

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY,  
JANUARY 11, 2010

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Office of Zoning Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairman
KONRAD SCHLATER	Commissioner
PETER MAY	Commissioner (NPS)
MICHAEL TURNBULL	Commissioner FAIA, (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist
ESTHER BUSHMAN	General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

This transcript constitutes the minutes from the Regular Meeting held on January 11, 2010.

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

2 6:32 p.m.

3 CHAIRMAN HOOD: Okay. We're going  
4 to go ahead and get started. This meeting  
5 will, please, come to order.

6 Good evening, ladies and gentlemen.

7 This is January 11, 2010. My name is Anthony  
8 Hood. Joining me are Commissioners Schlater,  
9 May and Turnbull. We are also joined by the  
10 Office of Zoning staff and the Office of  
11 Planning staff and Office of the Attorney  
12 General staff.

13 Copies of today's meeting agenda  
14 are available to you and are located in the  
15 bin near the door.

16 Please, be advised that this  
17 proceeding is being recorded by the 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.

22 Please, turn off all beepers and

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1 cell phones.

2 Does the staff have any preliminary  
3 matters?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: If not, let us  
6 proceed with the agenda. The first hearing  
7 action, Zoning Commission Case No. 10-01,  
8 Office of Planning Text Amendment to amend the  
9 C-3-C Zone District. Ms. Steingasser?

10 MS. STEINGASSER: Commissioner  
11 Hood, the Office of Planning is recommending a  
12 set down of a text amendment to allow, as a  
13 matter-of-right now, development for projects  
14 related to approve new community plans and for  
15 affordable housing projects funded by the city  
16 to achieve equivalent density and height in  
17 the TDR Zones as if they were to have  
18 purchased TDRs without such purchase.

19 In our original report, we  
20 recommended a special exception review be  
21 provided to these projects in lieu of the PUD,  
22 which is the other option for this zone.

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1           After discussions with the Office  
2 of Attorney General, they had some legal  
3 issues. The solution soon became more complex  
4 than the problem and so we are now  
5 recommending a straightforward matter-of-  
6 right. We think we will achieve all the  
7 goals.

8           We think it's in the public  
9 interest to allow affordable housing projects,  
10 new communities or small area planned  
11 equivalence approved by Council with a very  
12 strong public purpose. I have attached some  
13 excerpts from that in our staff report.

14           And we are recommending now revised  
15 language, I believe was provided to you this  
16 evening by OAG.

17           CHAIRMAN           HOOD:           Okay.  
18 Commissioners, this is revised language.  
19 Thank you, Ms. Steingasser. That was  
20 presented to us this evening. Unless someone  
21 has any comments or questions for Ms.  
22 Steingasser? Commissioner May?

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1           COMMISSIONER MAY: I remember there  
2 being significant discussion in some of the  
3 Zoning Regulation rewrite about TDRs. And I'm  
4 wondering how is this going to mesh with the  
5 future Zoning Regulations?

6           MS. STEINGASSER: This would not  
7 conflict with the future Zoning Regulations.  
8 What we found in our preliminary study of TDRs  
9 was that there is a far greater capacity to  
10 receive TDRs than there is a capacity at this  
11 point to generate. So this would not conflict  
12 with the market of TDRs.

13           COMMISSIONER MAY: Okay. And then  
14 the second thing is one of the statements in  
15 the report is that this is not -- this is an  
16 alternative, in essence, to a PUD. And I'm  
17 wondering for projects that are as big as we  
18 anticipate this to be, I guess, or at least  
19 I'm anticipating this to be, I mean, a PUD  
20 doesn't seem overly burdensome and actually is  
21 an appropriate method for allowing this kind  
22 of, I guess, zoning for this sort of

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1 development.

2 MS. STEINGASSER: Well, the reason  
3 we felt the PUD was actually an excessive  
4 burden on the new communities and the  
5 affordable housing project was both the time  
6 involved and the participation necessary when  
7 the project itself is its own amenity.

8 You know, the benefit is that it is  
9 affordable housing. The city is already  
10 invested in the project, either through  
11 funding of the new communities projects or  
12 through funding of an individual affordable  
13 housing project.

14 So the benefits and the amenities  
15 were already pre-established. So it just  
16 became a question of why go through the full  
17 set down, the public hearing, the public  
18 coordination when the other issues of a PUD  
19 would be adverse impact and public capacity,  
20 which we thought could be addressed through  
21 the special exception standards.

22 COMMISSIONER MAY: But we are not

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1 going to have those now.

2 MS. STEINGASSER: But now we are no  
3 longer recommending that.

4 COMMISSIONER MAY: And so how do we  
5 address those issues?

6 MS. STEINGASSER: We don't. It was  
7 discussed with the Office of Attorney General  
8 that these areas are all identified. They are  
9 transfer-of-development-rights receiving  
10 zones. They are identified in the  
11 Comprehensive Plan as areas that are already  
12 appropriate for the highest possible density  
13 within the city.

14 All projects that are currently  
15 capable of affording and purchasing the  
16 transfer-of-development-rights can go upwards  
17 to the 10 FAR and 130 feet with absolutely no  
18 design review. So it was felt that to assign  
19 a review to only affordable housing projects  
20 was actually antithetical to what we were  
21 proposing, which was that it created an  
22 arbitrary burden on an affordable housing

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1 project that was not applicable to other  
2 projects in the same geographic boundary.

3 COMMISSIONER MAY: This is going to  
4 be an interesting hearing. I just have this  
5 feeling that we are opening the door to  
6 potentially undesirable consequences as a  
7 result of this as a matter-of-right and not  
8 subjecting something this large to a PUD.

9 I mean, I would think that anything  
10 this large would likely come before us as a  
11 PUD in the first place. So it's --

12 MS. STEINGASSER: Well, that's  
13 why --

14 COMMISSIONER MAY: I just have --  
15 we don't have a lot to react to yet.

16 MS. STEINGASSER: Yes.

17 COMMISSIONER MAY: We certainly  
18 haven't had any public input on it, so I just  
19 had that sense.

20 MS. STEINGASSER: Well, it's  
21 narrowly defined so that it has to be an  
22 affordable housing project. It has to --

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1 which is basically a project that is already  
2 coming equipped with its benefits and  
3 amenities and recognized public interest.

4 It has to also be funded by the  
5 District Government. So what we are doing is  
6 we are leaving the burden of additional public  
7 burdens of funding an already publicly funded  
8 project. And it is constrained only to the  
9 receiving zones where there is already that  
10 equivalent height and density that has no  
11 design review.

12 COMMISSIONER MAY: I'm just  
13 curious. The particular development that you  
14 are suggesting that this hearing be  
15 consolidated with at 2 M Street, N.E., I mean,  
16 that Northwest One New Community has been in  
17 the works for three years, something like  
18 that.

19 MS. STEINGASSER: Closer to five.  
20 Between the planning process, working with the  
21 community.

22 COMMISSIONER MAY: So five years.

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1 And now we have this need for this urgent  
2 zoning.

3 MS. STEINGASSER: That's correct.

4 COMMISSIONER MAY: And what has  
5 happened all the years leading up to this?  
6 Was there some other thought about how this  
7 was going to be accomplished?

8 MS. STEINGASSER: Well --

9 COMMISSIONER MAY: I mean, why is  
10 it all of a sudden now very important?

11 MS. STEINGASSER: Well, it has  
12 always been very important. New communities--

13 COMMISSIONER MAY: Why is this  
14 solution now very important?

15 MS. STEINGASSER: Because part of  
16 the new community plan requires the  
17 development of parcels that are within the TDR  
18 Receiving Zones. They are to create a mixed  
19 income buildings. The market share of which  
20 will help fund and underwrite the  
21 affordability on the western side of North  
22 Capitol Street.

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1           So it's that relationship of having  
2 market rate funds to help support the  
3 affordability requirements of that. The  
4 project has been moving forward. You know,  
5 it's the same story that the private  
6 development communities are telling about the  
7 ability to get financing, the ability to  
8 either work through bonds or financing and it  
9 just hasn't materialized.

10           The project is close to being ready  
11 to go. We felt this was the most expeditious  
12 way to move that project along.

13           I want to be clear that if we set  
14 down the alternative language, the project in  
15 question would not be before the Commission.

16           COMMISSIONER MAY: Right.

17           MS. STEINGASSER: So we would not  
18 need to waive any set downs.

19           COMMISSIONER MAY: Will the hearing  
20 still need to be expedited?

21           MS. STEINGASSER: I believe so,  
22 yes, to get this effective so that the

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1 applicant can go to building permit.

2 COMMISSIONER MAY: All right.  
3 Okay. And since all we're doing at this  
4 moment is deciding whether or not to have a  
5 hearing, I mean, I don't feel totally  
6 comfortable with the amount of information we  
7 have. It seems like it's all coming very  
8 quickly without a lot of background. And the  
9 fact that we're getting revised language, you  
10 know, today, doesn't make me feel much better.

11 I'm not saying it's enough to make  
12 me not want to set it down, but I'm just  
13 anxious about it. That's it for me for my  
14 questions.

15 CHAIRMAN HOOD: Thank you,  
16 Commissioner May. Commissioner Turnbull?

17 COMMISSIONER TURNBULL: Thank you,  
18 Mr. Chair. I just have one. I can't recall  
19 the street sizes around all the receiving  
20 zones. I'm assuming that the 130 feet, the  
21 Height Act, this all falls under the Height  
22 Act?

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1 MS. STEINGASSER: Absolutely.  
2 North Capitol and 1<sup>st</sup> Street both are capable  
3 of generating 130 foot buildings.

4 COMMISSIONER TURNBULL: Okay.

5 CHAIRMAN HOOD: Commissioner  
6 Schlater?

7 COMMISSIONER SCHLATER: Mr.  
8 Chairman, I just want to say for the record  
9 that I have to recuse myself on this case,  
10 because my employer, William C. Smith &  
11 Company is the developer at the Northwest One  
12 New Community and so I won't be able to sit on  
13 this case. Thanks.

14 CHAIRMAN HOOD: Thank you very  
15 much, Commissioner Schlater.

16 Well, I'm not sure where my  
17 colleagues are. I think, you know, I have  
18 seen a lot of things change and a lot of  
19 things happen. And as Commissioner May has  
20 already mentioned, this will make a very  
21 interesting hearing.

22 I think we need to go forward and

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1 see how interesting it is going to be. And  
2 also, I am in tune to looking at the  
3 alternative language, which would take out, I  
4 believe, 2<sup>nd</sup> and M Street, unless someone feels  
5 otherwise.

6 And I think that's what we're being  
7 asked to look at the language, in which I  
8 think all the parties, at this point, OP and  
9 OAG, have agreed that it's legally sufficient  
10 for us to move forward.

11 I would be in support. And because  
12 there is three of us, I want to see if all of  
13 us are in support of moving forward with this.

14 So I would move approval of the  
15 revised language of 771.4 that was submitted  
16 to us tonight and also expediting. I don't  
17 know what that means. Do we cut the 45 days  
18 or what are we talking about?

19 MS. STEINGASSER: It cuts about 10  
20 days off.

21 CHAIRMAN HOOD: Oh, 10 days off,  
22 okay. And expedited request that we and staff

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1 work and try to expedite this hearing as soon  
2 as possible.

3 We can't do it next week, can we?  
4 Oh, and also waive the rules for the late  
5 report. This looks like things are still  
6 running, so we will forgive and waive the  
7 rules for the late report.

8 Okay. So is that all we need to  
9 do?

10 MS. SCHELLIN: Yes, sir.

11 CHAIRMAN HOOD: Okay.

12 COMMISSIONER MAY: I was wondering  
13 if I could ask a question of OAG?

14 CHAIRMAN HOOD: Could I do this?  
15 Could we accept the motion or is this  
16 something that is going to be added to the  
17 motion, because that way it won't be repeated?

18 COMMISSIONER MAY: It might. It  
19 might.

20 CHAIRMAN HOOD: Okay. Well, hold  
21 that caveat and Commissioner May, let's ask  
22 the question.

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1 COMMISSIONER MAY: Well, I mean, if  
2 you made a motion and we get a second and then  
3 discuss it.

4 CHAIRMAN HOOD: Your's may need to  
5 be added, so --

6 COMMISSIONER MAY: Right, right.

7 CHAIRMAN HOOD: Okay.

8 COMMISSIONER MAY: The question I  
9 had was I understand why special exception  
10 review wouldn't necessarily make sense, but  
11 I'm wondering whether the sort of one-time  
12 design review that we do at Capitol Gateway in  
13 that overlay, not Capitol Gateway, Capitol --  
14 what's the -- Capitol South area, what is  
15 that?

16 MS. STEINGASSER: Capitol Gateway.

17 COMMISSIONER MAY: That's Capitol  
18 Gateway.

19 CHAIRMAN HOOD: Overlay.

20 COMMISSIONER MAY: Capitol Gateway  
21 Overlay, that sort of one-step design review,  
22 whether we could institute something like that

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1 in cases where this is going to be executed  
2 simply because there is that extra density?

3 I know that we did that extra  
4 density case --

5 MR. RITTING: Yes, the concern is  
6 the same with -- I apologize if that sounds a  
7 little too loud. I'm not quite sure what is  
8 going on with the volume. But the legal  
9 concern is the same whether it is a one-step  
10 design review or a special exception type  
11 review.

12 (Audio system failure for approx 5  
13 seconds.)

14 MR. RITTING: So creating some  
15 other form of review doesn't solve that  
16 problem.

17 COMMISSIONER MAY: Yes. Okay. So  
18 I guess it doesn't change the motion. But  
19 that is something that I would like to talk  
20 about a little more. Thanks.

21 CHAIRMAN HOOD: Okay. Thank you  
22 very much. Can I get a second?

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1 COMMISSIONER TURNBULL: Second.

2 CHAIRMAN HOOD: Moved and properly  
3 seconded. Any further discussion?

4 All those in favor?

5 ALL: Aye.

6 CHAIRMAN HOOD: We did include in  
7 that motion waive the report? Yes. Any  
8 opposition? Not hearing none, Ms. Schellin,  
9 would you, please, record the vote?

10 MS. SCHELLIN: Yes. Staff records  
11 the vote 3-0-2 to set down Zoning Commission  
12 Case No. 10-01 and to approve the expedited  
13 hearing and to waive the rules for receiving  
14 the late submittal of OP's report.  
15 Commissioner Hood moving, Commissioner  
16 Turnbull seconding, Commissioner May  
17 approving, Commissioner Keating not present,  
18 not voting, Commissioner Schlater not voting  
19 having recused himself.

20 CHAIRMAN HOOD: Okay. Let's move  
21 to final action. Also, let me acknowledge we  
22 have Mr. Jennings from DDOT. He was trying to

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1 hide down there. We want to make sure -- and  
2 forgive me for not acknowledging you earlier.

3 We always like it when we see DDOT.

4 Say it in the mike, so we can get  
5 that on record.

6 MR. JENNINGS: It's a pleasure to  
7 be here.

8 CHAIRMAN HOOD: It's a pleasure to  
9 be here?

10 MR. JENNINGS: I always enjoy being  
11 here. Thank you. Thank you very much, Jeff  
12 Jennings for the record.

13 CHAIRMAN HOOD: All right. Thank  
14 you, Mr. Jennings.

15 MR. JENNINGS: Thanks.

16 CHAIRMAN HOOD: Okay. Let's go to  
17 final action. Zoning Commission Case -- you  
18 know what, I need to switch these after  
19 looking at it, Commissioners. Let's take B  
20 first and A second.

21 Let's do Zoning Commission Case No.  
22 06-01A, Steuart-H Street, LLC, two-year time

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1 extension at Square 776. Ms. Schellin?

2 MS. SCHELLIN: This was a request  
3 that was filed, I believe, back in the summer  
4 and the Commission had it on its agenda back  
5 in September. And at that time, the  
6 Commission decided to defer action until it  
7 had the hearing on the PUD Modification Case  
8 06-01B.

9 So the two-year time extension is  
10 before you. We did receive a letter from the  
11 applicant saying that they were withdrawing  
12 their request. However, I believe OAG has  
13 indicated they believe that this request is  
14 still valid.

15 CHAIRMAN HOOD: And I would agree,  
16 because I think without the extension, you  
17 don't have a modification. I would agree I  
18 believe that is what OAG has advised us. And,  
19 Mr. Ritting, if you want to add to that?

20 MR. RITTING: To just expand on  
21 that slightly, the applicant's theory is that  
22 the time extension is not required because

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1 they filed a modification request. I disagree  
2 with that, because I believe that they are  
3 required under the Zoning Regulations to  
4 justify their time extension request under  
5 Regulation No. 204.810.

6 They did submit in the companion  
7 case for the time extension a justification  
8 for that, so I believe that it is certainly  
9 warranted that you would take action on that  
10 tonight.

11 However, I believe their withdrawal  
12 was based on a false assumption.

13 CHAIRMAN HOOD: Okay. I would  
14 agree. I mean, but very creative, but I would  
15 agree with what Mr. Ritting said. Any of my  
16 colleagues want to comment on that?

17 Okay. What I would like to do is  
18 move approval for the time extension, even  
19 though -- and just accept the letter 06-01A,  
20 Exhibit 5, so noted. But I would think that  
21 as it has already been stated that we need to  
22 move on the time extension.

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1 I think they have made their case,  
2 especially with economic conditions in this  
3 day and time, so I would move approval of  
4 Zoning Commission Case No. 06-01, two-year PUD  
5 time -- well, you know what, let me just say  
6 it from now. A two-year time extension, two-  
7 year PUD time extension at Square 776 and ask  
8 for a second.

9 COMMISSIONER SCHLATER: Second.

10 CHAIRMAN HOOD: It is moved and  
11 seconded. Any further discussion?

12 All those in favor?

13 ALL: Aye.

14 CHAIRMAN HOOD: Not hearing any  
15 opposition of those present, Ms. Schellin,  
16 would you record the vote?

17 MS. SCHELLIN: Yes, staff records  
18 the vote 4-0-1 to approve final action in  
19 Zoning Commission Case No. 06-01A,  
20 Commissioner Hood moving, Commissioner  
21 Schlater seconding, Commissioners May and  
22 Turnbull in support, Commissioner Keating not

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1 present, not voting.

2 CHAIRMAN HOOD: Okay. Next we have  
3 Zoning Commission Case No. 06-01B, Steuart H-  
4 Street, LLC, PUD Modification at Square 776.  
5 And this is the PUD modification. Ms.  
6 Schellin?

7 MS. SCHELLIN: This is before you  
8 for final action. I don't believe we got  
9 anything additional before you, other than the  
10 draft order.

11 CHAIRMAN HOOD: Did NCPC comment?  
12 NCPC didn't comment on this? Anyway, I don't  
13 see it. Okay.

14 COMMISSIONER MAY: Did they comment  
15 on PUD Modifications?

16 CHAIRMAN HOOD: Do they? I don't  
17 know. That's a good question. I read so  
18 much, I don't remember.

19 COMMISSIONER MAY: For some reason,  
20 I don't think so. I don't remember it being  
21 on the NCPC agenda, but --

22 CHAIRMAN HOOD: Okay. Well, I

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1 don't see it. Maybe they don't. Okay.

2 COMMISSIONER MAY: I don't think  
3 they do. I don't think they actually come.

4 CHAIRMAN HOOD: Okay. I think the  
5 big issue was it was always one of those  
6 questions that you just don't remember.

7 COMMISSIONER MAY: Yes.

8 CHAIRMAN HOOD: It's a sticking  
9 question. Now, we've got to find the answer  
10 to it, because I don't remember.

11 COMMISSIONER MAY: Maybe Ms.  
12 Schellin knows.

13 CHAIRMAN HOOD: Ms. Schellin, does  
14 NCPC comment on PUD modification?

15 MS. SCHELLIN: We send them  
16 everything, but they are not required to, no.  
17 But we do send them everything. We can have  
18 Ms. Hanousek check the file to see if it came  
19 in, if you would like?

20 CHAIRMAN HOOD: That's okay. If we  
21 don't have it in front of us or can't find it,  
22 I just wanted to acknowledge.

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1 MS. SCHELLIN: We did not have  
2 anything as of today.

3 CHAIRMAN HOOD: Okay. Okay. So  
4 again, I think the issue here, the plans are  
5 changed and I think we saw that. I think we  
6 fleshed this out during proposed and I don't  
7 have anything to add. Let me open it up to my  
8 colleagues. Okay.

9 Not seeing anything, I would move  
10 that we approve this PUD Modification. But in  
11 this motion, I would ask to work with OAG that  
12 we can make them end together. I don't know  
13 how that works, but, you know, like the time  
14 extension for two-years from a certain date  
15 and it's going to end at a certain time.

16 And I think we need to bring those  
17 two together, so some parity there.

18 MR. RITTING: Yes, I can certainly  
19 consolidate the two orders into one and  
20 include the findings necessary to justify the  
21 time extension and the order granting the PUD  
22 Modification.

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1           You bring up a related issue which  
2           is the timing of the extension, i.e., how long  
3           does it last? I believe the applicant was  
4           under the impression when they submitted their  
5           letter requesting to withdraw the time  
6           extension request, that by granting the PUD  
7           Modification, you would make the order valid  
8           for two years from the date the order is  
9           issued.

10           That, in effect, would grant a  
11           slightly longer time extension than was  
12           originally applied for in their time extension  
13           request, which expired in October. So suppose  
14           we issue the order tomorrow, that would mean  
15           it would be a time extension for two years and  
16           three months.

17           If you believe that that's a  
18           warranted amount of time and it certainly  
19           would be for purposes of administrative  
20           efficiency useful to have the PUD Modification  
21           expire -- or rather the original expire at the  
22           same time as the modification.

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1           In fact, it seems kind of silly to  
2 have them expire at different times. I could  
3 do that so that the term would be the same.

4           CHAIRMAN HOOD: Well, whatever it  
5 is, that sounded good. So unless my  
6 colleagues object, that you do just that  
7 whatever it is. Commissioner May?

8           COMMISSIONER MAY: Yes. I just  
9 wanted to comment. I assume that the  
10 conditions of the revised order are going to  
11 be essentially the same except for the changes  
12 that we discussed in the hearing, right?

13          MR. RITTING: Well, that brings up  
14 a point that I mentioned on the draft that I  
15 sent you about the condition for the grocery  
16 store.

17          COMMISSIONER MAY: Right.

18          MR. RITTING: I noticed in  
19 reviewing the draft modification order that a  
20 condition requiring the grocery store of a  
21 certain size to be included in the project was  
22 absent from the draft modification order

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1 submitted by the applicant.

2 I think it would be unusual for you  
3 to withdraw a condition that you included in  
4 the original PUD order through a modification  
5 order, especially given that there was no  
6 evidence in the record at the modification  
7 hearing that they were seeking to withdraw  
8 that condition.

9 COMMISSIONER MAY: I agree with  
10 that. I mean, it wasn't explicitly requested.

11 There was no testimony or evidence at the  
12 hearing about withdrawing it, so I would  
13 assume it would still be a condition.

14 CHAIRMAN HOOD: I think we have a  
15 general consensus up here to exactly that.  
16 Are there any other discussion?

17 Oh, I need a second, okay.

18 COMMISSIONER MAY: Second.

19 CHAIRMAN HOOD: I had already  
20 moved. Okay. Commissioner May seconding.  
21 Any further discussion?

22 All those in favor?

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1 ALL: Aye.

2 CHAIRMAN HOOD: Ms. Schellin, would  
3 you record the vote, not hearing any folks  
4 against? Do we have a proxy?

5 MS. SCHELLIN: No.

6 CHAIRMAN HOOD: Okay.

7 MS. SCHELLIN: He didn't  
8 participate.

9 CHAIRMAN HOOD: Okay.

10 MS. SCHELLIN: So staff records the  
11 vote 4-0-1 to approve final action on Zoning  
12 Commission Case No. 06-01B, Commissioner Hood  
13 moving, Commissioner May seconding,  
14 Commissioner Schlater and Turnbull in support  
15 or in favor, Commissioner Keating not voting,  
16 not present, having not participated.

17 CHAIRMAN HOOD: Okay. Thank you,  
18 Ms. Schellin.

19 Next, Zoning Commission Case No.  
20 09-11. This is the Office of Planning Text  
21 Amendment re: retail and services used in SP  
22 Zone Districts. Ms. Schellin?

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1 MS. SCHELLIN: We did receive an  
2 NCPC report at Exhibit 13 in this case.

3 CHAIRMAN HOOD: Okay. Thank you.  
4 Any discussion on 09-11? Any discussion? I  
5 will move that we approve 09-11 and also  
6 acknowledge the NCPC report as no adverse  
7 impacts and ask for a second.

8 COMMISSIONER SCHLATER: Second.

9 CHAIRMAN HOOD: Moved and properly  
10 seconded. Further discussion?

11 All those in favor?

12 ALL: Aye.

13 CHAIRMAN HOOD: Not hearing any  
14 opposition, Ms. Schellin, would you record the  
15 vote?

16 MS. SCHELLIN: Yes, staff records  
17 the vote 4-0-1 to approve final action in  
18 Zoning Commission Case No. 09-11, Commissioner  
19 Hood moving, Commissioner Schlater seconding,  
20 Commissioners May and Turnbull in support,  
21 Commissioner Keating not present, not voting.

22 CHAIRMAN HOOD: Okay. Next, Zoning

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1 Commission Case No. 09-17A, D.C. Public  
2 Library - Text Amendment pertaining to all  
3 public libraries. Ms. Schellin?

4 MS. SCHELLIN: This is before you  
5 for final action. And I don't think we have  
6 an NCPC report. We do not. So we have the  
7 proposed rule making, a copy of that before  
8 you and I would ask that the Commission  
9 consider final action.

10 CHAIRMAN HOOD: Thank you, Ms.  
11 Schellin. Any comments, Commissioners?

12 COMMISSIONER MAY: Are we sure  
13 there is not something from NCPC? Because I'm  
14 certain it was voted upon at NCPC.

15 MS. SCHELLIN: Ms. Hanousek will go  
16 and check, but I have not seen anything. I  
17 did not see anything come in today.

18 CHAIRMAN HOOD: You want to wait  
19 before we do that to see?

20 COMMISSIONER MAY: I think we can  
21 continue the discussion, because there are a  
22 couple of other items we need to discuss.

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1 CHAIRMAN HOOD: Okay. Let's go  
2 right ahead. Any discussion?

3 COMMISSIONER MAY: Well, there --

4 CHAIRMAN HOOD: Mr. May?

5 COMMISSIONER MAY: We have late  
6 submissions to address?

7 MS. SCHELLIN: This is the rule  
8 making case.

9 COMMISSIONER MAY: Oh, it's the  
10 rule making, oh, got it, okay, sorry.

11 CHAIRMAN HOOD: Yes, I really  
12 believe the next discussion, the next case,  
13 we're going to have a little discussion.

14 COMMISSIONER MAY: Okay.

15 CHAIRMAN HOOD: And I'm glad Mr.  
16 Jennings --

17 COMMISSIONER MAY: Sorry, I got  
18 it --

19 CHAIRMAN HOOD: -- came down just  
20 for that.

21 COMMISSIONER MAY: -- mixed up.

22 CHAIRMAN HOOD: So yes, I was

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1 trying to hurry and get to that. I know Mr.  
2 Jennings is going to stay around for that last  
3 one.

4 COMMISSIONER MAY: All right.

5 CHAIRMAN HOOD: Are we fine? Any  
6 issues with this?

7 COMMISSIONER MAY: No issues.

8 CHAIRMAN HOOD: Okay. Well, I  
9 would move approval of Zoning Commission 09-  
10 17A and ask --

11 MR. COLLINS: Excuse me, Chairman  
12 Hood, just to clarify, we do not have an NCPC  
13 report.

14 CHAIRMAN HOOD: Okay. Thank you.

15 COMMISSIONER MAY: Sorry.

16 CHAIRMAN HOOD: Of 09-17A, D.C.  
17 Public Libraries - Text Amendments, public  
18 libraries, and ask for a second.

19 COMMISSIONER TURNBULL: Second.

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

22 All those in favor?

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1 ALL: Aye.

2 CHAIRMAN HOOD: Not hearing any  
3 opposition, Ms. Schellin, would you record the  
4 vote?

5 MS. SCHELLIN: Yes. Staff would  
6 record the vote 5-0-0 to approve final action  
7 in Zoning Commission Case No. 09-17A,  
8 Commissioner Hood moving, Commissioner  
9 Turnbull seconding, Commissioners May and  
10 Schlater in support, Commissioner Keating in  
11 support by absentee ballot.

12 CHAIRMAN HOOD: Okay. Next, Zoning  
13 Commission Case No. 09-17, D.C. Public Library  
14 - Map Amendment and Special Exception at Part  
15 of Parcel 207/64. Ms. Schellin?

16 MS. SCHELLIN: Yes, sir. On this  
17 one, we did have one item. Actually, I  
18 believe there actually may be two items that  
19 came in after the record closed. I believe  
20 DDOT's report also came in after the record  
21 closed, Exhibit 39, and then Exhibit 40 was a  
22 filing by the applicant. So if the Commission

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1 so desires to open the record to accept those  
2 filings?

3 CHAIRMAN HOOD: Okay. So we need  
4 to open the record for 39 and 40. What about  
5 36?

6 MS. SCHELLIN: It came in.

7 CHAIRMAN HOOD: It came in on time?

8 MS. SCHELLIN: Right.

9 CHAIRMAN HOOD: The ANC? Great.  
10 Okay. Commissioners, any problems with  
11 opening the record for 39, Exhibit 39, DDOT's  
12 report, and the applicant's response to DDOT's  
13 report on 40? Any problems with letting those  
14 in? Okay. All right. So ordered by  
15 consensus both of those will be admitted.

16 We may take this one a little bit  
17 out. We may have some questions for Mr.  
18 Jennings.

19 Mr. Jennings, I'm going to start  
20 off and ask you if you would be so kind to  
21 help me. Explain in your report that you  
22 submitted, and I'm trying to find exactly the

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1 particular language, "DDOT's six-year spending  
2 plan is fully committed and leaves no  
3 available budget room, at this time. There is  
4 a need for additional safety along the portion  
5 of Alabama Avenue."

6           You know, unfortunately, I mean,  
7 not unfortunately, fortunately, and I'm glad  
8 to have a job, but I work in the Federal  
9 Government, so I'm not sure some times how  
10 intergovernment works some times in the  
11 District.

12           But it seems to me that DDOT is the  
13 one who is responsible for any streets and  
14 should be working along with DCPL to try to  
15 accommodate some of those issues. And I'm not  
16 sure. And you're saying that the money is all  
17 -- or DDOT's budget has been spent, so I'm not  
18 sure how do we achieve, how do we get to the  
19 point of even looking at some of those issues  
20 that may have come up?

21           MR. JENNINGS: That's a very good  
22 point. Once again, for the record, my name is

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1 Jeff Jennings. I work for the District  
2 Department of Transportation. The Six-Year  
3 Spending Plan has been obligated. And with  
4 respect to agencies that have projects that  
5 they wish to see get done in a certain amount  
6 of time, I'll give you a very good example.

7 We have recently had the folks who  
8 are working on the Wilson Senior High School  
9 in Upper Northwest approach DDOT and they have  
10 actually taken into consideration a lot of  
11 traffic calming construction around Wilson  
12 High School, which they approached us with in  
13 the last couple of months. And we like the  
14 sound of it and they were fully aware that  
15 this was going to be part of their own budget  
16 in order to accomplish this.

17 They wanted DDOT construction crews  
18 as well as DDOT planning and policy staff to  
19 review everything they were doing in advance  
20 of moving forward with that work.

21 I think this is a case where we  
22 didn't know anything about this particular

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1 library lack of parking, I guess, which  
2 perhaps is causing a little bit of this  
3 conversation we are having today.

4 And as we stated in the report,  
5 that's a good thing. Perhaps more things need  
6 to be done to accompany the lack of parking  
7 that is going to happen here at this site.

8 CHAIRMAN HOOD: So the long and  
9 short of it is you're looking for DCPL to do  
10 like Wilson High School more or less and put  
11 some of those traffic mitigations and parking  
12 issues in their budget and accommodate it?

13 MR. JENNINGS: As we discussed at  
14 our meeting with DCPL, you know, we certainly  
15 let them know that trying to find the money at  
16 this point in time would not be an easy  
17 process. And we would perhaps like for them  
18 to move forward with those ideas that we  
19 suggested to them at that meeting in December,  
20 but, of course, much of our budget, as has  
21 been stated here, is spoken for.

22 CHAIRMAN HOOD: I don't know how

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1 much of this is within our control. I mean,  
2 we can surely ask. And it may be and it may  
3 not, but I just don't see this being a show  
4 stopper for me. I would just again  
5 courteously ask both agencies to continue to  
6 work together, so you can achieve what DDOT  
7 has issued.

8 Because you guys are the  
9 professionals, but also the experts. We know  
10 you are professionals, but you all are the  
11 experts, and also continue to work with DCPL.

12 I'm not sure, but let me open it up to my  
13 other Commissioners who may want to comment on  
14 any of this. Commissioner Schlater?

15 COMMISSIONER SCHLATER: Mr.  
16 Chairman, just a point of clarification on  
17 DDOT's position here. It says "The District  
18 Department of Transportation does not disagree  
19 with the applicant's request for an amendment  
20 to the Zoning Map."

21 Does that mean DDOT agrees with the  
22 applicant's request for an amendment to the

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1 Zoning Map?

2 MR. JENNINGS: I think we take a  
3 position where we like the idea of this  
4 library project moving forward. I don't think  
5 you are necessarily seeing language used here  
6 where we're giving it full-fledged approval.  
7 We would like DCPL to come to DDOT in a  
8 similar fashion to what the DCPS folks and the  
9 Office of Facility's folks did with the  
10 example I cited earlier.

11 That would have made it perhaps a  
12 much easier process than what we are  
13 experiencing right now.

14 COMMISSIONER SCHLATER: Do you  
15 think ultimately that that is a zoning issue  
16 or an intergovernmental coordination issue?

17 MR. JENNINGS: That's a great  
18 question. And I don't know if I have the  
19 answer to that here tonight.

20 COMMISSIONER SCHLATER: Okay. I  
21 think I come down on the side of it being an  
22 intergovernmental issue.

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1                   MR. JENNINGS:    And, Mr. Chairman,  
2                   just for kind of the sake of example, what I  
3                   received recently in the last couple of weeks  
4                   or so since we have had this meeting with DCPL  
5                   is that this intersection that we are dealing  
6                   with, that's mentioned here in our report,  
7                   it's a precarious intersection, this T-  
8                   intersection that we are dealing with.

9                   And I think that's why we are  
10                  trying to make it as much of a point here as  
11                  possible. I even received an email recently  
12                  from somebody in the community stating that  
13                  there was a near miss of two young people at  
14                  this intersection that just happened in the  
15                  middle of the week last week.

16                  So I do hope that, you know, as you  
17                  put it pretty well, we can move forward in a  
18                  positive way with this. You know, this  
19                  project is a very, very good project. And we  
20                  don't necessarily want to stand in the way of  
21                  this.

22                  But there also comes a point where

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1 we know in three or four years or whenever the  
2 library is completed this intersection will  
3 see much more activity than what it is seeing  
4 at the current time with the school, Beers  
5 Elementary School, being practically next  
6 door, students from Beers visiting the Francis  
7 Gregory Library after school. We will  
8 continue to see circumstances like what we saw  
9 just last week or I heard about.

10 I even brought the email from the  
11 community person with me here tonight.

12 CHAIRMAN HOOD: Maybe we need to do  
13 some reprogramming of dollars, because if that  
14 issue is going on now, then I would encourage  
15 DDOT to do all they can to deal with the  
16 issues out there now.

17 This kind of reminds me of another  
18 case we had previously. It was on Martin  
19 Luther King Avenue. You know, there was a  
20 situation that was already existing. So I  
21 would just -- and I know you are saying that  
22 the budget has been out for six years, but I

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1 don't know if I would put all that strain on  
2 this applicant, because we already have an  
3 issue out there.

4 That email you have for, I guess,  
5 two young folks who almost were hit or  
6 something? I don't know what it says in the  
7 email, but you alluded to that. So there is  
8 an issue. I don't know if it is this  
9 applicant's issue, but again, I would hope  
10 that both DDOT and the applicant would  
11 continue to work together and move forward.

12 At least that's where I'm going to  
13 come down on it. Okay. Commissioner May?

14 COMMISSIONER MAY: Yes. You cite  
15 the example of Wilson High School. Which  
16 entity at Wilson actually approached you about  
17 this? Was it OPEFM or D.C. Public Schools or  
18 was it the Wilson High School Corporation?  
19 What?

20 MR. JENNINGS: DCPS and OPEFM sat  
21 in the meeting together.

22 COMMISSIONER MAY: Both of them in

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1 the meeting together. And OPEFM was willing  
2 to put up the money for the traffic calming  
3 measures?

4 MR. JENNINGS: I don't remember who  
5 said we would be willing to put up the money,  
6 but they both sat there and said this is going  
7 to happen.

8 COMMISSIONER MAY: You know, I  
9 understand the desirability of having that  
10 kind of a situation. I don't know that either  
11 the D.C. Public Libraries are in the same  
12 situation to be able to respond like that in  
13 that circumstance, so I'm not sure how  
14 completely relevant that example is.

15 I also know, I mean, the Wilson  
16 High School community is very active and it  
17 would not surprise me at all if they were able  
18 to persuade DDOT to pay for this if they  
19 hadn't already convinced DCPS or OPEFM.

20 You know, some of the stuff that we  
21 are talking about is basic traffic calming  
22 that, you know, gets installed across the city

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1 some times with less than six-year planning.  
2 And so it seems to me that there is room to  
3 work something out.

4 And frankly, whether it comes from  
5 DCPS' budget or whether it comes from DDOT's  
6 budget, at this point, it doesn't really make  
7 that much difference.

8 And, you know, like the Chairman I  
9 would really hope that both the applicant and  
10 DDOT would work this out, so that when this  
11 library opens, that it is safe for people to  
12 cross the street to get to it. And it  
13 certainly seems achievable to me and I don't  
14 know that we necessarily need to do anything  
15 different in our action tonight to make sure  
16 that that happens.

17 I think that the burden is on DDOT  
18 and DCPL to work together to resolve this.

19 CHAIRMAN HOOD: Any comments?  
20 Commissioner Turnbull?

21 COMMISSIONER TURNBULL: Thank you,  
22 Mr. Chair. I guess I'm a little bit concerned

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1 that, at this point of the process, final  
2 action, we are suddenly hearing that we have a  
3 precarious situation at this intersection and  
4 they are looking for us to go ahead and  
5 approve this.

6 And we can go ahead and approve it,  
7 but precarious is the same as dangerous. I  
8 mean, unsafe. I just can't imagine that this  
9 hasn't risen up a level to say we have got an  
10 issue here for a public entity that needs to  
11 open and we are not working together to do  
12 this.

13 I would agree with Commissioner May  
14 that this is ridiculous. I mean, this is the  
15 first time I have heard DDOT refer to an  
16 intersection as precarious. So it just  
17 strikes me we are at final action and we are--  
18 what do you do?

19 CHAIRMAN HOOD: I think DDOT  
20 mentioned, and Mr. Jennings alluded to again  
21 tonight, DDOT was unaware of this project,  
22 right?

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1           MR. JENNINGS: I had seen it on the  
2 zoning calendar earlier last year. It didn't  
3 necessarily rise to the level of where DDOT  
4 needed to make comments at that point in time.

5           We became much more aware of the case when  
6 this panel here suggested for the applicant to  
7 meet with transportation because of the lack  
8 of parking in a private lot.

9           That parking, as I think you may  
10 have noted or observed at the earlier case,  
11 earlier hearing, will happen along the street.

12           And I think there may have been some earlier  
13 discussion as well. More pedestrians will be  
14 accessing this site, because there will be  
15 less parking.

16           So we met with the applicant  
17 December 17<sup>th</sup> and we came to the suggestions  
18 that we came to for DCPL during that meeting.

19           COMMISSIONER MAY: Mr. Chairman, I  
20 would note that we received, in one of them,  
21 the filings, from, I guess, the applicant, the  
22 February 6, 2009 report from DDOT which gave

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1 its support to the project. It didn't address  
2 any of the pedestrian crossing concerns.

3 It was focused mostly on the  
4 parking issue. I understand, Mr. Jennings,  
5 you may not have been aware of it, at that  
6 time, because it was not signed by you or  
7 initialed by you. But I don't think it is  
8 completely correct to say that DDOT was  
9 unaware of the project.

10 I think that some of these issue  
11 arose relatively recently. So I don't think,  
12 you know, the issue of when it actually came  
13 to the forefront and DDOT's planning is  
14 vitally important at this time. I think it  
15 became important as the result of our  
16 deliberations. And I think that it's  
17 important that it be addressed.

18 And you know, I don't know that we  
19 necessarily have much more that we could do to  
20 make sure that it is, but, you know, if there  
21 are more near misses and more emails about  
22 that or if, God forbid, something really bad

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1 should happen at that intersection, I have to  
2 believe that there will be crews out there  
3 pretty quickly trying to install devices to  
4 fix things once the new library is open.

5 And I think they will figure out  
6 who pays for it without any trouble.

7 CHAIRMAN HOOD: I would agree with  
8 your comments, Commissioner May. And all of  
9 my colleagues and their comments. I think not  
10 to belabor, because if not, if we keep going,  
11 those mitigation methods will probably be out  
12 there. They will have taken care of that  
13 while we're sitting here talking about it.

14 But I will tell you that I think  
15 all the comments were heard, it's a part of  
16 the record. I'm hoping that those agencies  
17 will continue to work together along with the  
18 community. As was mentioned, the near miss,  
19 as Commissioner May said those things don't  
20 happen long. Somebody is going to find some  
21 money in this city to get that taken care of.

22 Okay. So I think we are fully on

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1 record as Commissioners, because part of our  
2 charge is to protect the residents of the  
3 District of Columbia and all parties involved.

4 And I think we have expressed that in our  
5 deliberations and in our conversation here.

6 And I also don't want to not go on  
7 notice the work of Ms. Bray, who put together  
8 a nice package and response to the three page  
9 letter. We got a nice -- I thought it was a  
10 hearing package at first, but we got a nice  
11 response to it and all the work that she did.

12 Mr. Jennings, you're not upset with  
13 us, are you? So what I would do is  
14 acknowledge her. I like the work that she put  
15 into this response.

16 So anyway, I would move approval of  
17 Zoning Commission Case No. 09-17 and also in  
18 that approval let us be on record for the  
19 concern of making sure that the agencies work  
20 together to try to mitigate some of those  
21 issues that may occur out there before they  
22 happen and ask for a second.

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1 COMMISSIONER SCHLATER: Second.

2 CHAIRMAN HOOD: Moved and properly  
3 seconded. Further discussion?

4 All those in favor?

5 ALL: Aye.

6 CHAIRMAN HOOD: Any opposition? So  
7 ordered. Staff, Ms. Schellin, would you  
8 record the vote with the proxy?

9 MS. SCHELLIN: Yes. Staff records  
10 the vote 5-0-0 to approve final action in  
11 Zoning Commission Case No. 09-17, Commissioner  
12 Hood moving, Commissioner Schlater seconding,  
13 Commissioners May, Turnbull in support,  
14 Commissioner Keating in support by absentee  
15 ballot.

16 CHAIRMAN HOOD: Again, I think it  
17 needs to be said while we may not always agree  
18 with DDOT, we definitely appreciate, and if  
19 you all could make sure Mr. Jennings either  
20 watched the webcast live rerun, but we  
21 definitely appreciate DDOT coming down. And I  
22 do not want that to go unmentioned, because we

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1 do appreciate the thought and the interest in  
2 which they provide us.

3 COMMISSIONER MAY: Mr. Chairman?

4 CHAIRMAN HOOD: Yes, sir?

5 COMMISSIONER MAY: I would also add  
6 that, I mean, the fact that Mr. Jennings was  
7 here for this meeting as opposed to simply  
8 coming to a hearing, which is what they  
9 normally do, I think is especially noteworthy,  
10 because he anticipated there would be some  
11 discussion on it. And it was very helpful to  
12 the Commission having him here.

13 CHAIRMAN HOOD: That's great. Yes,  
14 I definitely agree.

15 Okay. Let's move on with our  
16 agenda. I saw we have correspondence on  
17 Zoning Commission Case No. 09-14, Safeway,  
18 Inc. - Letter from applicant requesting  
19 indefinitely postponement of January 14<sup>th</sup>  
20 hearing. Ms. Schellin?

21 MS. SCHELLIN: Yes, this is a  
22 request from the applicant asking for an

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1 indefinite postponement. The applicant needs  
2 some time to go back and address some issues  
3 that, I believe, the Office of Planning has  
4 brought up and also the community.

5 And so they would like to have an  
6 indefinite postponement to work with the  
7 community and work with the Office of  
8 Planning. And when they feel they have done  
9 that, then they will contact us when they are  
10 ready to schedule a new hearing.

11 CHAIRMAN HOOD: Okay.  
12 Commissioners, we have a request. We also  
13 have a request Office of Planning said that  
14 they would not be submitting a public hearing  
15 report at this time. So you know, there are a  
16 number of factors that we don't really have in  
17 front of us to weigh to begin with.

18 It looks like there is going to be  
19 more collaboration between all the parties  
20 involved and they are asking that we do this  
21 indefinitely, so they can work out all the  
22 kinks. And it appears that you guys possibly

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1 only have a five minute hearing on this case.

2 So with that said, do we need to do  
3 a motion on this indefinite postponement?  
4 Somebody would like to do it or you would like  
5 me to do it?

6 Okay. I would move that we  
7 postpone 09-14 indefinitely and ask for a  
8 second.

9 COMMISSIONER TURNBULL: Second.

10 CHAIRMAN HOOD: Moved and properly  
11 seconded. Any further discussion?

12 All those in favor?

13 ALL: Aye.

14 CHAIRMAN HOOD: Not hearing any  
15 opposition, Ms. Schellin, would you record the  
16 vote?

17 MS. SCHELLIN: Yes. Staff records  
18 the vote 4-0-1 to approve the request for an  
19 indefinite postponement of the hearing in  
20 Zoning Commission Case No. 09-14, Commissioner  
21 Hood moving, Commissioner Turnbull seconding,  
22 Commissioners May, Schlater in support,

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1 Commissioner Keating not present, not voting.

2 CHAIRMAN HOOD: Okay. I want to  
3 thank everyone for their participation  
4 tonight.

5 Ms. Schellin, do we have anything  
6 else in front of us?

7 MS. SCHELLIN: No, sir, that's it.

8 CHAIRMAN HOOD: Okay. With that,  
9 this meeting is adjourned.

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