
2 we have a hearing on July 18th that it might not be that short
3 and it's related to Chapter 13. Then I would rather have the
4 special meeting at that time, because in that way I can be
5 assured by the calendar that, in fact, I would be able to publish
6 in a timely fashion if the Commission is willing to make that
7 sacrifice because we have a -- yeah, I believe that I have to
8 double check the calendar, but I don't know. We have a hearing
9 on July 18. Do we have a hearing on July 15?

10 CHAIRPERSON MITTEN: No, we do not.

11 SECRETARY BASTIDA: Okay, so if the Commissioners
12 would bear with me I would rather have it on July 18th, not July
13 25th.

14 CHAIRPERSON MITTEN: Well, it's not us. It's
15 whether or not Office of Planning can accommodate that schedule.

16 SECRETARY BASTIDA: That gives them basically about
17 three and a half weeks.

18 (Pause.)

19 MS. STEINGASSER: We will get it done.

20 CHAIRPERSON MITTEN: That would be great.

21 SECRETARY BASTIDA: So to make sure --

22 CHAIRPERSON MITTEN: Thank you. God bless you.

23 SECRETARY BASTIDA: -- That we will need these on
24 Monday, July the 15th, so I can get it to the Commissioners
25 because it will be a special meeting for them to be able to

1 decide it on the 18th. Okay? That gives you exactly three
2 weeks.

3 MS. STEINGASSER: We can meet that. We can get
4 that done.

5 CHAIRPERSON MITTEN: Thank you. So Mr. Bastida,
6 just run those dates down again.

7 SECRETARY BASTIDA: We will have a special meeting
8 and I will put it on the reminder schedule on July 18th. I will
9 suggest that we have special at six o'clock. The Office of
10 Planning will submit their report no later than closing of
11 business Monday July 15th. And in that way, I will be able to
12 fax immediately to all the Commissioners the proposals since
13 there will be not that many pages, I would assume. Then the
14 Commissioners hopefully be able to read it, evaluate it, and make
15 a decision on Thursday, July the 18th.

16 CHAIRPERSON MITTEN: All right.

17 SECRETARY BASTIDA: And if it needs further
18 adjustment, then it gives me a week to do that and work with
19 Corporation Council if that needs be to be able to publish in the
20 Register in a timely fashion, to be able to decide it in the
21 September meeting.

22 CHAIRPERSON MITTEN: Great. Thank you. Any
23 questions? All right.

24 I would like to thank everyone who attended this
25 evening for their interest in the business of the Commission.

1 You should also be aware that should the Commission propose
2 affirmative action following our -- or at our special public
3 meeting on July 18th at six p.m., that the proposed action must
4 be published in the D.C. Register as proposed rule making with a
5 period of time for comments.

6 In addition, the proposed rule making will be
7 referred to the National Capital Planning Commission for Federal
8 Impact Review. The Zoning Commission will then take final action
9 at a public meeting following a receipt of public comments and
10 the NCPC comments, after which a written final rule making and
11 order will be published.

12 I now declare today's public hearing adjourned.

13 (Whereupon, at 7:12 p.m., the public hearing was
14 concluded.)