

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

+ + + + +

MONDAY

MARCH 24, 2008

+ + + + +

The Special Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:11 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- GREGORY N. JEFFRIES, Vice Chairman
- CURTIS L. ETHERLY, Jr., Commissioner
- MICHAEL G. TURNBULL, FAIA, Commissioner (OAC)
- PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

- SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
ARTHUR ROGERS
MATT JESICK

The transcript constitutes the minutes from the Special Public Meeting held

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on March 24, 2008.

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

2 6:11 p.m.

3 CHAIRPERSON HOOD: Good evening.
4 This is our special public meeting. Good
5 evening, ladies and gentlemen. This is March
6 24, 2008. My name is Anthony J. Hood.

7 Joining me this evening are Vice
8 Chairman Jeffries, Commissioner May -- I
9 almost said Parsons, Commissioner May,
10 Turnbull and Etherly. I had to look.

11 Copies to day's meeting agenda are
12 available to you and are located in the wall
13 bin near the door. We do not accept any
14 public testimony at our meetings unless the
15 Commission request someone to come forward.

16 Please be advised that these
17 proceedings are being recorded by a court
18 reporter and is also webcast live.
19 Accordingly, we must ask you to refrain from
20 any disruptive noises or actions in the
21 hearing room. Please turn off all beepers and

1 cell phones.

2

3 First, let me say good evening to
4 Mrs. Sharon Schellin from the Office of Zoning
5 staff. Also we are joined to my right from
6 the Office of Planning staff Mr. Joel Lawson
7 and his staff. Yeah, I know Mr. Jesick. Mr.
8 Jesick, thank you.

9 Okay. Does the staff have any
10 preliminary matters?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. If not,
13 let's proceed with our agenda. First up we
14 have a consent item, Zoning Commission Case
15 No. 05-24B, request for us to consider a minor
16 modification to PUD.

17 Mrs. Schellin.

18 MS. SCHELLIN: Staff has nothing
19 further to add to that.

20 CHAIRMAN HOOD: This is a request
21 -- if you look at your date, March 20, 2008,
22 this is a request as to marking distance from

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1 A&R/THC II, LLC which is the development team
2 which is asking us to go from 20 single family
3 homes to 45 townhomes. We have that was given
4 to us -- e-mailed to us the Office of Planning
5 Report which comments on the modification.

6 We have taken into consideration
7 their comments. What I will do at this point
8 in time is open it up and see if anybody
9 thinks we should deal with this on the consent
10 calendar as a consent calendar item. If I
11 don't hear anything -- Commissioner May.

12 COMMISSIONER MAY: Notwithstanding
13 my understanding of the time sensitive nature
14 of this request, it is very hard for me to
15 make the leap into saying this is, in fact, a
16 minor modification. I mean, I understand the
17 circumstance but what is being proposed, the
18 change that is being proposed to me does not
19 pass as a minor modification.

20 The other examples that was cited
21 I don't know anything about the history of
22 that but we are talking about a more intense

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1 use that I think would be -- at least needs
2 some public discussion.

3 CHAIRMAN HOOD: Okay. I would
4 agree with you, Mr. May. I also looked at the
5 previous order that was submitted for us, I
6 guess for an example. When I looked at that
7 having been around that long, I remember as is
8 stated that the purpose of the request, and
9 this was the previous order, which was cited.
10 I believe it was given to us to kind of be in
11 comparison with what we have in front of us.

12 I look at 345 unit low elderly
13 apartments and we want the building for the 11
14 townhomes. I think that is totally different
15 than what we have here in front of us where we
16 are going from single-family homes to 45
17 townhomes.

18 The applicant states it is the
19 same makeup. The fact that the substitute
20 townhomes are the same architectural design as
21 approved townhomes suggest that a public
22 hearing is not necessary. I think we need to

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1 have a public hearing. Because of the
2 financing and other financial obligations, I'm
3 inclined to hopefully see how we can move this
4 as fast as possible.

5 But there are only two of us that
6 have spoken and I need to know what my other
7 colleagues think.

8 MR. TURNBULL: Mr. Chair, I would
9 concur with both you and Commissioner May.

10 CHAIRMAN HOOD: Would my other
11 colleagues like to comment on it?

12 VICE-CHAIRMAN JEFFRIES: Well, I'm
13 actually looking at the Zoning Commission
14 order 05-24. That order stated the granting
15 of flexibility to vary the mix of uses within
16 the unit type by up to 10 percent. Does this
17 change represent less than 10 percent? Oh,
18 no. The applicant -- oh, I'm sorry. Okay.

19 CHAIRMAN HOOD: What are you
20 looking at?

21 VICE-CHAIRMAN JEFFRIES: I'm
22 actually reading the Office of Planning's

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1 report but I didn't get to the second part of
2 that. This is a 100 percent change. I
3 thought it just represented a certain portion
4 of the housing. I would concur with fellow
5 commissioners.

6 CHAIRMAN HOOD: All right. Ms.
7 Schellin, how can we try to assist this
8 applicant? I don't know if there have been
9 any discussions because I would hate to see
10 them lose any funding which is cited here.

11 MS. SCHELLIN: I think that we
12 could advertise it for a hearing as long as we
13 had the number of days necessary for the ANC
14 rules and maybe allow the applicant whether
15 than waiting for a prehearing statement to
16 come in first to allow the applicant to file
17 that 20 days before the hearing.

18 CHAIRMAN HOOD: Let's do whatever
19 it takes to make it happen.

20 MS. SCHELLIN: Okay.

21 CHAIRMAN HOOD: This is definitely
22 a worthwhile project and I guess if we do a

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1 general consensus. The general consensus that
2 we are talking about here is all of us
3 agreeing. There is no such thing to me, and
4 I read this, as a general consensus and one
5 person not agreeing. A general consensus is
6 that we all agree. You will hear more of this
7 in a few minutes. Okay. Do we have a general
8 consensus on that?

9 MS. SCHELLIN: So we need to
10 actually have you go ahead and vote to set it
11 down for hearing if someone would move that.

12 CHAIRMAN HOOD: Okay. I would
13 move that we set down Zoning Commission Case
14 No. 05-24B and leave the staff ways to make
15 this happen as soon as possible if that helps
16 you. I would ask for a second.

17 COMMISSIONER ETHERLY: Second, Mr.
18 Chair.

19 CHAIRMAN HOOD: Moved and properly
20 seconded. Any further discussion? Any
21 further discussion? All those in favor?

22 ALL: Aye.

1 CHAIRMAN HOOD: Any opposition?
2 Not hearing any, would the staff record the
3 vote.

4 MS. SCHELLIN: Staff records the
5 vote five to zero to zero to set down Zoning
6 Commission Case No. 05-24B. Commissioner Hood
7 moving, Commissioner Etherly seconding,
8 Commissioners Jeffries, May, and Turnbull in
9 favor. This is being set down as a contested
10 case and also with permission for staff to get
11 this advertised as quickly as possible.

12 CHAIRMAN HOOD: All right. Thank
13 you, Ms. Schellin.

14 Next we will go to hearing action
15 for Zoning Commission Case No. 06-40, the
16 Gateway Market Center, Inc., Consolidated PUD
17 & Related Map Amendment, Square 3587 and
18 Parcels 129/9 and 129/32. Mr. Jesick or Mr.
19 Lawson.

20 MR. JESICK: Thank you, Mr.
21 Chairman and members of the Commission. My
22 name is Matt Jesick. Nothing really new to

1 report since the last setdown meeting. The
2 applicant has submitted packets of the revised
3 plans dated November of '06. You should have
4 those in front of you.

5 The Office of Planning did submit
6 a brief memo describing or giving an update on
7 the Florida Avenue market plan. I would be
8 happy to answer anymore questions. The Office
9 of Planning still does recommend setdown of
10 the application.

11 CHAIRMAN HOOD: Okay. Thank you,
12 Mr. Jesick. I know that when we got ready to
13 set this down previously I think. I don't
14 need to reiterate where I stand but I found
15 this very interesting. It was submitted by
16 the applicant. It's actually page 2.

17 It talks about the plan which we
18 are still waiting on which was supposed to be
19 completed in April of 2007. I don't want to
20 sound like a broken record but then I read on
21 to say, "We have a general but not a unanimous
22 consensus." I don't mind being educated but

1 I haven't heard of that before.

2 I thought general consensus was
3 everybody agreeing. I guess it depends on how
4 you play around with a little terminology and
5 it makes it work. Anyway, I don't plan on
6 doing that. Not that I'm saying anything
7 behind it but I make sure I speak to that
8 person.

9 Anyway, Commissioner May, you had
10 a number of questions and rightly so. We do
11 not have the updated architectural drawings in
12 front of us. What I will do at this time to
13 save time is not wait for anybody. I'll just
14 start with you, Mr. May.

15 COMMISSIONER MAY: It was good to
16 see the updated set of drawings. Some of my
17 questions were resolved. There are definitely
18 questions that I would have going forward when
19 we get to the hearing. I do want to register
20 a couple of comments that might help the
21 applicant in preparing for that hearing.

22 Some of the issues of accessing

1 and sort of circulation with the different
2 parts of the building are not very clear from
3 the drawings. For example, it's hard to
4 understand how the multi-purpose room would be
5 used and accessed and those sorts of things.
6 I'm sure it's explainable. It's just not
7 clear to me from the drawings.

8 The rooftop structures are also
9 not clear and I'm not sure how to make that
10 clear. It's a very, very complicated
11 assemblage of uses and parts and levels and so
12 on so it's a little bit hard to follow.
13 Rooftop structures are something else I would
14 like to have further information on and
15 further clarity.

16 I would also want to register the
17 sort of question about the second floor
18 retail. It looks like the entire second floor
19 plate is devoted to retail which is kind of
20 surprising and I'm curious about what is
21 driving that. I would be concerned that maybe
22 it's not going to stay that way forever. It's

1 hard to imagine what retail use is going to
2 work there.

3 Then the last thing I would say is
4 that I am still not enamored of the
5 elevations. I think there is still a lot
6 going on. I think has been some very good
7 efforts to simplify from what we saw before
8 and some of the moves that didn't really make
9 sense like the arched grand entrance didn't
10 really make a lot of sense.

11 I think what we have now is quite
12 a bit more coherent and I think is just sort
13 of the first step in that direction. A little
14 bit more work in that way I think would be
15 appropriate. I would be interested to know
16 whether my fellow commissioners have the same
17 feeling towards that because often I wind up
18 saying that it's too complicated and people
19 say, "Well, I love complexity." Let me hear
20 you guys.

21 CHAIRMAN HOOD: I never heard that
22 request before. Most people don't want to

1 hear from us, at least me. Does anybody else
2 have any comments or want to respond to
3 Commissioner May? You don't have to but if
4 you would like to. Okay. Not hearing
5 anything, Mr. May, I think you are going to
6 get your wish.

7 COMMISSIONER MAY: I don't want to
8 send the applicant a mixed signal on this but
9 I just think a little bit more refinement on
10 the design is appropriate.

11 CHAIRMAN HOOD: Okay. Thank you
12 for your comments.

13 I think we have two requests. We
14 have a request for setdown. I read somewhere
15 I thought it was expedited because I think it
16 was a funding issue. Was this the one that
17 was a funding issue?

18 MS. SCHELLIN: It may but the
19 timing still falls on the applicant. We can't
20 set a hearing until they file their prehearing
21 statement. The faster they get that in, the
22 faster we'll give them a hearing.

1 MR. TURNBULL: DHCD was it?

2 MS. SCHELLIN: Yes.

3 CHAIRMAN HOOD: Let's move on.

4 We've come to the point to make sure they do
5 that as expeditiously as possible. I would
6 move that we set down Zoning Commission Case
7 No. 06-40, Gateway Market, Inc. at Square
8 3587, Parcels 129/9 and 129/32. Also ask the
9 applicant to incorporate or to consider some
10 of the comments that were made by our
11 colleague Commissioner May and ask for a
12 second.

13 MR. TURNBULL: Second.

14 CHAIRMAN HOOD: Moved and properly
15 seconded. Any further discussion? Any
16 further discussion? All those in favor?

17 ALL: Aye.

18 CHAIRMAN HOOD: Ms. Schellin, it
19 sounds like there's no opposition. Could you
20 please record the vote?

21 MS. SCHELLIN: Sure. Staff

22 records the vote five to zero to zero to set

1 down Zoning Commission Case No. 06-40 of the
2 contested case. Commissioner Hood moving,
3 Commissioner Turnbull seconding, Commissioners
4 Jeffries, May, and Etherly in support.

5 CHAIRMAN HOOD: Okay. Our next
6 case for hearing action is Zoning Commission
7 Case No. 04-33C, Office of Planning. I think
8 this is going to be a three-phase request but
9 I'll let the Office of Planning speak on it.
10 Emergency and Setdown of Text Amendment to the
11 Inclusionary Zoning (IZ) Regulations.

12 MS. SCHELLIN: I'm sorry, Chairman
13 Hood. If we could, the first thing we need to
14 do is waive the rules for the late submittal.

15 CHAIRMAN HOOD: Okay. You're
16 right.

17 MS. SCHELLIN: You can do that by
18 consensus but I just need to have it on
19 record.

20 CHAIRMAN HOOD: Okay. Request to
21 waive our rules for 10 days. We were supposed
22 to receive the Office of Planning report.

1 That was not done. Do we have a general
2 consensus to accept the report? The report is
3 accepted. Thank you.

4 Again, let me go to Mr. Rogers.
5 Mr. Rogers is our IZ man so we will start with
6 Mr. Rogers.

7 MR. LAWSON: Actually, I think
8 I'll start, Mr. Chair.

9 CHAIRMAN HOOD: That's okay.
10 That's why I don't do that.

11 MR. LAWSON: We're attempting.
12 That's fine. My name is Joel Lawson and I'm
13 with the D.C. Office of Planning. The Office
14 of Planning, as you know, submitted a report
15 recommending the Zoning Commission first adopt
16 an amendment to the Zoning Regulations to
17 Chapter 26 on an emergency basis, and this is
18 to the IZ regulations, to then schedule a
19 public hearing to consider adoption of the
20 amendment on a permanent basis and also to
21 authorize the issuance of a Notice of Proposed
22 Rulemaking at this time.

1 The amendment that we are
2 proposing would not affect the substance of
3 the program in any way. Rather, it is
4 intended to clarify its implementation.

5 As noted in our first report,
6 council recently amended the Inclusionary
7 Zoning Implementation Act of 2006 to require
8 the Mayor to publish the IZ purpose price rent
9 schedule in the D.C. Register to deliver to
10 the council the administrative regulations
11 that implement the act in Chapter 26 of the
12 Zoning Regulations by April 4, 2008.

13 However, the IZ Zoning Regulations
14 as they currently exist as adopted by the
15 Zoning Commission states that the IZ program
16 becomes effective with the publication of the
17 first purchase rent schedule. The result when
18 you kind of combine these two together could
19 mean that the IZ program is made effective
20 before the administrative regulations are
21 properly vetted and adopted raising very real
22 and practical problems for the program as a

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1 whole.

2 The intent of the amendment that
3 we brought forward is to ensure that the
4 administrative program receives the needed
5 public notice, comment, and review prior to
6 its adoption and the triggering of the IZ
7 program.

8 In our report OP recommended a
9 specific change to Section 2608.1, the
10 provision that provides for when the
11 regulations are triggered. As you can tell
12 from the late report -- from the fact that we
13 submitted the report late, OP was somewhat
14 rushed in that submission to ensure that it
15 could be placed by the Office of Zoning on the
16 agenda for this meeting which was critical to
17 have happen.

18 However, after it was submitted it
19 was realized that the language originally
20 proposed by OP would not adequately address
21 the issue. As such and in order to ensure
22 that the program is properly implemented, OP

1 submitted a supplemental report on Friday with
2 revised language to rectify the language and
3 to make sure that the language meets the
4 intent behind what we are trying to do.

5 As such, OP recommends that the
6 Zoning Commission adopt this amended language
7 as set out in our March 21, 2008 report on an
8 emergency basis and, as I said, then schedule
9 a public hearing to consider adoption of this
10 amendment on a permanent basis and authorize
11 the issuance of a Notice of Proposed
12 Rulemaking at this time. This concludes my
13 short testimony. We are available for
14 questions. Thank you.

15 CHAIRMAN HOOD: Mr. Lawson, thank
16 you. You said the date of the revised was
17 March 21st or March 20th?

18 MR. LAWSON: It was Friday
19 whatever that date was.

20 CHAIRMAN HOOD: I mean the date
21 that we have in front of us is the 21st or do
22 I have the wrong one in front of me? I have

1 the 20th which is attached to the request for
2 the waiver.

3 MS. SCHELLIN: That was the
4 initial and then the one that you got tonight,
5 the single page, that one is updated.

6 CHAIRMAN HOOD: All right. I'm
7 sorry. I have it in front of me. Okay. One
8 of the changes I see it says, "Effective upon
9 the letter of the publication of the Notice of
10 Final Rulemaking permitted in the act." Any
11 questions for the Office of Planning?

12 We have three requests in front of
13 us. We are asked to set this down as an
14 emergency -- handle it as an emergency, set it
15 down, and also advertise the language
16 immediately. I would move that we place it
17 under emergency, do it under emergency, set it
18 down for a hearing, and advertise the language
19 immediately and ask for a second.

20 COMMISSIONER MAY: Second.

21 CHAIRMAN HOOD: Moved and properly
22 seconded. Any further discussion? Any

1 clarification needed? All those in favor?

2 ALL: Aye.

3 CHAIRMAN HOOD: Any opposition?

4 So ordered. Staff would record the vote.

5 MS. SCHELLIN: Yes. Staff records
6 the vote five to zero to zero to take
7 emergency action to set the case down for a
8 hearing and to authorize the immediate
9 publication of the proposed rulemaking for
10 Zoning Commission Case 04-33C. This is being
11 set down as a rulemaking case. Commissioner
12 Hood moving, Commissioner May seconding,
13 Commissioners Jeffries and Etherly and Mr.
14 Turnbull also in favor.

15 CHAIRMAN HOOD: Okay. I think
16 that's all we have on the hearing action for
17 tonight and special public meeting.

18 We will now move to proposed
19 action in Zoning Commission Case No. 07-26.
20 This is the O Street Roadside, LLC -
21 Consolidated PUD & Related Map Amendment @
22 1400 7th Street, N.W. Ms. Schellin.

1 MS. SCHELLIN: The staff is just
2 reporting that you have before you the
3 additional filings that were requested.

4 CHAIRMAN HOOD: What I would like
5 to do dated March 12th from the applicant it
6 talks about the TDM parameters. They mention
7 about the number of parking spaces, the issue
8 about the H Street right-a-way. There were
9 some concerns, I believe, that DDOT had that
10 the applicant did not agree with.

11 I'm not going to bring that up for
12 discussion. It's in front of us. We had
13 appropriate time at the hearing to really
14 flesh that out and I think they still have to
15 deal with DDOT at a later time anyway. I am
16 not of the mindset to even bring that up for
17 discussion but if any one of my colleagues
18 want to, they can but it won't be brought up
19 by Anthony Hood.

20 COMMISSIONER MAY: We didn't
21 actually get a report from DDOT expressing
22 that concern. Right?

1 CHAIRMAN HOOD: I haven't seen --
2 I haven't seen one. I looked into the
3 applicant's request. I have missed things in
4 the past.

5 COMMISSIONER MAY: I didn't see it
6 or recall it.

7 CHAIRMAN HOOD: Anyway, we'll
8 leave it up to --

9 COMMISSIONER MAY: Just for my
10 understanding, this is the sort of thing --
11 there are some things that we can decide in a
12 hearing like this or when we take action that
13 may be subject to further approval by DDOT.

14 The number of parking spaces, for
15 example, in the building, though, I would not
16 expect that something that actually requires
17 DDOT approval. It's not like if we approve
18 what the applicant has proposed here, it's not
19 like DDOT is going to somehow hold that up
20 administratively unlike curbs cuts, for
21 example.

22 Not having heard some official

1 reason why this isn't the right number of
2 parking spaces from DDOT and hearing from the
3 applicant that this is what they are proposing
4 and the community seems to be in agreement, I
5 don't see any reason to do anything different
6 from what the applicant has proposed. It's
7 unfortunate we didn't hear something official
8 from DDOT on this.

9 CHAIRMAN HOOD: Okay. We are
10 where we are and we want to make the judgment
11 when we can. I would agree with your
12 comments. Sounds like it was overwhelming
13 support. One of the things that the applicant
14 brought out in this submission was that the
15 community also bought off on the parking
16 spaces. I do not want to undo something that
17 has been worked on for years. Obviously there
18 is overwhelming support for this project.

19 There were some other things that
20 my colleagues had asked for. I don't know,
21 Commissioner May, if you still have an issue
22 about the height.

1 COMMISSIONER MAY: They submitted
2 drawings that clarified what I was uncertain
3 about in terms of the heights of buildings.
4 The other thing that I did have a question
5 about doesn't have to do with the height.

6 It did have to do with 8th Street
7 and there was a clarification in the
8 applicant's submission that 8th Street would
9 not actually -- there would not be an easement
10 over 8th Street, it would simply be private
11 property but that there would be -- the view
12 would be maintained and all that but it would
13 essentially be a private street.

14 CHAIRMAN HOOD: With public
15 easement. Okay.

16 COMMISSIONER MAY: There wouldn't
17 be a recorded -- there is no recorded document
18 that says there is a public easement.

19 CHAIRMAN HOOD: Okay.

20 COMMISSIONER MAY: Now, I don't
21 know how anybody else feels about that. I
22 mean, obviously having an easement is a little

1 more comforting and makes it less likely that
2 in the future that something might happen to
3 that. What we have approved is what we have
4 approved and I assume that is going to be
5 binding on the applicant in perpetuity that
6 this access would be maintained even without
7 the public easement.

8 CHAIRMAN HOOD: Okay. Anybody
9 else have any comments or concerns?
10 Commissioner Jeffries.

11 VICE-CHAIRMAN JEFFRIES: Yeah. I
12 just wanted to say I'm very happy with the
13 axonometrics that were submitted. I think
14 it's very helpful, particularly with the
15 project of this size and skill with so many
16 different uses and varying group heights. I
17 think it's very helpful to get a good sense
18 how this project sits. I just wanted to put
19 that on the record.

20 CHAIRMAN HOOD: Okay. If I don't
21 hear anything, I will move that we approve
22 Zoning Commission Case No. 07-26 for staff to

1 work with OAG -- we have a proposed order in
2 front of us -- for staff to work with OAG to
3 make any technical and legally sufficient
4 corrections and ask for a second.

5 VICE-CHAIRMAN JEFFRIES: Second.

6 CHAIRMAN HOOD: Moved and properly
7 seconded. Any further discussion? All those
8 in favor?

9 ALL: Aye.

10 CHAIRMAN HOOD: Any opposition?

11 So ordered. Staff will record the vote.

12 MS. SCHELLIN: Yes. The staff
13 records the vote five to zero to zero to
14 approve proposed action Zoning Commission Case
15 No. 07-26. Commissioner Hood moving,
16 Commissioner Jeffries seconding, Commissioners
17 Etherly, May, and Turnbull in favor.

18 We do have one more item that is
19 going to come in before final and that's just
20 some more detail on the amenities that you
21 guys asked for. You said they could do that
22 by final.

1 CHAIRMAN HOOD: Okay. Thank you,
2 Ms. Schellin. Do we have anything else for
3 this special public meeting?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: Okay. This
6 meeting is adjourned.

7 (Whereupon, at 6:37 p.m. the
8 meeting was adjourned.)
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