

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT OF COLUMBIA ZONING COMMISSION
SPECIAL PUBLIC MEETING

REMAINING TEXT AND MAP
AMENDMENTS -- DOWNTOWN
DEVELOPMENT DISTRICT (DD) Case No. 97-14Z
CONSISTENCY CASE, PART 3

Monday,
February 23, 1998

Room 220
441 Fourth Street, N.W.
Washington, D.C.

The hearing in the above-entitled matter was convened, pursuant to notice, at 6:41 p.m.

BEFORE:

MAYBELLE TAYLOR BENNETT, Chairperson
HERBERT FRANKLIN, Commissioner
JOHN PARSONS, Commissioner

STAFF PRESENT:

MADALIENE H. DOBBINS
KENNETH KARKEET

OFFICE OF PLANNING:

DAVE COLBY

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

2 7:05 p.m.

3 CHAIRPERSON BENNETT: Good evening, Ladies and
4 Gentlemen. My name is Maybelle Taylor Bennett. I'm chairperson for the Zoning
5 Commission for the District of Columbia. Joining me this evening are
6 Commissioners Franklin and Parsons. I declare this hearing open.

7 The matter that is the subject of this hearing is Case Number 97-
8 14Z as in Zebra. This is part of an ongoing initiative of the Office of Planning to
9 present to the Zoning Commission for adoption a number of zoning text and map
10 amendments to effectuate the 1994 comprehensive plan amendments relative to
11 downtown land use and zoning.

12 The proposed text amendments would effect Chapter 17 of Title XI
13 of the District of Columbia Municipal Regulations, Zoning. As a result of the Office
14 of Planning's initiative in this matter, the Zoning Commission has already taken a
15 number of actions. The remaining downtown land use policy changes that were
16 adopted in the Comprehensive Plan Amendments Act of 1994 will now be
17 considered in this case. Overall, all the proposed zoning amendments are intended
18 to complete the actions needed to eliminate inconsistencies between existing zoning
19 and the downtown element of the comprehensive plan.

20 The Zoning Commission will consider the request of the Office of
21 Planning, any modifications or alternative proposals that are presented and
22 reasonably related to the scope of the proposed amendment. The specific
23 proposals to amend the zoning regulations and map are contained in the Notice of
24 Public Hearing for this case. Copies of that notice are available to the public.

25 The Zoning Commission notes that item 3 beginning on page 2 of
26 the public hearing notice was inadvertently included as part of the proposed text
27 amendment. Rather, the intent of the Commission is to invite testimony on the

1 matter in which the zoning regulations should address the council's adopted policy
2 modifying the amount of off site affordable housing that can be substitute for on-site
3 housing in the housing priority area within downtown on sites located south of
4 Massachusetts Avenue.

5 The order of procedure will be as follows. First, preliminary
6 matters. Second, the presentation of the petition which, in this case, is the Office of
7 Planning. Third, the report of other agencies. Fourth, reports of advisory
8 neighborhood commissions. Fifth, persons in support or opposition in the order they
9 requested to testify. The Commission will adhere to this
10 schedule as strictly as possible.

11 Those presenting testimony should be brief and non-repetitive. If
12 you have a prepared statement, please give copies to staff and orally summarize the
13 highlights. Please give us your statements before summarizing. Each individual
14 appearing before the Commission must complete two identification slips and give
15 them to the reporter before making a statement. If these guidelines are followed, an
16 adequate record can be developed in a reasonable length of time.

17 So let us begin this evening with preliminary matters.

18 MS. DOBBINS: Madam Chair, I have no preliminary matters.

19 CHAIRPERSON BENNETT: All right. Thank you.

20 Are there any ANC's here this evening? Any representatives from
21 advisory neighborhood commissions?

22 We're going to begin, then, with the Office of Planning. And I'm
23 going to ask those who have requested to testify that they limit their comments to
24 five minutes only. Thank you.

25 Mr. Colby.

26 MR. COLBY: Thank you, Madam Chairman.

27 There are about seven, perhaps more, amendments depending on
28 whether you read -- take them from our report or from the advertisement for public

1 hearing. But, my question would be as we get into these, whether for me to run
2 through them all or whether you want to deal with them one at a time. The first few
3 are essentially a bookkeeping amendments and then we get into some more
4 substantive amendments.

5 If you like, I'll just start and you can correct me as we go, if you
6 want me to stop.

7 CHAIRPERSON BENNETT: Let me just make this suggestion,
8 with the bookkeeping amendments, why don't you move through them more
9 efficiently. And where they get into greater substance, we can dwell a little bit longer
10 on them. But for my own clarity, it would be useful just to move through them one by
11 one.

12 MR. COLBY: The first one is in -- I guess I'll follow the notice of
13 public hearing in terms of the order. The first one is a change in reference -- or a
14 change due to the reference to periodic amendments. In order to make sure that the
15 language recognizes that the plan is amended now every four years, and used to be
16 every two years, and may in the future be five or six years in between plan
17 amendment cycles, we have suggested simply adding the word at the end, or the
18 two words, as amended, at the end of the Section 1700.2. That's all it does.

19 The next is -- Number two amends subsections 1701, et cetera, to
20 strike the phrase Market Square and replace it with Pennsylvania corridor in its
21 place. This is -- this is a strictly a name change for a geographic area. The 1994
22 amendments to the comprehensive plan called for striking the phrase Market Square
23 and in fact replacing it, and we have just suggested that change. The area is now
24 refers to itself as Penn corridor, or Pennsylvania corridor.

25 The third -- and that would occur in the three subsections noted.
26 The third is -- deals, as you pointed out, or was pointed out earlier, deals with off-site
27 affordable housing. If you like, although you only asked for comment on that, the
28 language shown comes from the council legislation which said -- noted that except

1 for Squares 406, 407, and 457, substantially increased from the previously adopted
2 40 percent to 50 percent.

3 If, in this case, the MCI Center is built, the percentage of
4 residential zoning requirements south of Massachusetts Avenue that can be
5 satisfied by the construction of rehabilitation -- or rehabilitation of low and moderate
6 income housing anywhere in the District. And that's reflected in a number of
7 locations changing the FAR number from 1.8 to 2.25. That's essentially the
8 change that occurs.

9 The changes, again, are just numerical changes to carry out that
10 policy change. And the policy change, I think, is clear so I don't -- I won't dwell on
11 that.

12 Number 4 -- Let's see -- Yes, number 4 in the advertised --

13 CHAIRPERSON BENNETT: Hold on. Hold on.

14 That takes care of how the FAR calculations have changed?

15 MR. COLBY: That's correct.

16 CHAIRPERSON BENNETT: And then you have -- All of the other
17 changes, all of the folded changes make similar adjustments?

18 MR. COLBY: Yes, except for the one -- the lengthy one at the
19 bottom of page 5 which references-- which refers back to the commission's
20 exclusion of Squares 406, 407, and 457, to say those wouldn't change. To say that
21 one remains and the rest of the DD/C-4 does change to 50 percent. And the same
22 at the top of page 6.

23 CHAIRPERSON BENNETT: 06, 04. You know, one of the things
24 that I'm doing as you go through is, we've got some written comments, one of which
25 was from MANNA, which says that they feel we have to be sending the matter back
26 to the Office of Planning for further analysis consistent with the downtown land use
27 and zoning element of the Amendments Act of '94. And what I hear you saying is
28 that the reason this change is before us is because you're doing -- you're trying to

1 make those adjustments consistent with policy that has already been established by
2 the council.

3 MR. COLBY: That's correct.

4 CHAIRPERSON BENNETT: So then, I guess I don't understand
5 the concern.

6 Is Mr. Rothman here? Don't see him.

7 Let's move on, then.

8 MR. COLBY: I'm going to ignore the order in our report and keep
9 going with the, which I assume you are all doing, with the advertisement numbers.
10 And four there is to amendment paragraph 1706.8(c) to read as follows. And that is
11 --

12 Wait a minute. Now I'm lost.

13 The Office of Planning recommended a map amendment from C-
14 3-C to DD/C-4 for Square 491. And it simply add this square to those squares
15 included in housing priority Area C by adding the number 491 to the list of housing
16 priority area squares in that housing priority area.

17 COMMISSIONER FRANKLIN: Where is 491?

18 MR. COLBY: That's actually -- 491 is the DOES sites.

19 COMMISSIONER FRANKLIN: That's what I thought.

20 MR. COLBY: The council had adopted -- It's actually picked up in
21 here twice as a map and a text. Let me deal with it here.

22 The council adopted a modified -- or, adopted a policy again
23 reflecting the potential of the MCI Center being built, which it has been, if there's a
24 commitment to construct that center at Square 491, the site of D.C. Department of
25 Employment Services to Housing Priority Area C, which is what we're doing. It's not
26 currently within the boundaries of the downtown development district and thus a
27 map and text amendment is required and this is the text portion.

28 We looked at both DD/C-4 and DD/C-3-C and determined by far

1 the most sense is made to make this DD/C-4. But I guess that comes -- that, again,
2 it's been spread apart among text and map and that's the map amendment. We'll
3 get to that in a minute.

4 So, let me move on unless you have any specific questions on that
5 at this time, and we can come back to that as part of the map amendment.

6 Number 5 is to amend Subsection 1706.11 to say that no
7 minimum residential use requirements shall apply in -- Well, did say would not apply
8 in Square 45. We've added to that, though, "any lot or lots in Square 455 or the
9 southern part of Square 454, approve as a sports arena." That, again, comes from
10 the council who had adopted a policy that a sports and entertainment complex
11 should be permitted as a matter of right in Square 455 and in the southern half of
12 Square 454. And that, we clearly meant without a residential requirement. So,
13 that's what we're accomplishing with that proposed amendment.

14 Number 6 is to amend Subsection 1706.3 to read as follows. This
15 is the -- This is where the council has -- Let me give you the background for it first
16 and then we can get to the actual language. The council adopted a policy to
17 encourage the amount of low and moderate income housing in the DD overlay area.
18 Specifically, the legislation read except for Squares 406, 407, and 457, substantially
19 increase and provide other incentives counting low and moderate income housing at
20 two times its space in meeting the on-site residential requirement for the
21 construction or rehabilitation of low and moderate income housing in the DD area or
22 in the neighborhoods adjacent to that.

23 Housing linkage programs in Washington and elsewhere derive
24 from common land economic factors and policies, typically to provide subsidized or
25 affordable housing within a downtown is ill advised or at least is difficult to achieve
26 because of the cost of land and these subsidies are required. And the same funds
27 could be spent much more efficiently outside of downtown and consequently,
28 linkage programs generally allow higher density office development to occur within

1 downtown provided affordable housing in neighborhood areas is subsidized. Again,
2 the aspect of linkage.

3 The original advertized text for DD included -- this goes back to
4 before -- originally advertised for the DD case years ago, included TDRs for
5 residential development. Two square feet of TDRs for each square foot -- a two to
6 one ratio, for each square foot of residential development south of Massachusetts
7 Avenue. This proposal was dropped during the DD case in order to strengthen the
8 market for historic preservation and arts and retail TDRs because it was thought that
9 there weren't enough -- wasn't a receiving area to go around and it would weaken
10 the TDRs for those other uses. And so, that never went forward at the time.

11 The location where affordable housing could be developed within
12 DD might well be the area north of Massachusetts Avenue but the incentives
13 generally could also help close the feasibility gap on sites anywhere in the DD area.
14 I think this is an important point here. The OP suggests that providing TDRs for
15 affordable housing would be in furtherance of the Comprehensive Plan amendment
16 cited.

17 TDRs for residential development with a higher ratio of TDRs
18 earned for affordable residential development would be a better way of
19 accomplishing additional affordable housing downtown. The Mayor's downtown
20 interactive task force has called for a substantial target of new dwelling units in the
21 downtown DD area as a critical ingredient in optimizing the success of the future
22 downtown.

23 The public policy mandate to achieve residential development
24 downtown was strongly reaffirmed by the council in the '94 plan amendments. The
25 ratio of TDRs provided should be higher for affordable housing than for market rate
26 housing, recognizing the greater feasibility gap.

27 And based on the above, OP recommends that the development
28 of affordable housing within DD or in TDRs at a two to one rate. And market rate

1 residential development in TDRs at a one to one rate north of Mass Avenue and 1.5
2 to 1 south of Mass Avenue.

3 I should note that in the -- If you're looking at the advertised text,
4 the ratio South of Mass was mistakenly shown as two to one. In the proposed
5 zoning text in both OP's preliminary report and in the notice of public hearing, the
6 ratio was put at 1.5 to 1 but when it came down to the words, it actually said two
7 to one.

8 And I would only add as a side note, that because market housing
9 was advertised at two to one, and because affordable housing is already
10 advantaged by a potential transfer at 40 percent out of downtown locations, we
11 would recommend consideration of a two to one ratio for market rate housing taking
12 into account testimony at this hearing.

13 And, I realize that the language that we had proposed, that we are
14 officially proposing, is 1.5 to 1 south of Mass Avenue and one to one north of Mass.
15 And of course, two to one for affordable housing.

16 So, quite frankly, I'm not sure -- I guess we would be proposing as
17 it is in the advertised text. I'm sorry, I'm lost between the two. But--

18 CHAIRPERSON BENNETT: Wait a minute. Market rate north of
19 Mass, one to one?

20 MR. COLBY: Yes.

21 CHAIRPERSON BENNETT: Market rate south of Mass, 1.5 to
22 one, though, advertised at two to one?

23 MR. COLBY: That's correct.

24 And affordable housing at two to one.

25 CHAIRPERSON BENNETT: And affordable in --

26 MR. COLBY: Within anywhere north or south.

27 CHAIRPERSON BENNETT: Well, north or south but in DD?

28 MR. COLBY: That's correct.

1 And as I think you will see in a second, part of the reason why
2 there's less concern about using up -- at least using up all the receiving zones is
3 we're adding a substantial -- proposing a substantial increase in the receiving zones.

4 Number 7 was really a bookkeeping for number 8. So, for the
5 moment ignore that.

6 Number 8 is add new Subsections 1709.17 through 1709.19. It's
7 adding three new TDR receiving zones. The '94 amendments to the plan
8 recommend it creating three additional receiving zones for TDRs from downtown.
9 And, while in the context -- in the legislation is retail -- speaks to retail incentives, DD
10 uses the same receiving zones for all preferred users. So, TDRs are also available -
11 - would also be available for housing -- affordable housing, at the same time.

12 The medium -- and the council spoke to the medium high density
13 commercial areas within CEA and they are clearly delineated and we've also
14 submitted a map attached which show that. But they're the within the central
15 employment area or the North Capitol Street area north of Union Station. This
16 southwest urban renewal area, Subarea C, north of the freeway, and the Capitol
17 South area near South Capitol and M Streets north of the Navy Yard and the
18 southeast Federal Center. Well, north of the southeast Federal -- I'm sorry, north of
19 Buzzard Point.

20 All three areas are zoned C-3-C having been rezoned recently.
21 The basic formula is that the owner receiving site may increase the density in
22 excess of the matter right standards of 90 feet in six and a half FAR; up to 10 FAR
23 and 130 feet. And you ask if it's in an area -- if the street is not as wide according to
24 the Height Act of 1910 which is what it's all tied to.

25 OP recommends that the full height and bulk formulation as found
26 in -- that that full height and bulk formulation be adopted. I would add that we did
27 not -- we should have, and our text refers to it, but there should have been a change
28 to 1709.18, current 1709.18, to -- and you don't see it in front of you because

1 1709.18 you see in front of you is the new one. But, that read in the new downtown
2 receiving zones, the maximum permitted height shall be permitted by the act to
3 regulate the height of buildings. And the maximum permitted floor area ratio shall be
4 10 for buildings permitted of a height 130 feet and nine for buildings permitted of
5 lesser height.

6 To that, it should read, "In the new downtown, North Capitol,
7 Capitol South, and Southwest receiving zones." Those three receiving zones need
8 to be added. That was technically brought to my attention this afternoon by Mr.
9 Sher. That was not advertised as specifically as language but it would take that to
10 accomplish the -- what we clearly put forth as the intent.

11 CHAIRPERSON BENNETT: Maybe I'm losing you, Mr. Colby, or
12 maybe --

13 MR. COLBY: It's because --

14 CHAIRPERSON BENNETT: Are you saying that these
15 descriptions in 1709.17, 18, and 19 --

16 MR. COLBY: They specify the area of the receiving zone but do
17 not -- no where do you know what the height and bulk is except we talked about it in
18 our discussion of the receiving zones. But no where in the regulations is there a
19 reference to the height and bulk that would be permitted.

20 CHAIRPERSON BENNETT: Except insofar as it is stated in all
21 three that they are all zone C-3-C.

22 MR. COLBY: Yes, but C-3-C doesn't tell you that they can go to
23 ten FAR and doesn't allow them to go to, basically, C-4 standards as receiving
24 zones.

25 CHAIRPERSON BENNETT: Oh, I see what you're saying.

26 MR. COLBY: In other words --

27 CHAIRPERSON BENNETT: I understand. I understand.

28 MR. COLBY: It was very specifically spelled out for downtown and

1 for the other receiving zone, there was a slightly lesser height in FAR.

2 CHAIRPERSON BENNETT: So, what we would need to do,
3 you're saying, after we hear what the folks in the audience have to say, if we wanted
4 to move forward, we'd have to readvertise on your judgment and add the descriptive
5 --

6 MR. COLBY: We clearly have to add that. If it requires
7 readvertising, then so be it. But we clearly have to be clear as to what the height
8 and bulk could be in that -- those three receiving zones. As a matter of a fact, in
9 part, the hearing will help us determine what the height and bulk should be, whether
10 there's some sensitive area we've overlooked.

11 Our report noted that there was a potential issue of height and
12 bulk at one end of the Capitol South area. And I've noted that -- or, we've noted that
13 there is a 240 foot wide right of way of Second Street adjacent to public housing,
14 much lower public housing. That 240 feet, at least on the east end of the receiving
15 area seems like a substantial buffer area for any -- to take up any height differences.

16 I would add that there's a potential problem to this -- if you look at
17 the maps, on M Street where the -- where Second Street -- where the C-3-C area
18 curves around and goes north and south of M Street. And there is a potential
19 problem that we may hear about where there's a need to modify the potential height
20 and bulk of the receiving zone in those two locations, north and south.

21 And then the last one, amend the zoning map by amending
22 Square 491 from C-3-C to DD/C-4 is the map portion of what we discussed earlier of
23 where we handle it as a text amendment.

24 I'm afraid I've been a little disorganized and in part it's because I
25 was going by the order of our report and the --

26 CHAIRPERSON BENNETT: That's the map portion of number 4?

27 MR. COLBY: That's correct, for Square 491.

28 CHAIRPERSON BENNETT: All right.

1 I am clear. I have been getting my little questions as you went
2 along.

3 Colleagues, do you have any questions of the Office of Planning?

4 MS. DOBBINS: Madam Chair?

5 CHAIRPERSON BENNETT: Yes, ma'am.

6 MS. DOBBINS: One matter before we move forward.

7 The record shows that the properties related to Square 491 was
8 posted.

9 Mister --

10 MR. COLBY: Yes.

11 MS. DOBBINS: Yes, you need to certify that it was made --

12 MR. COLBY: Yes, I so certify.

13 MS. DOBBINS: Okay.

14 CHAIRPERSON BENNETT: Oh, one other question. What's on
15 Squares 406, 407, and 457?

16 MR. COLBY: Yes, they are left out here?

17 CHAIRPERSON BENNETT: No, no.

18 MR. COLBY: Why are they called out specially?

19 CHAIRPERSON BENNETT: I see where they are included here
20 but I want to know what they are. What is it? Where are they?

21 MR. COLBY: I should know but they're--

22 CHAIRPERSON BENNETT: I used to know.

23 MR. COLBY: I did, too.

24 CHAIRPERSON BENNETT: Once upon a time.

25 COMMISSIONER PARSONS: I might be able to help. 457 is on
26 7th Street. That would be D.C. Space.

27 CHAIRPERSON BENNETT: Oh, 7th and E.

28 COMMISSIONER PARSONS: Yes. It's a -- GSA has inherited

1 PADC's responsibility there and they're going to be marketing it that much like
2 PADC would.

3 CHAIRPERSON BENNETT: Which corner?

4 COMMISSIONER PARSONS: That whole block that goes over to
5 the old USIA building. The Armature building down on E. It must be here in the
6 map somewhere.

7 CHAIRPERSON BENNETT: Well, I'm looking at the map and I
8 didn't see the square numbers. I remember in DD -- in the DDD we used to have
9 maps that showed the square numbers.

10 Well, here we are. Under Appendix A, I thought I used to be able
11 to read these numbers without --

12 COMMISSIONER PARSONS: As I recall, you could, years ago.

13 CHAIRPERSON BENNETT: Uh huh. Don't start. We're not going
14 to start this.

15 So, 457 is at D and 7th. The whole square goes between D and
16 E, Sixth and Seventh.

17 COMMISSIONER FRANKLIN: Yes.

18 COMMISSIONER PARSONS: But the development is only on the
19 west side of that square. There's a completed office building over there on the east
20 side.

21 406 is up near the Drake Building on the west side of Eighth.

22 CHAIRPERSON BENNETT: Say that again? It's at Eighth and --
23 Is it on this? I see 404.

24 COMMISSIONER PARSONS: Here's 406.

25 CHAIRPERSON BENNETT: Oh, right here. This is 407.

26 COMMISSIONER PARSONS: Yes.

27 CHAIRPERSON BENNETT: At E.

28 COMMISSIONER PARSONS: That's another one controlled by

1 GSA.

2 CHAIRPERSON BENNETT: And Eighth.

3 COMMISSIONER PARSONS: So, the things that are being
4 eliminated are those old PADC squares.

5 CHAIRPERSON BENNETT: I see.

6 COMMISSIONER PARSONS: Where they're going to seek
7 housing and write down the cost to the sale of the property.

8 CHAIRPERSON BENNETT: GSA has them?

9 COMMISSIONER PARSONS: Yes. The inheritor of PADC's
10 responsibility.

11 CHAIRPERSON BENNETT: That was my last question.

12 Colleagues, questions? Further questions of the Office of
13 Planning?

14 COMMISSIONER FRANKLIN: One brief question, Madam Chair.

15 In the South Capitol receiving zone, the receiving zone is C-3-C
16 portions of that area only. Do you recall what is not in the C-3-C portion? What is or
17 what is not?

18 MR. COLBY: No, in fact my recollection would be that it -- Well, it
19 could be that the two squares as shown on -- that go along M Street on the south,
20 that the line may have picked up more than the zone portion which is probably only
21 the lower half of the square.

22 And so, this is a way of showing that on the map anyway, that the
23 map may be incorrectly drawn. But in fact, it is the C-3-C portion. I think that's the
24 only -- to my knowledge, that's the only --

25 COMMISSIONER FRANKLIN: What about the squares just
26 adjacent to the freeway? Are those C-3-C?

27 MR. COLBY: You mean the Architect of the Capitol area and so
28 on?

1 COMMISSIONER FRANKLIN: Yes, 696.

2 MR. COLBY: I could say I believe so. But--

3 COMMISSIONER FRANKLIN: Well, if you could check that, I'd
4 appreciate it.

5 MR. COLBY: I surely will.

6 CHAIRPERSON BENNETT: Mr. Parsons, questions of OP?

7 COMMISSIONER PARSONS: When we originally did the DD, as I
8 recall we were after a goal of about 5,400 housing units. Have you done any
9 analysis as to what all of these proposals will do to that goal? I mean, are we
10 reducing that goal by 50 percent?

11 MR. COLBY: No, I -- We haven't. We have done a -- there's a
12 housing conference coming up where some of this is going to be important. And we
13 have done a number of, or a substantial update, on all of the accounting toward that
14 goal. And I don't -- I can provide that easily for the record.

15 What you're asking beyond that is what these -- if you went from
16 40 to 50 percent, for instance, which is, of course, is not advertise but is out for
17 comment. And I guess I would need to know which of these we were -- I could try
18 and do that. We have not done that. I would need to know -- I think this -- That's
19 easy enough to do if I know what working -- which ones of these we're looking at. I
20 think the toughest one is the 40 to 50 percent.

21 COMMISSIONER PARSONS: Right.

22 MR. COLBY: The -- You can't really quantify what the incentives
23 will do. You can only hope that they're effective. And --

24 COMMISSIONER PARSONS: Do you know how many housing
25 units in preparation for this Saturday?

26 MR. COLBY: No, I don't.

27 COMMISSIONER PARSONS: You'll know that by Friday
28 afternoon?

1 MR. COLBY: Well, no. Somebody else knows it. I don't --

2 COMMISSIONER PARSONS: As I recall, we were kicking around
3 1,800 to 2,000 when we passed DDD. But -- south of Massachusetts Avenue.

4 MR. COLBY: Yes.

5 COMMISSIONER PARSONS: I may be mistaken. Most of that
6 was PADC. How many are in Pennsylvania corridor now, do you know? Landsburg
7 Center. All right. I'm putting you on the spot.

8 MR. COLBY: Well, you are. Those are numbers like the square
9 numbers that I used to know, but they come and go. Right now they're gone.

10 COMMISSIONER PARSONS: Okay. Because the Tariff
11 building's coming on line and we're hopeful that will be all residential as well.

12 I think it would be helpful to me to know what it is we're doing. I
13 mean, we were trying to meet a goal of 5,400 and somebody had decided that that
14 was a community. And of course, many of those were south of Massachusetts
15 Avenue and now we're slipping again to allow them to go north.

16 And my suspicion is, of course, that if the convention center goes
17 forward, we'll be back here five years from now saying gee, now that it's a
18 convention center, we can't have housing. And let's continue on. Or housing --
19 hotels look like residential -- it's kind of residential and they're almost residential.
20 And before you know it, we'll have compromised the whole thing.

21 CHAIRPERSON BENNETT: You sound like me, industrial land.

22 COMMISSIONER PARSONS: Yes, it's that kind of a slow erosion
23 of a goal that everybody, I think, shares.

24 MR. COLBY: I think -- I mean, to help answer that rather than to
25 wring our hands, which we may want to do anyway, we ought to have the report in
26 front of us. At least to say where we are without these changes and then these
27 changes I think would be easy enough --

28 COMMISSIONER PARSONS: All right.

1 MR. COLBY: At least those that are quantifiable.

2 COMMISSIONER PARSONS: That would be good. Thank you.

3 That's all I have.

4 CHAIRPERSON BENNETT: All right. So, you will get back to us
5 telling us where we are now?

6 MR. COLBY: Yes. And to the extent I can, where we would
7 be as a result of these changes, where it's quantifiable.

8 COMMISSIONER FRANKLIN: Taking into account, I hope, the
9 point of the Committee of 100 that there ought to be a concomitant addition of
10 housing requirements to offset the elimination in Squares 455 and 454.

11 MR. COLBY: Right. That's exactly where I was going but without
12 the data, we really don't -- we don't know.

13 CHAIRPERSON BENNETT: If there are no reports of other
14 agencies or any other agencies in the audience? Seeing none, have any
15 representatives from Advisory Neighborhood Commissions come in since we
16 began?

17 All right. Then why don't we begin with Mr. Gross, Arnold &
18 Porter.

19 Now, I see Gross, Maszak and Goodwin, all three are coming
20 forward. All right.

21 Good evening, gentlemen.

22 MR. MASZAK: Good evening, Madam Chairman, Mr. Parsons,
23 Mr. Franklin. I'm Peter Maszak, special counsel with the law firm of Arnold & Porter.
24 With me tonight are Nate Gross, specialist in zoning and land use at the firm, and
25 Michael Goodwin, a partner in the real estate group.

26 Our testimony tonight is in support of the advertised text
27 amendments. Arnold & Porter has a significant number of real estate and zoning
28 clients in the downtown development district and in existing and proposed receiving

1 zones.

2 This evening, however, we are not representing specific properties
3 but rather are offering general testimony in two parts. First, Mr. Gross will present
4 policy oriented testimony regarding the advertised amendments. Then Mike
5 Goodwin will make a number of observations about the TDR market and the TDR
6 transfers that have occurred since the program was adopted. I'd like to also make a
7 few additional introductory comments.

8 Nate and I significantly participated in the drafting, amending, and
9 later adoption of the original DD district regulations. The TDR provisions and
10 mechanisms have proved very successful. We believe that extending the benefits of
11 TDRs to new receiving zones, and possibly even in the future to new sending sites
12 and zones, certainly further the original purposes and goals of the DD district and
13 will create a viable living downtown that balances the interests for all D.C. residents,
14 businesses, developers, and visitors.

15 Second, we applaud the efforts of the Office of the Planning and
16 the Office of Zoning in their continuing efforts and their continuing ability to make
17 zoning rule making for the downtown compatible with the interests of the DD district.

18 MR. GROSS: Good evening, Madam Chairman and members of
19 the commission. I'll comment briefly in two sections, summarizing.

20 First, on TDRs for residential development, I think we can say, and
21 Michael Goodwin's comments will document this to a greater degree, that despite
22 the weak office market in the 1990s, there have been a significant number of TDR
23 transfers which have greatly assisted both historic preservation and preferred uses.

24 The second comment is that it's often said that zoning can't do the
25 whole job and the city is just about on the verge of adopting some other incentives.
26 Well, some of them have been adopted. And the tax increment financing legislation
27 which hopefully will be adopted very shortly is another piece so that zoning and
28 other financial incentives can work together with TDRs helping out.

1 One of the interesting combinations that's being looked at by some
2 developers in downtown currently, and even a few years ago, is the idea of providing
3 required housing within historic buildings. And let's say that if the TDRs for
4 residential development are adopted, then you have a double incentive on the
5 zoning side, namely the possibility of getting TDR for historic preservation and for
6 providing the housing.

7 And, right now the Tariff building, the rule of historic buildings, the
8 Le Droit and Atlas buildings, and the Mather building across the street from the
9 Martin Luther King Library, are all being looked at for potential residential
10 development. Also, a few years ago, the row of commercial flat fronts being
11 restored across the street, across Seventh Street, for the MCI arena were looked at
12 as a possible receiving site for required housing on another property that would have
13 been developed for all office uses. That didn't work out but the concept is around in
14 the residential as well as preservation will help make that more attractive.

15 And part of the dynamics there is that the -- given the small size
16 typically and the small floor plate of historic buildings, they have less value and less
17 rent potential, usually, for office space than your larger floor plate buildings. So,
18 often multi-level retail uses, or in this case housing, can be looked at for historic
19 buildings.

20 We're recommending that you do adopt the advertised two to one
21 ratio for residential development. Housing is usually considered the most difficult in
22 terms of financial feasibility of the preferred uses in downtown. And you could even
23 consider more than two to one but two to one was advertised. And there are other
24 preferred uses, such as major arts and retail uses, that even earn three to one
25 TDRs.

26 Secondly, on the proposed receiving zones, just a few brief
27 planning comments and mostly this is nothing new. All three are either established
28 or emerging high density office precinct that are well buffered with the exception that

1 Mr. Colby mentioned. Possibly an interesting situation down there on Second
2 Street, Southeast.

3 The comprehensive plan encourages major commercial
4 development in all three areas. All three have excellent highway and Metro rail
5 access. And to the extent that areas like this are well utilized and fully developed,
6 they not only make use of the infrastructure that was built, but also takes some
7 redevelopment pressure off of other areas that don't need high density office
8 development.

9 Another comment is we don't see the potential height based on
10 width of the abutting street as presenting an urban design problem in these areas.
11 Nineteenth Street, Northwest is a good illustration of a pattern that could emerge.
12 Running from Pennsylvania Avenue to approximately N Street, Nineteenth Street,
13 since 1958 has been the boundary between the C-3-C district to the west and the C-
14 4 district to the east. So, you have some east/west streets on which 130 foot
15 buildings in C-4 and 90 foot buildings in C-3-C are fairly close to each other. And at
16 street level, this is not presenting an urban design problem.

17 It's also softened by the Lafayette Center PUD that was approved
18 and built at 110 feet. And now you also have two receiving buildings with TDRs built
19 at 130 feet and you have kind of an eclectic mix which may actually add design
20 interest rather than present a design problem.

21 We would urge that you use the full height and bulk formula that
22 Mr. Colby was mentioning that applies now to the new downtown area in that these
23 areas are a long term resource for the city. For example, if at a certain time if the
24 city wanted to include historic landmarks outside of downtown or certain important
25 categories of historic landmarks for TDRs, the enormous receiving capacity of these
26 areas could absorb that as well as the downtown TDRs.

27 Or, if residential development outside of downtown or affordable
28 residential development, were included, the total quantity of such uses we're getting

1 probably could be accommodated in these receiving zones. So we would urge
2 adoption at the full height and bulk.

3 On what Mr. Colby was mentioning about Second Street is an
4 interesting situation and may very probably need a step down formula. As far as the
5 dog leg right along M Street itself, that situation is mitigated somewhat by the width
6 of M Street which is 90 feet. So, the maximum there would be 110 feet. If that's a
7 problem, then that could be addressed. But it's not 130 foot situation whereas
8 Second Street could be 130 foot situation.

9 And that concludes my comments.

10 CHAIRPERSON BENNETT: Thank you.

11 MR. GOODWIN: What I'd like to do is just spend a couple of
12 minutes giving you a market perspective on TDRs. There have been 14 TDR
13 transactions by my count which have closed in the city. My colleagues and I have
14 been involved in about a dozen of those, so we have a pretty good sense of where
15 the market has been and is currently is at.

16 In general, from the standpoint of the market, I think the TDR
17 program has been a resounding success at both the sending end and the receiving
18 end. In the DD district, it has been involved -- TDRs have subsidized the
19 redevelopment of seven landmarks or contributing buildings. TDRs have subsidized
20 the reopening of one preferred use, Knempfer's Warner Theater project. We have
21 had transfers of TDRs. We have had retransfers of TDRs. And we have even had
22 one recent TDR banking transaction. So, virtually every tool that was envisioned
23 by the DD regulations has been utilized.

24 Having said this, we're coming to a juncture where, from my
25 perspective, the TDR market is in jeopardy because a reduced demand for TDRs.
26 Since the first TDR transaction closed in July of 1992, there has been a steady
27 downward trend in the value of TDRs. Between 1992 and early 1994, TDRs
28 transferred at prices over \$30.00 a square foot, or \$30.00 per TDR. By late 1994,

1 the price of TDRs had dropped into the low 20s. And then by 1996, the price hit
2 rock bottom in the mid-teens. And at this price, for owners of sending sites in the
3 DD district who either have a historic property or who were considering putting in a
4 preferred use, it simply becomes uneconomic to use TDRs to get there. The value
5 of the TDR is just not sufficient to subsidize the use.

6 Now, there are several factors which I think underlie the decline in
7 the value of TDRs. Most obviously over the same time period we've seen a
8 dramatic decline in the District's overall real estate economy.

9 Where TDR receiving sites back in the beginning of the '90s were
10 trading at values of \$100.00 to \$150.00 a square foot, those sites today may be in
11 the range of \$60.00, \$70.00, \$80.00 a square foot, in many cases half of what they
12 were trading for in 1990s, in the early 1990s. So, it's only natural that there has
13 been a parallel decline in the value of the TDRs which historically trade at a discount
14 of the value of the FAR on site.

15 A second and more subtle force at work here is the size of the
16 potential receiving sites. During the first couple of years of the TDR market there
17 were two unusually large receiving sites that really drove the market. The IFC site at
18 right at G.W. Circle on Pennsylvania Avenue, and Knempfer's 1900 K Street site,
19 those two sites alone accounted for 400,000 TDRs.

20 Now, just to give you a sense of perspective, the other seven TDR
21 receiving sites in the city collectively account for 275,000 TDRs. So, you can see,
22 thus far two receiving sites really created a market and helped for a number of years
23 to sustain the price of TDRs. Today, most receiving sites have needs at
24 the smaller end of the spectrum, in the range of 15 to 50,000 TDRs, and that's going
25 to have a downward pressure on prices.

26 Those are the principle considerations on the demand side of
27 TDRs. On the supply side, I think there's an adverse force at work as well. Over the
28 last decade we've seen the eastward march of development in the city towards

1 larger sites with bigger floor plates for large professional firms. These sites are
2 going to be generators of TDRs as opposed to receivers of TDRs. So, without some
3 increase in the number of sites which may receive TDRs, the TDRs that are
4 generated by these sites may, from my perspective, prove unmarketable.

5 I think the expansion of the receiving zones as proposed by OP is
6 the best approach for assuring that supply and demand here maintain some
7 equilibrium. Expanding the receiving site -- the receiving zones will obviously
8 expand the number of receiving sites that are in the market at any given point in
9 time. In general, just by the nature of the new receiving zones, the receiving sites,
10 the proposed receiving sites, are going to be larger receiving sites. And they're
11 going to be capable of receiving more TDRs. This, too, I think will have a very
12 positive impact on maintain the TDR market.

13 CHAIRPERSON BENNETT: You're going to have to wrap up.
14 I've given you 15 minutes because it's five minutes each. So, if you could
15 summarize your final thoughts.

16 MR. GOODWIN: I guess the one thing I would add as a caveat
17 that notwithstanding our support of the new receiving zones, they are not a panacea
18 for the TDR market. Most of the sites in the proposed receiving zones are years,
19 and in some cases unfortunately, decades away from development. And may not
20 give a -- have any current impact on the TDR market.

21 MR. GROSS: That concludes our testimony. We'd be happy to
22 answer any questions.

23 CHAIRPERSON BENNETT: Thank you.

24 Colleagues, questions of this panel?

25 COMMISSIONER FRANKLIN: Just one, Madam Chair.

26 There's a reference to active consideration of residential uses in a
27 couple of properties, Tariff Commission, LeDroit, Atlas, Mather. Is there a TDR
28 incentive for that housing interest at the moment?

1 MR. GROSS: If the two to one TDRs are adopted and then --

2 COMMISSIONER FRANKLIN: No, I didn't ask that. I said at
3 present, any TDR incentive on those properties?

4 MR. GROSS: No.

5 MR. GOODWIN: Not for housing.

6 MR. GROSS: But for preservation there would be.

7 COMMISSIONER FRANKLIN: There is for historic preservation
8 but not residential use?

9 MR. GROSS: Right. They're all historic buildings. Now, the Tariff
10 building is federal now and unzoned. So, it would depend on how the ownership
11 was handled later.

12 COMMISSIONER FRANKLIN: So, notwithstanding the fact that
13 there's no residential TDR, residential use is being contemplated?

14 MR. GROSS: Right. I think what we're really saying there is that
15 people looking at these properties, at least two of them, know they can get historic
16 preservation TDRs and they're aware of these hearings. And it's a possibility of two
17 to one residential for the use in addition. And that's -- helps their interest in the
18 properties.

19 CHAIRPERSON BENNETT: This would be -- So, you're support
20 of two to one ratio for housing development B-4 south of Mass market rate, that's
21 what you're talking about?

22 MR. GROSS: Yes. That's what we're saying, the south of Mass
23 part of it.

24 CHAIRPERSON BENNETT: All right. Further questions?

25 MR. MASZAK: Madam Chairman, I -- Just a point that Mr. Colby
26 and you discussed about readvertising. I'm not certain that necessarily readvertising
27 would be necessary to the extent that the original notice incorporated at least
28 arguably, what the original -- didn't change the original text so that the existing

1 requirements don't have to be readvertised if they already exist. Only if you change
2 the underlying height and bulk requirements would they require readvertising.

3 That's my understanding but I didn't quite understand what -- If
4 you believe that readvertising has to be done, I'm not certain that that -- that legally it
5 has to be done.

6 Thank you.

7 CHAIRPERSON BENNETT: Thank you.

8 Is Jeffrey Kanne here?

9 Good evening.

10 MR. KANNE: Good evening. I'll try to be very brief.

11 CHAIRPERSON BENNETT: You've got five minutes.

12 MR. KANNE: My name's Jeffrey Kanne.

13 CHAIRPERSON BENNETT: Kanne. I'm sorry.

14 MR. KANNE: That's okay. No one gets it right the first time.

15 I'm appearing here today to ask you to approve the expansion of
16 the receiving zones for the TDRs to include the areas recommended by the Office of
17 Planning.

18 In particular, I urge you to approve the expanding of the TDR zone
19 to include the former urban renewal area in the southwest. This area is well defined.
20 It's made up almost exclusively of very large commercial office buildings. The area
21 is well served by mass transportation including four Metrorail lines and the Virginia
22 Railway Express Station. There are no residential uses that would be adversely
23 impacted.

24 Square 327 Southwest is one of the sites that would become a
25 receiving zone under these proposed rules.

26 CHAIRPERSON BENNETT: Where is that? I've got it in front of
27 me.

28 MR. KANNE: That's at the corner of Twelfth and Maryland

1 Avenue in the portals area. It's right next to Blue Cross.

2 CHAIRPERSON BENNETT: I see it.

3 MR. KANNE: I'm attempting in the process of developing a
4 commercial office building on that site. The proposed change would very
5 significantly improve the chances that I can get this project financed because the
6 increase in bulkage would make the project much more attractive to financial
7 institutions. It would also permit rental rates that would be more competitive with
8 neighboring jurisdictions which, as you know, are developing buildings at a very
9 rapid pace.

10 This is a very real project and your approval of the southwest
11 receiving zone will have an immediate beneficial consequence to the District.
12 Negotiations with tenants are underway and are very serious, and working plans for
13 this building are almost finished. The development would result in a very substantial
14 increase in the tax revenues to the District, hundreds of thousands of dollars
15 annually. And provide the District with a beautiful, state-of-the-art office building to
16 compete with buildings being constructed elsewhere in the region.

17 Very importantly, the substantial price to be paid for the TDRs for
18 the projects will inject funds into the downtown development district. As the
19 example, this project shows an expansion of the TDRs into the former southwest
20 urban renewal area is a win/win for the District. The District will receive increased
21 tax revenues and injection of funds into the DD, and projection of competitive
22 attractive office space.

23 Finally, this can all be gained at no sacrifice to the character of the
24 former urban renewal area which, as I said, is made up of massive commercial
25 buildings.

26 Thank you for your time and consideration. I'd be glad to answer
27 any questions, if you have any.

28 CHAIRPERSON BENNETT: Thank you, Mr. Kanne.

1 Questions?

2 COMMISSIONER FRANKLIN: No questions.

3 CHAIRPERSON BENNETT: All right. Thank you very much for
4 your testimony.

5 MR. KANNE: Thank you.

6 CHAIRPERSON BENNETT: Mr. Thomas Duffy.

7 MR. DUFFY: Good evening.

8 CHAIRPERSON BENNETT: Good evening.

9 MR. DUFFY: My name is Tom Duffy. I'm a multi-family developer
10 in the District and I've been following the city's effort to produce a living downtown
11 for some time. I'm very supportive of a living downtown concept and am somewhat
12 familiar with the downtown development district overlay zoning requiring commercial
13 developers to produce on-site and off-site housing.

14 I personally have not seen much housing developed as a result of
15 the overlay, not in the housing priority areas at least. And I believe if the District of
16 Columbia's vision of a living downtown is to become reality more must be done to
17 incentivize housing developments. That is why I support the proposal to create
18 transferrable development rights for housing in the downtown development district
19 and to expand the TDR receiving zones.

20 I cannot say with complete certainty that the TDRs will provide
21 sufficient incentive to immediately transform the housing priority areas, but it will be
22 a step in the right direction. The proposal by the Office of Planning appears very
23 well conceived and sensitive to the economic realities of developing housing in the
24 downtown area, especially affordable housing.

25 TDRs are also attractive to me because their have private sector
26 transactions would not involve district or federal subsidies as well as establishing
27 relationships between the commercial and residential developers.

28 I'm currently negotiating to purchase several sites in the downtown

1 development district and intend to develop multi-family housing should the TDR
2 proposals be enacted. I'm convinced demand exists for quality housing but
3 economic incentives are necessary to make it a reality. Enacting this legislation and
4 including projects currently on the drawing board could immediately spur new
5 residential construction. Additional economic incentives such as real estate tax
6 relief, access to tax exempt bonds, financing, and/or tax increment financing may be
7 necessary. But I believe that these are potentially available.

8 I think this type of public/private partnership is what is necessary
9 to make a living downtown a reality. We are in a unique position to create a new
10 urban environment and take advantage of the increased safety and vitality
11 generated by the MCI Arena. Additional residential will improve the commercial
12 viability of the neighbor and add increased retail and entertainment activity. Coupled
13 with this are proposed new convention center, a health economy, and federal
14 incentives to the District that are intended to promote economic activity.

15 I think Abe Pollin took a big step to revitalize downtown and I think
16 that the Zoning Commission can take a big step by approving the TDR proposal.

17 CHAIRPERSON BENNETT: Thank you, Mr. Duffy.

18 Questions of Mr. Duffy?

19 Thank you for your testimony.

20 Representatives of Square 456 Associates. Mr. Reutershan.

21 MR. REUTERSHAN: Good evening.

22 CHAIRPERSON BENNETT: How are you?

23 MR. REUTERSHAN: Very well.

24 Good evening. For the record, my name is Chris Reutershan. I'm
25 a principal with Concord Partners and I'm here tonight representing the owners of
26 Square 456 Associates. Square 456 Associates owns the majority of
27 the undeveloped portion of Square 456 which is the square immediately to the south
28 of the new MCI Arena.

1 We're here tonight as proponents of the various changes. I have
2 comments on two of them that effect this particular project.

3 The first is item 3 on the agenda for this evening, Section 1706.6,
4 which seeks to increase the off-site affordable housing. In this instance, Square 456
5 Associates has already entered into an agreement with various parties that has fixed
6 the amount of housing that will be placed on site, which is in excess of the minimum
7 required.

8 However, by increasing the off-site affordable housing, what it
9 does is gives us flexibility. There are two ways of dealing with housing in the
10 downtown development district on this particular site. One is to do off-site affordable
11 housing. The other is to do arts or to increase the amount of arts one might
12 otherwise do.

13 In this instance, by increasing the affordable housing, it gives us
14 additional flexibility to choose between doing on-site arts or off-site affordable
15 housing, both of which have substantial benefits to the community. But in terms of a
16 very large project, the more flexibility a developer has, the more likely and more
17 quickly a project can be done.

18 The second comment relates to your agenda item 6, 1706.3, item
19 B, the increase or new TDRs for on-site residential development. At present, the
20 housing market in the downtown area, at least as it applies to our site, which we are
21 very familiar with the economics, is not feasible to do housing unto itself. Indeed,
22 that was one of the original premises of the downtown development district, that by
23 linking housing to the construction of office, the office would provide the economic
24 incentive to produce housing.

25 As the various markets have started to shape up over the last
26 several years and most recently in the last year, or actually six months as the MCI
27 center and the new downtown did, are changing the way people think about that
28 area, an increase in -- or a new TDR for on-site housing would make it more easy to

1 consider doing the housing unto itself as opposed to having to wait for the
2 commercial aspect of the project to provide the necessary benefit.

3 The current value, as near as we can get it, and of course it sort of
4 fluctuates every time another apartment is let, but our cost of doing on-site housing
5 is in the neighborhood of minus \$50.00 a foot. In other words, contributing the land
6 for zero and then taking an additional \$50.00 and putting it into the project, never to
7 see it again.

8 You've heard testimony of sort of where the market for TDRs are,
9 and again, the market is wherever the last transaction was done. Right now the
10 numbers are in the low teens, low twenties depending on who you're talking to and
11 how desperate someone is for it. So, two FAR of TDRs starts to look something like
12 \$35.00 to \$40.00, to \$42.00 which starts to then make the case for the ability of one
13 to start a housing project if one was to get a bump in the rents. Which I don't think it
14 totally unrealistic given the great job that BD is doing and I have to say that I am on
15 the board of the BD, so I'm not unbiased in that regard.

16 But also, the benefits of the arena and I think just the general
17 perception that things are starting to get better in the District.

18 That is my testimony and I'd be happy to answer any questions.

19 CHAIRPERSON BENNETT: So you're okay with the two to one
20 ratio that's in 1706.3(b)?

21 MR. REUTERSHAN: Yes.

22 CHAIRPERSON BENNETT: For market rate high?

23 MR. REUTERSHAN: Yes.

24 CHAIRPERSON BENNETT: And you're okay with having greater
25 flexibility as described in your earlier comments?

26 MR. REUTERSHAN: Yes.

27 CHAIRPERSON BENNETT: Thank you.

28 Questions of Mr. Reutershan?

1 COMMISSIONER FRANKLIN: Madam Chair, one at least.

2 I want to just explore this greater flexibility point to be sure I
3 understand it. You are, I think, implying that it would be better for you to be able to
4 develop off-site lower income housing than to have to require on-site arts?

5 MR. REUTERSHAN: They are roughly equivalent in terms of the
6 economic impact. It really depends on -- See, this property is a very large one. The
7 ground area is about 80,000 square feet. And when you look through all the various
8 pages of regulations, it's a complex equation.

9 To distill it, one has to do a certain amount of arts or commit space
10 for arts uses in order to obtain a C of O for other uses. And one never knows what
11 the market for these art uses are going to be. One would always hope to have a
12 very large art use and be done with it as opposed to having to do many small ones.
13 That's simply the simplicity rule.

14 So, in this instance, we don't know where we're going to be at the
15 point in time that this project gets built and who's going to be in the market at that
16 point in time. And therefore, the more flexibility we have to in effect be able to
17 choose between doing arts or affordable housing, it makes it that much easier at that
18 point in time to make that decision, do we support some additional development of
19 affordable housing or do we try and find another arts tenant to bring into the project.

20 COMMISSIONER FRANKLIN: Well, educate me on this. If
21 there's a TDR to provide incentive for on-site housing, that's, in your judgment, a
22 pretty powerful incentive?

23 MR. REUTERSHAN: Yes. I mean, it's the money. Assuming you
24 can sell it.

25 COMMISSIONER FRANKLIN: In what way does off-site lower
26 income housing help the downtown? It helps the community at large, you're saying,
27 but it doesn't do anything for downtown.

28 MR. REUTERSHAN: No, but it's -- we're dealing with the city.

1 COMMISSIONER FRANKLIN: Excuse me?

2 MR. REUTERSHAN: We're dealing with a city.

3 CHAIRPERSON BENNETT: With the city as a whole.

4 MR. REUTERSHAN: As a whole. There's all sorts of gives and
5 takes. I don't think we can just narrowly approach it on the basis of --

6 COMMISSIONER FRANKLIN: Of course, I have the benefit of
7 being unsullied by a lot of information because I wasn't present on the commission
8 when all of this rather complex regulatory regime was adopted. And I have very
9 serious reservations about even the legality of requiring off-site housing.

10 MR. REUTERSHAN: It seems to be an accepted approach.

11 COMMISSIONER FRANKLIN: A lot of things are accepted that
12 haven't been yet challenged.

13 So, I don't know where I am on that.

14 MR. REUTERSHAN: We don't have an opinion one way or the
15 other as to whether one is better than the other. We're simply taking the point of
16 view that what is written as law into the zoning regulations is something that we
17 have to comply with. And therefore, as an owner of a property, it is in every owner's
18 benefit almost always to be able to have more flexibility in trying to work out how
19 you're going to make your project work. And at the end of the day, that benefits
20 everyone.

21 COMMISSIONER FRANKLIN: Thank you.

22 CHAIRPERSON BENNETT: All right. Mr. Parson, questions of
23 Mr. Reutershan?

24 COMMISSIONER PARSONS: No questions.

25 MR. REUTERSHAN: Thank you very much for the opportunity to
26 testify. Good evening.

27 CHAIRPERSON BENNETT: Representatives of F.P. Lane?
28 Anyone here representing F.P. Lane?

1 Representatives of 1108 K Street Associates?

2 MR. WALTON: Good evening members of the Commission.

3 CHAIRPERSON BENNETT: Good evening.

4 MR. WALTON: My name is Ron Walton and I'm a representative
5 of the owners in property in Square 317, the southeast corner at Twelfth and K
6 Street. And I'm here to testify in support of the creation of transferrable development
7 rights in a two to one ratio for either affordable or market rate housing to create
8 housing south of Massachusetts Avenue. And --

9 CHAIRPERSON BENNETT: Southeast corner of Twelfth and K?

10 MR. WALTON: Correct. It's a vacant site at this point.

11 And for, I'd like to testify in support of the revision to Section 1706
12 of the regulations which would increase the affordable housing that could be
13 provided off-site for downtown sites south of Massachusetts Avenue from the
14 current 40 percent up to 50 percent. We believe that these provisions are consistent
15 with the comprehensive plan as it was last amended.

16 We've owned this site since 1982 and have explored innumerable
17 development possibilities for this site during that period of time and particularly,
18 since the zoning has come to DD/C-3-C with the housing overlay. And we've been
19 unable to make it economically feasible to start any development at this point in
20 time, primarily because of housing requirement that is on that site. We think that we
21 could probably proceed with a number of different developments, primarily office or,
22 say, hotel if were not for that specific housing impediment.

23 And however, we do recognize that the city's desire to have the
24 housing provided in the downtown area. And I really love Washington, D.C. having
25 been here for 26 years and am very excited to see the development that is now
26 taking place as a result of the MCI Center and the work that the downtown BID is
27 doing as well. But we need to have our projects, or any project, this specific project,
28 to be economically feasible.

1 And we believe that with the creation of the transferrable
2 development rights and the increasing of the housing that we are allowed to put off-
3 site, it will close the gap that will make this -- close a gap that separates us from
4 having an economically viable site where we could actually start development and
5 provide some housing compared to what we have now.

6 So, I would urge you to adopt these amendments. And I thank
7 you for allowing me to testify. I would be glad to answer any questions you may
8 have.

9 CHAIRPERSON BENNETT: All right. Thank you, is it Mr.
10 Walton?

11 MR. WALTON: Yes.

12 CHAIRPERSON BENNETT: Thank you, Mr. Walton.

13 Questions of Mr. Walton?

14 Have you talked at all, or have you thought at all about the
15 feasibility of developing housing there in the event that -- or a hotel, for instance, in
16 the event that the convention center does materialize?

17 MR. WALTON: We are exploring that possibility. The one
18 problem we're facing is a design problem. We have a relatively small site and it's
19 not possible to do two separate buildings on it. So, we'd have to design it with a
20 mixed use property. And because of -- as the previous individual here testified, the
21 housing requirement does put a -- has to be supported by the other usage on the
22 site.

23 And so, that's why I like these amendments, that it would reduce
24 the burden on the rest of the site. And we are, in fact, considering a hotel for this and
25 think that it might be compatible with a mixed use development.

26 CHAIRPERSON BENNETT: All right. Thank you.

27 MR. WALTON: Thanks for letting me testify.

28 CHAIRPERSON BENNETT: Representatives of Union Station

1 Venture?

2 Good evening.

3 MR. BURD: Good evening, Madam Chairperson. For the record,
4 my name is Chuck Burd. I'm with the Bristol Group.

5 CHAIRPERSON BENNETT: Burd did you say?

6 MR. BURD: Burd, right. B-U-R-D.

7 I'm representing Union Station Venture, the entity which owns the
8 Woodward & Lothrop service warehouse in Square 712.

9 My long term goal for this site has always been to develop office
10 buildings. Union Station Venture has been working on that goal for many years. We
11 believe that office development is reasonable and feasible with an appropriate set of
12 development controls. We expect the strengthening of the office market to improve
13 the attractiveness of our site as other sites in the city are developed.

14 We support the designation of the Zoning Commission of our
15 property as a receiving zone. The designation of our property as a receiving zone
16 allows us to consider buying extra density. The determination of whether, when,
17 and from whom we would buy the TDRs had not been made but it would be
18 beneficial for the planning of our site and the entire surrounding areas to bring this
19 area into productive use as now it is relatively underutilized.

20 The designation would also be beneficial to potential developers of
21 downtown because it would give them a wider base in which to market the TDRs for
22 sale. We see the proposed amendment as having the potential for benefiting many,
23 including the city utmost in that, again, bringing a relatively unproductive area into
24 use again.

25 The owners of Square 712 support the approval of the proposal to
26 include the property in TDR southwest receiving area.

27 I appreciate your attention and thank you for your time and
28 consideration.

1 CHAIRPERSON BENNETT: Thank you.

2 MR. BURD: And answer any questions that you have for me.

3 CHAIRPERSON BENNETT: Questions of Mr. Burd?

4 COMMISSIONER FRANKLIN: None.

5 CHAIRPERSON BENNETT: Thank you for your testimony.

6 MR. BURD: Thank you.

7 CHAIRPERSON BENNETT: Representatives of Greenbaum and

8 Rose?

9 Good evening.

10 MR. LIFFMAN: Good evening, Madam Chairperson and members
11 of the commission.

12 For the record, my name is Reid Liffman. I am here tonight on
13 behalf of Greenbaum & Rose. We represent the owners of property in the area
14 north of Union Station, including property between H and K Streets, west of First
15 Street, Northeast, and property in the triangle bounded by New York and Florida
16 Avenues and the railroad right-of-way.

17 The property between H and K Streets in Squares 675 and 676 is
18 now zones C-3-C. We have developed three office buildings on this property and
19 have additional land rights for future development. For those of you who don't know
20 where the squares are, that is the square that contains the CNN building and the
21 Federal Energy Regulatory Commission building, and an additional speculative
22 office building.

23 Including this area in the TDR receiving zones would allow us the
24 opportunity to increase the size of our building if the needs of a potential tenant so
25 require. This would increase revenue for the District in terms of additional taxes and
26 jobs. It also makes our property more competitive, to be marketed to a greater
27 range of tenants, making it more likely that we can develop the property in a timely
28 manner.

1 The Florida Avenue property is still zoned CM-2. It is designated
2 in the medium high density commercial category of the comprehensive plan but we
3 chose not to seek to have it included in the overall C-3-C rezoning because we
4 believe that in the short run there may be more of a market for CM type use on that
5 site. However, we believe that in the long run the site may well be appropriate for
6 office development like the properties immediately across Florida Avenue to the
7 south.

8 We would, therefore, request that you consider including this
9 property, Square 3584, lot 809, in the receiving zone.

10 CHAIRPERSON BENNETT: Square 358?

11 MR. LIFFMAN: Four. Three, five, eight, four. Lot 809.

12 You've heard and will hear of the benefits of designating additional
13 receiving zones in terms of economic benefits to the city and increasing the city's
14 leverage to achieve its downtown goals. I will not go into these any further. But I
15 will just state that the properties I've describe can contribute to those benefits and I
16 urge you to designate them in the receiving zones.

17 I appreciate your time and will be happy to answer any questions.

18 CHAIRPERSON BENNETT: Give me the boundaries again for
19 3584, lot 809.

20 MR. LIFFMAN: Florida and New York Avenue bounded on the
21 north by New York Avenue just as the overpass goes and then Florida Avenue on
22 the south. There's that Sunoco station on the corner. Right across the street from
23 the Federal Express building.

24 CHAIRPERSON BENNETT: Oh.

25 MR. LIFFMAN: Right there.

26 CHAIRPERSON BENNETT: Questions, Mr. Franklin?

27 Thank you, Mr. Liffman.

28 MR. LIFFMAN: Thank you.

1 CHAIRPERSON BENNETT: Representative of the Antonelli
2 Organization? Is a representative here of the Antonelli Organization?

3 Representative of Potomac Capital Investment Corporation?

4 Good evening.

5 MR. SPINGLER: Good evening, Madam Chairperson, members
6 of the commission. My name is Frank Spingler. I'm senior vice president of
7 Potomac Capital Investment Corporation which is a member of Square 673
8 Associates, L.L.C. We're the long term lessee of 100,000 square foot parcel located
9 in the north capital area at First and M Streets, Northeast.

10 CHAIRPERSON BENNETT: First and N as in noodle?

11 MR. SPINGLER: M as in Michael.

12 CHAIRPERSON BENNETT: As in Michael.

13 MR. SPINGLER: Yes.

14 The property is leased from the District of Columbia Department of
15 Housing and Community Development and our rent and purchase structure is tied to
16 the value of the property. Therefore, both the District and ourselves as lessee have
17 an interest in the maximization of the value of this site. On behalf of the long term
18 lessee, we strongly support the establishment of the North Capitol receiving zone
19 set forth in Section 1709.17 of the proposed regulations.

20 The north capitol Street area has undergone significant
21 improvement in the past few years anchored by the private sector, federal, and
22 association growth on the south and by the District government offices to the north.
23 We believe that the adoption of this area as a receiving zone will spur development
24 in the area to the benefit of the neighborhood, the property owners effected, and the
25 District of Columbia as a whole through an increase in job and taxes in this area.

26 We look forward to working with the District on this opportunity to
27 provide a first-class market alternative at a competitive price with the suburbs in an
28 area well served by public transportation and in close proximity to the Capitol.

1 Thank you and I'd be happy to answer any questions.

2 CHAIRPERSON BENNETT: All right. Thank you, Mr. Spingler.

3 Questions?

4 All right.

5 MR. SPINGLER: Thank you.

6 CHAIRPERSON BENNETT: Thank you.

7 Representative of Bear Saint Properties?

8 MR. LIDNER: Good evening, Madam Chair, Commissioners
9 Parsons and Franklin. My name is Rusty Lidner. I am here this evening on behalf
10 of Bear Saint Properties, the managing partner of 20M Associates.

11 20M owns property in Square 698 which is bounded by South
12 Capitol, half K and L Streets, Southeast. It's in Capitol South district. The Zoning
13 Commission rezoned the entire area, as you heard earlier, in 1996 and of course, as
14 you know. We've owned the property for more than ten years and our long term
15 goal for the property is to develop it with an office building or hotel. The site has
16 excellent service, transportation, and access being located both near South Capitol
17 Street and approximate to the Southeast/Southwest Freeway. In addition, it's catty-
18 cornered from the Navy Yard Green Line across the street.

19 The Southeast Federal Center and the Navy Yard, where
20 construction is going to facilitate the relocation of worker from Crystal City, are just
21 down the street to the east. We believe that these locational attributes will
22 eventually will make the site an attractive candidate for office tenants or amenity
23 laden hotels. And even though the market is not quite there yet, the time table
24 may well be accelerated by the development of the southeast federal center or Navy
25 Yard.

26 We support the inclusion of our property in the receiving zone for
27 TDRs from downtown. We believe that such an action is called for by the
28 comprehensive plan which the Office of Planning has cited in its report. The

1 designation of additional receiving zones helps to balance potential future supply
2 and demand of TDRs and in fact, is consistent with the laws of supply and demand
3 much as you've heard already this evening.

4 We consider, and I consider, it to be -- what's proposed is an
5 incentive based regulation and seeing no downside for any property owner or the
6 District in adopting this proposal. Therefore, inclusion to support the adoption of the
7 regulations as cited is recommended.

8 CHAIRPERSON BENNETT: Thank you, Mr. Lindner.

9 Questions of Mr. Lindner?

10 Thank you.

11 Representative of Phillip Companies?

12 MR. PHILLIPS: Madam Chairperson and members of the
13 commission, my name is Leland Phillips. I'm here on behalf of the partnership which
14 owns Square 537 which is bounded by Fourth, Third, East Street, and Virginia
15 Avenues, Southwest.

16 This square is located in the former southwest urban renewal
17 project Area C. A portion of the property, the project, area north of the Southwest
18 Freeway was zoned C-3-C by this commission on October 23rd, 1995. This became
19 effective upon the expiration of the renewal plan controls at the end of November,
20 1996.

21 Our long term goal for this property is to construct office and/or
22 hotel buildings on the site. The property is an area surrounded by office buildings,
23 both public and private.

24 When the Zoning Commission considered rezoning the site to its
25 current C-3-C, it recognized the existing character of the area together with its
26 excellent transforation access. We are located near both South Capitol and M
27 Streets, and in direct proximity to the Southeast/Southwest Freeways, and the
28 Anacostia Freeway. Our site is within a block of the Federal Center Metro station

1 and two blocks from a major metro hub at L'Enfant Plaza and the Virginia Railway
2 Express station.

3 We believe that our property is an attractive candidate for office
4 and hotel use. We are hopeful that the continuing upturn in the commercial market
5 bodes well for our pursuit of office tenants. Like others who have testified, we
6 support the designation by the Zoning Commission of additional receiving zones,
7 and specifically the inclusion of Square 537 in the southwest receiving zone.

8 In 1994, amendments to the comprehensive plan call for
9 properties designated as minimum high density commercial to be included in the
10 receiving zones. I would submit that our area is right as any for TDR acquisition.

11 We support the position recommended by the Office of Planning
12 and now before you for consideration. The designation of our property as an
13 additional receiving zone allows us to consider buying extra density should it be
14 available at a reasonable price. The zoning will help us, the increased likelihood of
15 us developing this site.

16 We see the proposed regulation as most advantageous for
17 potential TDR sellers, for ourselves, for the District, which will benefit considerably
18 from the additional tax base and creation of jobs.

19 Again, the owners of 537, Square 537, support approval of
20 proposal include this square -- to include this square in the southwest receiving
21 zone.

22 I thank you for your attention. If I can answer any question, I'll be
23 glad to do so.

24 CHAIRPERSON BENNETT: Thank you, Mr. Phillips.

25 Questions of Mr. Phillips?

26 All right, Wilkes, Artis, Hedrick & Lane? Are you going to be joined
27 by Mr. Glasgow and Mr. Epting at this time or are they going to be separate
28 presentations?

1 MR. SHER: We're going to make one presentation and I'll make it.
2 Madam Chair, members of the commission, for the record, my
3 name is Steven E. Sher. I'm the director of zoning services with the law firm of
4 Wilkes, Artis, Hedrick & Lane. I am joined by two partners in the firm, Chip Glasgow
5 and John Epting but I'm going to be the only one speaking this evening. Mr. Karkeet
6 just handed you a copy of my outline. It's not nearly as imposing as it looks because
7 it's got a couple of attachments.

8 On the first page in item 1, I've just sort of ticked down through the
9 items as Mr. Colby went through them on the hearing notice, and giving you our
10 overall position on each one of those items. Items 1 and 2 we don't have any
11 position on. They're housekeeping type things and it doesn't make any difference to
12 us.

13 Item 3, we support the change from a maximum of 40 percent to a
14 maximum of 50 percent for the off-site housing percentage. Items 4 and 9 regarding
15 DOES site, we support the designation of District owned properties as housing sites
16 and that is a District owned property.

17 Item 5, the arena site, we support removing the housing
18 requirement for the MCI Center site but, of course, it doesn't make any difference
19 because that site was developed without respect to zoning. It was a public building
20 and approval went through the National Capital Planning Commission as Mr.
21 Parsons well knows.

22 Item 6, the TDR bonus for affordable housing, we support the
23 bonus but we also support an alternative which would count any housing actually
24 built in downtown at twice the square footage and I'll come back and explain that a
25 little bit further later.

26 Item 7, the renumbering, it wouldn't make any difference if we
27 supported it. You've got to do it any how.

28 Item 8, the designation of new receiving zones, we support that

1 with a conforming amendment to what is now Section 1709.8 which Mr. Colby
2 mentioned before which a couple other people have mentioned. And I'll come back
3 to that a little bit later, too.

4 So, that's our overall position on the items as outlined in the
5 hearing notice.

6 As the commission is aware, this is, again, another one of those
7 comprehensive plan consistency type cases. And these are amendments designed
8 to address the Comprehensive Plan Amendments Act of 1994 and one of the
9 lengthier pieces of paper attached to the outline are those portions of D.C. Law 10-
10 193 which relate to the downtown element of the Comprehensive Plan.

11 This commission has recognized its obligation to implement the
12 comprehensive plan as required by the statute. And on pages 2 and 3 I've listed a
13 whole bunch of cases and haven't attached all those orders or the package would be
14 12 inches thick. Actually, I have them if you want them.

15 CHAIRPERSON BENNETT: That's all right, Mr. Sher.

16 MR. SHER: You don't want them. That's all right.

17 In which the commission has recognized its obligation to make the
18 zoning not inconsistent with the Comprehensive Plan. I would like to, however, note
19 at the very bottom of the page on -- when the commission when through the SHOP
20 district proceeding which is now 1989, getting ten years ago. My how time flies.

21 That the commission stated in its order the policies by which the
22 commission must be guided have been adopted. It's evident that the Executive
23 Branch and the Council considered them with care. The charge of the commission
24 is not to assess and revise those policies but to implement them. That language,
25 that theme, has gone through all of those other cases that I've cited.

26 With respect to the three major issues that we see in the notice
27 that was set out, the off-site housing requirement, I know that there is -- I don't know
28 if I want to call it a supplement, but there's a piece of paper on the front of the notice

1 which wasn't in the notice as it was published. But which says you want to take
2 testimony or you invite testimony on that matter which the commission should
3 address the council's policy. Well, I think you've sort of hit it right in the notice. All
4 you need to do is adopt which was in the notice and you've addressed what the
5 council had in its policy.

6 The council's policy is pretty clear. It had a number of
7 contingencies if you build an arena, if you don't build an arena. If you build housing
8 on -- whatever it is, we built an arena. It's out there. WE all know it's out there.

9 Give that the council's policy in 10 D.C.M.R. 940.2(g)(1)(B) says
10 substantially increase to 50 percent the percentage of residential zoning
11 requirements that can be satisfied by construction elsewhere. The other
12 contingencies didn't occur. That's the policy in the Comprehensive Plan. That was
13 the compromise brokered by Chairman Clark during the discussions on the 1994
14 Comp Plan amendment. That was the one that was adopted unanimously by the
15 council. That's the law.

16 In terms of incentives for affordable housing downtown, the Office
17 of Planning has recommended the TDR proposal and as I put it in our -- in my
18 outline, it was two, one an a half, and one square feet. Mr. Colby has expressed
19 some willingness to consider two square feet rather than one and a half for housing
20 south of Mass Avenue. We basically support the proposal.

21 You've heard from many of the property owners, some of whom
22 are our clients and whom we've had extensive discussions with about what helps to
23 close the gap. I'm not sure that anything that you've got here closes the gap and
24 that's just based on my own personal observations and experience in dealing with
25 this since 1989 or '88, or '87, whenever it first came around. But it helps. So,
26 anything that helps is better than something that doesn't help.

27 We also believe that the commission should adopt as an
28 alternative the language that's set forth in the Comprehensive Plan which would be if

1 you built any affordable housing in the DD, you would count that as at twice the
2 number of square feet that was built. And that is what is set forth in that section of
3 the plan. It's discussed in the Comprehensive -- Excuse me -- in the whole report
4 which is the second attachment to my outline. It gives some greater flexibility and
5 provides a greater likelihood that housing will be built.

6 As you heard from Reutershan and others, the more that you give
7 people an opportunity to try and figure out how to make this work, the more likely it
8 is that someone will be able to do it.

9 If you have the choice between either buying -- selling TDRs and
10 getting some cash in that way, or you have the choice to actually build the housing
11 and count it at two to one and in effect build half the housing that you otherwise
12 might have to build, you've got to figure out at what point in time you're going to go
13 forward and which one of those things works best for you as a potential developer.

14 TDRs are great if somebody's out there who wants to buy it. If at
15 the time that I want to go forward and build my project, if there's nobody in the
16 market to buy, the TDR is worth zero. It might be worth something later but at the
17 point at which I'm putting dollars out of pocket it's not worth anything to me.

18 On the other hand, if I know that I can reduce the housing
19 requirement by 50 percent if I build affordable housing, I can factor that into the pro
20 forma. I can take the uncertainty out of the equation and know whether I can do it or
21 not.

22 So, we would only suggest that you consider either of those
23 alternative, give a developer the opportunity to do one or the other, whichever works
24 best at the time given where one might be at the time.

25 With respect to the receiving zones, the Comprehensive Plan,
26 again, is pretty specific about medium high density commercial sites. Again, these
27 are not mixed use sites designated in the plan. They're all commercial sites. And
28 you heard from many different people the reasons that that ought to be done. It

1 helps to balance the demand outside the DD with the supply from the DD side to
2 provide additional economic incentives. It increases benefits to the District in terms
3 of jobs, tax base, and so forth.

4 As you have heard discussed before by Mr. Colby, we believe
5 there needs to be a conforming amendment to the regulations to specifically identify
6 the height and FAR that would be permitted in the new -- three new receiving zones.
7 And we suggest that in a present 1709.18, which I think becomes 1709.21, that you
8 just list after new downtown North Capitol, Capitol South, and Southwest as
9 receiving areas. I don't believe that that's outside the scope of what you're
10 considering this evening.

11 Your notice gives you some discretion to consider, as it says,
12 "Modifications or alternatives that are presented that are reasonably related to the
13 scope of the proposed amendments set forth herein." I don't see how that is not
14 reasonably related. You've got to specify what it is. Office of Planning's report
15 which is a necessary adjunct to what you're looking at here clearly specifies what it
16 thought those heights and densities ought to be and I believe that's within the scope
17 of what you're looking at.

18 I've stated my conclusions at the bottom of page 5 and I don't think
19 I need to state them again.

20 CHAIRPERSON BENNETT: The suggested reduction --
21 requirement, housing requirement reduction, by half, you would propose only for the
22 development of on-site affordable housing?

23 MR. SHER: Correct.

24 CHAIRPERSON BENNETT: Or on-site market housing as well?

25 MR. SHER: No. It's affordable housing.

26 CHAIRPERSON BENNETT: Affordable housing. So you have a
27 different way of being able to satisfy that?

28 MR. SHER: Yes, you have a housing requirement of X. You have

1 a choice of doing half an X if you make it affordable housing, or doing all X and
2 selling TDRs.

3 CHAIRPERSON BENNETT: Questions for Mr. Sher?

4 COMMISSIONER FRANKLIN: Always.

5 MR. SHER: One of these days maybe not.

6 COMMISSIONER FRANKLIN: Yes. To what degree has the low
7 income off-site provision produced off-site low income housing, to your knowledge?

8 MR. SHER: In the DD, the project that perhaps comes closest to
9 that is Mr. Reutershan's Square 456. And I don't believe it's actually produced any
10 house yet because that project hasn't gone forward yet. That's the one that's
11 furthest along that comes closest.

12 COMMISSIONER FRANKLIN: Well, you say it's furthest along. In
13 what sense is the off-site low income housing progress?

14 MR. SHER: In front of you?

15 COMMISSIONER FRANKLIN: Yes. No, in progress.

16 MR. SHER: Oh, in progress. I know, and I'm not sure whether I'm
17 at liberty to talk about the specifics of it, but I know that there have been discussions
18 between the owner/developer of that property and affordable housing providers as to
19 sites, dollars, and so forth in terms of what could be done.

20 COMMISSIONER FRANKLIN: And that's the first case that you
21 know about?

22 MR. SHER: I don't know of any -- Yes. In a word.

23 MR. GLASGOW: Mr. Franklin, if you want, there are two --

24 CHAIRPERSON BENNETT: You have to identify yourself for the
25 record.

26 MR. GLASGOW: Oh, I'm sorry. My name is Norman M. Glasgow,
27 Jr. of the law firm of Wilkes, Artis, Hedrick & Lane.

28 Affordable housing has been produced through a companion

1 section dealing with alley closings. And there have been several projects that have
2 received funds for that. They have a provision in there, too, where in effect if you
3 close an alley, there is a ratio of what it is that you can pay towards affordable
4 housing when you close an alley in the downtown area and you develop an office
5 building.

6 COMMISSIONER FRANKLIN: It's quid pro quo for getting the
7 alley space, presumably.

8 MR. GLASGOW: It's, in a sense.

9 COMMISSIONER FRANKLIN: That I understand.

10 MR. GLASGOW: Right. I don't think there have been any DD
11 affordable housing units produced to date. And other than PADC developed sites
12 and a couple of PDDs that I've worked on that were pre-DD, we don't have quite the
13 -- There has been no housing.

14 MR. SHER: No office buildings, either.

15 MR. GLASGOW: Right. In the DD area. There were none --

16 MR. SHER: None in the housing area.

17 MR. GLASGOW: -- in the DD housing overlay area.

18 COMMISSIONER FRANKLIN: Well, now that Mr. Glasgow's here,
19 let me take -- prevail upon his legal learning. Suppose the city said we need more
20 trees in the city. We've got a terrible budget crisis. And to develop any office
21 developments downtown, you've got to kick 500,000 bucks to a tree fund. Would
22 that be lawful?

23 MR. GLASGOW: I think it's getting to those line of cases that deal
24 with the linkage. I think the first series of cases on that, there was one in Boston
25 and there was one out on the West Coast. I think it was in Seattle.

26 COMMISSIONER FRANKLIN: Oregon.

27 MR. GLASGOW: Yes, in Oregon. The determination was made
28 in those courts that there could be a linkage program with respect to housing and

1 the developments of office buildings downtown --

2 COMMISSIONER FRANKLIN: It was reasonably related to the
3 impact of what was being developed?

4 MR. GLASGOW: Yes. That there would be housing opportunities
5 for workers that would be in those buildings and others that were needed in the city,
6 basically.

7 COMMISSIONER FRANKLIN: The case I have in mind is the one
8 where you have to set aside some open space if you wanted to enlarge your
9 hardware store. Do you recall that one?

10 MR. SHER: That's Oregon.

11 MR. GLASGOW: That was the Oregon.

12 COMMISSIONER FRANKLIN: That's the Oregon case, right.

13 MR. GLASGOW: But I'm thinking of the ones that had to do with
14 linkage, housing linkage, programs. There was one out on the West Coast and
15 there's one -- Yes, Boston was one. I think San Francisco.

16 CHAIRPERSON BENNETT: I thought San Francisco.

17 MR. GLASGOW: Yes.

18 COMMISSIONER FRANKLIN: And then in what court was there a
19 determination?

20 MR. GLASGOW: It was not -- they were not Supreme Court
21 cases.

22 COMMISSIONER FRANKLIN: I didn't think so.

23 MR. GLASGOW: They were 9th Circuit court case out on the
24 West Coast.

25 COMMISSIONER FRANKLIN: Well, I did -- as you know, I have
26 some serious problems about this linkage issue here and I don't see the connection
27 between developing office building downtown and off-site low income, or indeed any
28 other kind of housing, particularly when the public purpose, it seems to me, that's

1 central to what we're all about in downtown is to get the housing downtown.

2 MR. GLASGOW: What we can do is just submit the cases.

3 COMMISSIONER FRANKLIN: That would be helpful to me. That
4 would be fine.

5 MR. GLASGOW: And just leave it at that, without arguing what
6 the case law is one way or the other.

7 COMMISSIONER FRANKLIN: That's fine. I don't want you to do
8 any billable time on educating me.

9 MR. GLASGOW: I hope this is billable time. Somebody better tell
10 me if it's not.

11 COMMISSIONER FRANKLIN: Any additional billable time.

12 Now, the other question to either of you is that suppose the city
13 council in its wisdom were to say, we think this business of 5,400 units of housing
14 downtown is a lot of hog wash and adopted some regulation that cut that back by 90
15 percent as part of a comprehensive plan amendment. Maybe even specifying site
16 by site where it is erasing that provision. Would this commission be obligated to
17 adopt regulations consonant with that action by the council?

18 MR. GLASGOW: I think subject to what the specific wording is,
19 the answer to that --

20 COMMISSIONER FRANKLIN: Site specific, let's say.

21 MR. GLASGOW: Well, I don't -- Well, you were talking about
22 almost text and map things because they have both in the Comprehensive Plan.

23 COMMISSIONER FRANKLIN: They sure do.

24 MR. GLASGOW: Yes. And I think subject to what the specific
25 language would be, the answer to that could be yes. You would have to do that. I --
26 to digress for one second, I happen to be on an airport authority board and every
27 once in a while you have an authority in charge of certain aspects tell you what it is
28 that you're going to do. And that goes into effect.

1 COMMISSIONER FRANKLIN: So that now do you have any
2 opinion as to whether having housing erased from the arena site, this commission
3 can simply ignore the reduction in the goal without replacing it with a concomitant
4 requirement?

5 MR. SHER: Well, one thing that the council did do, and I -- in the
6 copy that I gave you there's a bunch of dots because I excised that piece out of it.
7 But if you look, go back, to the text at the back, the council said if there's an arena,
8 you do this. If there's not an arena but you build housing on that site, you do this.
9 And if you don't build housing on the site and there's no arena, you do that.

10 So, the council had three different contingencies in front of it in the 1993-'94
11 amendment cycle. And it understood what -- I like to believe it understood what it
12 was doing at that point.

13 COMMISSIONER FRANKLIN: I'm sure it did.

14 MR. SHER: And so, it understood that the percentage went to
15 here if you built the arena. It went to there if something else happened. And it went
16 to there if something else happened.

17 The change from 40 to 50 was the minimum --

18 COMMISSIONER FRANKLIN: It was amending the zoning
19 regulations, was it not?

20 MR. SHER: I can think of a couple of occasions where I believe
21 the council has come awful darn close to amending the zoning regulations. I don't
22 know that that's one of them. Because, again, the arena was not a project subject to
23 zoning so whatever happened there happened.

24 And in this case, it said here are some contingencies. And you
25 can go out to other jurisdictions and the closest one that I'm familiar with is
26 Montgomery County because I happen to live out there. I know a little bit about it.
27 Not as much as I know about the District.

28 Their master plan process fixes things in their plan to the point

1 where the zoning just follows. Now, what's a little bit different about that, and it's
2 only different in -- it's different in some respects, is that you had the county council
3 adopting the plan and then the county council adopts the zoning, too.

4 COMMISSIONER FRANKLIN: That's quite a bit different.

5 MR. SHER: Well, it doesn't really because if it had been
6 somebody else doing it, you still have the proposition that the zoning follows the
7 plan. We got accustomed in this city for a long time, and I'll say when I first started
8 here a long time ago, we didn't have a comprehensive plan to follow. And the
9 Court's decision in the Georgetown Waterfront case basically said it's only on a
10 comprehensive basis. And that was an interpretation that many courts around the
11 country adopted as to what the meaning of "in accordance with a comprehensive
12 plan" meant.

13 The Home Rule Act changed that language to read, "not
14 inconsistent with a comprehensive plan." And we've been crawling up to speed on
15 what a comprehensive plan ought to be. 1978 goals and policies. 1984 first
16 adoption of the main plan. 1985 land use element. Amendments in '89, '94.

17 The council is assuming, asserting, its prerogatives. The Mayor
18 proposes. The council disposes. The Zoning Commission implements. To the
19 extent that the council makes that plan more explicit, the natural consequence of
20 that is your prerogatives are going to be more constrained. If the council had been
21 much more general in a plan which I believe it could have been if it wanted to, then
22 your opportunities and obligations would have been different.

23 Where does the council cross the line and actually zone? That's --
24 Ask him.

25 I know one of the --

26 CHAIRPERSON BENNETT: At least two.

27 COMMISSIONER PARSONS: Spot zoning.

28 COMMISSIONER FRANKLIN: You know what they are but that's

1 not why we're here tonight.

2 MR. SHER: Well, I know one that comes awfully close in my
3 mind. And that was the home builders where the council said the commission shall
4 give expedited consideration to zoning that property C-4. Designating a piece of
5 property high density commercial I don't think is zoning.

6 COMMISSIONER PARSONS: Oh, come on.

7 MR. SHER: Well, it tells you what the land use category ought to
8 be but it doesn't zone it. And you can decide what high density commercial is. We
9 can talk about C-5, C-4, C-3-C, C-3-B.

10 COMMISSIONER PARSONS: We'd be talking about C-4 and you
11 know it.

12 MR. SHER: No, not every case has been C-4.

13 COMMISSIONER PARSONS: I'm sorry I jumped in. Go ahead.

14 COMMISSIONER FRANKLIN: No, no. Thank you. We've had
15 this colloquy before.

16 MR. SHER: Yes, we have.

17 COMMISSIONER FRANKLIN: And I just always like to get a little
18 more education.

19 CHAIRPERSON BENNETT: Further questions of this panel?

20 Thank you very much.

21 Mr. Lynch.

22 MR. LYNCH: Can I invite Charlie Docter to come up and join me?

23 CHAIRPERSON BENNETT: No.

24 MR. LYNCH: I think the one resident of the -- I invite Charlie
25 Docter. I believe the one resident of the effected zone that's here to testify tonight
26 and I'm sure you'll give him great weight because of that.

27 I'm honored to be here on behalf of two of the organizations which
28 actually brought this case, the DCC back in 1990, the Downtown Cluster of

1 Congregations, and the Committee of 100.

2 I guess the best way to distinguish my testimony from my
3 predecessors would be say, one, I'm not on billable hours. And, two, I don't think
4 the Zoning Commission is nearly as handcuffed as the lawyers would like you to
5 believe.

6 I think the OP's version, while accurately reflecting the council's
7 intent with regard to some flexibility via TDRs and the 50 percent buy out option, I
8 feel OP's version, the one that you have in front of you, fails to implement the
9 council's fairly specific language for the zone to achieve the expanded retail and
10 residential for the zone at the same time as allowing some flexibility and TDRs, i.e,
11 what's the council's language.

12 Facilitate District and private sector efforts to develop and market
13 the downtown retail core as an attractive shopping destination for District residents
14 as well as tourists and suburban residents, and improve the development and
15 promotion of downtown as a retail alternative. Achieve a continuous and substantial
16 residential and retail usage along Seventh Street from Penn Avenue to Mass
17 Avenue. Encourage a major concentration of retail and hotel development and/or
18 residential development near the Gallery Place Metro station. Squares along
19 Seventh Street, Northwest from Penn Ave north to Mass Avenue should primarily be
20 used for residential, retail, and arts development with an emphasis on a mix of uses
21 for each square and with residential use as the priority.

22 Consider some of these languages that the council has repeatedly
23 used and the Mayor, again, will be repeating this weekend as I'm sure you'll be
24 attending his downtown housing summit this Saturday. As you look at these
25 language, I would recommend to you look at what you could do to facilitate the
26 residential and retail at the same time as expanding some of the flexibility and
27 TDRs.

28 Look at Squares 404, 405, and 428 between the new arena and

1 the existing convention center for increasing of retail requirement. This is the heart,
2 the arena is the heart, of the new entertainment retail zone. We want to expand
3 that. We've just awarded the development rights on the adjacent Far East Trade
4 Center site to Herb Miller's group. The city is looking to really harness the energy
5 that's happened through the arena. That's reflected in the Mayor's downtown task
6 force report and in the arena task force report. So, I would look at those squares for
7 expanding your retail opportunities and increasing the retail requirements.

8 As for the housing, look at four to five squares where you can
9 increase the residential requirement. And this will allow you both additional buy out
10 opportunities for affordable housing off-site as well as strengthening the retail core
11 that already -- and residential core, that exists. Look at Squares 251, 403, 404, 405,
12 and 491 for residential. And I also believe the residential requirement of 491 that's
13 proposed should be higher.

14 Instead of the DDC-4, I would look at a 3.5 FAR residential
15 requirement there with no buy out option. That is to help make up for the loss of the
16 residential at the sports arena. And I think is within reason given the goal for
17 continuous residential from Penn Avenue north up to Mass Avenue.

18 Some additional fine tuning. We've got -- how often do you get to
19 fine tune, go back with 20/20 hindsight? Much of what we've worked to achieve
20 downtown is now in the process of happening. This commission has the opportunity
21 to harness that energy in terms of all the expanded retail that you see, in terms of
22 the entertainment that you see, in terms of the residential that is happening. We
23 have got the opportunity to fine tune the DDD with adding some key squares, with
24 some additional residential retail requirements, by allowing some additional TDR
25 zones. And this is our opportunity to do so.

26 Some additional comments, as you look to expand the number of
27 TDR zones, I would also look to suggest you expand the number of historic sites
28 that could be sending TDRs. From the Downtown Cluster of Congregations, we

1 would argue that historic congregations throughout the city should be eligible to sent
2 TDRs.

3 If you're going to expand the number of zones as dramatically as
4 OP is proposing, then we should expand the number of generator sites appropriately
5 as well. And the argument for using historic congregations outside of the DDD
6 would be the same for the reason why you're using the historic congregations within
7 the DDD. So, I would urge you to look at expanding the sending sites for TDRs.

8 Again, look at your opportunities as allowed in the language of the
9 council. You've got -- you're not handcuffed. You can make up some of the
10 residential. You can expand it. You can complete and harness the energy that
11 we've achieved with the arena, with the Landsburg, with the Shakespeare Theater,
12 with the other, and I urge you to do so.

13 One last point is I urge somebody to take the bull by the horns and
14 it should be the Zoning Commission, and let's call all these subareas the East Side.
15 The town plan does call it downtown east. You can continue to have the subareas
16 but somebody needs to name the area.

17 I can't help but think of the Seinfeld episode of yah, dah, yah, dah,
18 yah. People talk about Gallery Place, Pennsylvania corridor, China Town, Arts
19 district, and people get a little confused. We've got to market the area successfully
20 and part of the marketing is a moniker everybody can live with and excited about,
21 and the East Side, I would suggest and the council even includes that word. I would
22 suggest would be one for referring to all those subareas.

23 That would be our testimony and you have detailed testimony from
24 the committee and the Cluster on record.

25 CHAIRPERSON BENNETT: Thank you, Mr. Lynch.

26 Mr. Docter, did you have comments?

27 MR. DOCTER: Yes. If I might be able to, I'd appreciate it very
28 much, Madam Chairman.

1 I think it should be put into perspective as to what happened in the
2 council. Shortly before Chairman Clarke became ill, he, being very much concerned
3 about affordable housing, being a very true advocate of affordable housing in the
4 city, proposed actually increasing the buy out to 65 or 70 percent. And this created
5 a great deal of stir. And, frankly, there was a lot of concern about it and this
6 compromise was something -- something had to be done because it was a very
7 emotional issue given the chairman. And, what was done was to raise it ten
8 percent.

9 And we are -- we certainly feel that this doesn't help the downtown
10 one bit getting residential which we need to have a living downtown in line with the
11 proposals that are from the Comp Plan that Mr. Lynch just read. And it also doesn't
12 recognize -- the whole buy out concept doesn't recognize the effort, the federal
13 government through the Pennsylvania Avenue Development Corporation of which I
14 was a member of the board appointed by the President just for ten months before
15 the Congress decided it should be no more.

16 But, I think there's been a vast public expenditure to get housing
17 downtown. And up to now, although Mr. Reutershan's project is moving, nothing
18 has happened as far as the District of Columbia's end of housing in the downtown
19 area. And for the first time tonight from the Office of Planning we have what I would
20 regard as a good idea. Not a buy out but a TDR. Something to give economic help.
21 For, I recognize it's a problem putting up housing in the downtown area. But for the
22 public, it's a necessity.

23 And likewise, we have TIF legislation moving though the council
24 right at this point that would again give some subsidy for developing, which is
25 basically what the PADC did when they gave subsidies in order to get the housing.

26 So, you have some good ideas finally emerging that were certainly
27 not before the council at the time that this particular 50 percent proposal was made.
28 And I think that quite frankly with those new concepts coming, I think it would be

1 perfectly proper for this commission to go and tell the council and the Mayor that you
2 would like to have, whether they really believe at this point that an addition in the
3 buy out is necessary. Of course, we would argue the buy out should be eliminated
4 completely.

5 But it seems to me that this is certainly an item of study. We've
6 moved ahead in the city. I think there is somewhat a better understanding of the
7 need to have downtown housing. I wouldn't say it's shared by all. But the lip service
8 up to this point may be getting a little bit beyond lip service and I would like to
9 welcome the opportunity that this commission in the exercise of its proper duties ask
10 the council, well, if you've got these new ideas of how to subsidize the housing
11 downtown, maybe we don't need to do this buy out. And I would recommend that
12 you do that.

13 And I think in this connection it should also be known that one of
14 the things that came out of the arena construction, which our neighborhood
15 supported because we felt it was necessary for the city, even though it meant that
16 we'd lose about 400 units of housing, potential units, is that there was a
17 memorandum of understanding between all the parties that was going to result in
18 the Office of Planning and other coping with the issues created by the construction
19 of the arena, the lose of housing and the other historical preservation issues, et
20 cetera, et cetera.

21 And nothing has happened in regards to that memorandum of
22 understanding. No study commission, nothing has been done. And I think that's an
23 additional reason for saying to the council and the Mayor, hey, let's think this thing
24 through a little bit better. We were supposed to have a study commission. We don't
25 even have the benefit of having that commission formed or doing anything in this
26 field at this point. And it seems to me that that's something that would certainly give
27 you grounds for saying that you want a little more study here.

28 I think that's basically all I have to contribute on this matter.

1 CHAIRPERSON BENNETT: Thank you, Mr. Docter. I appreciate
2 that.

3 Colleagues, questions?

4 COMMISSIONER FRANKLIN: I just happen to agree with Mr.
5 Docter is saying and a good deal of what Mr. Lynch is saying. It seems to me that if
6 we're seeing a welling up of interest downtown, we ought to take advantage of it in a
7 way that doesn't simply buy out.

8 I don't see a rational basis for imposing the buy out, so-called,
9 which is a very interesting term in itself by the way, obligations on people who are
10 developing downtown compared to developing anywhere else in the city. There is a
11 pressing need for affordable housing in the District of Columbia. That need has to
12 be met generally through some kind of a general taxpayer supported obligation.
13 And to impose it just on people who are developing downtown seems to me to be
14 irrational.

15 What is rational is trying to develop some system of incentives so
16 that housing gets developed downtown because that's the public policy that we're
17 trying to promote. So, of course, I'm predisposed to favor the TDR concept and I'm
18 very skeptical about the buy out concept.

19 I'm not sure yet about retail in terms of how to approach that. But,
20 this has been very useful testimony and if there's some further suggestions you all
21 have in terms of specific language that might be adopted, I would want to keep the
22 record open.

23 CHAIRPERSON BENNETT: Thank you.

24 MR. LYNCH: Thank you.

25 MR. DOCTER: Thank you.

26 CHAIRPERSON BENNETT: All right. I have come to the end of
27 my witness list. And so I assume that everyone else in the audience has just come
28 to be supportive and did not necessarily want to come forward. Am I correct in that

1 assumption?

2 Ladies and gentlemen, the other members of the commission and
3 I wish to thank you for your testimony and your assistance in this hearing. The
4 record in this case will be kept open until March 31st, 1998 for submissions of any
5 additional information. Any special information or reports specifically requested by
6 the commission must be filed no later than the close of business on March 31st,
7 1998 in suite 210 of this building, 441 Fourth Street, Northwest.

8 The only thing that I have recorded, and I'm directing my
9 comments now to staff, that we wanted to make sure that into the record was
10 information from Mr. Colby which brings us up to speed on where we are now with
11 respect to housing in the downtown area and what the implementation of these
12 proposed provisions would do to us or for us in any way that could be quantifiable.
13 Is that correct?

14 MR. COLBY: And the zoning of the Capitol South area, how far
15 the C-3-C -- how much of that is C-3-C.

16 COMMISSIONER FRANKLIN: And I would add, if any information
17 is available on the effect of the so-called buy out provisions on low income housing.

18 MR. COLBY: The -- on downtown --

19 COMMISSIONER FRANKLIN: Yes, if any affordable housing has
20 thus far resulted from any of the provisions presently -- building regulations as
21 distinguished from alley closings.

22 CHAIRPERSON BENNETT: The commission will make a
23 decision in this case at one of its regular monthly meetings following the closing of
24 the record. These meetings are held at 1:30 p.m. on the second Monday of each
25 month with some exceptions and are open to the public. If any individual is
26 interested in following this case further, I suggest you contact staff to determine
27 whether this case is on the agenda of a particular meeting.

28 You should also be aware that if the commission proposed

1 affirmative action, the proposed action must be referred to the National Capitol
2 Planning Commission for federal impact review. The Zoning Commission will take
3 final action at a public meeting following receipt of the ANCPC comments after
4 which a written order will be published.

5 And I'll declare this hearing closed.

6 (Whereupon, at 9:18 p.m., the commission was adjourned.)