

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION  
PUBLIC HEARING

In the Matter of:

CONTROL BOARD REGULATORY  
REFORM

Case No. 98-19

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

Thursday,  
November 5, 1998

The above-entitled matter came on for hearing, pursuant  
to notice, at 8:30 p.m.

BEFORE:

JERRILY R. KRESS	Chairperson
ANTHONY HOOD	Commissioner
JOHN PARSONS	Commissioner

STAFF PRESENT:

SHERI PRUITT-WILLIAMS	Interim Director, Office of Zoning
STEFANIE D. BROWN	Office of Zoning
PATRICIA N. YOUNG	Office of Corporation Counsel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 [www.nealrgross.com](http://www.nealrgross.com)

	<u>PAGE</u>
Opening statement, Chairperson Kress	3
Preliminary matters	5
Report of other Agencies	6
Reports of the Advisory Neighborhood Commissions	6
Persons in support	6
Mr. Lindsley Williams	7
D.C. Building Industry Association, Greg Fazakerley and Christopher Collins	37
Arnold and Porter, Peter Mazsak and Nate Gross	101
Persons in opposition	
Harriet Hubbard	74

CHAIRPERSON KRESS: Good evening, ladies and gentlemen. I'm Jerrily Kress, Chairperson of the Zoning Commission for the District of Columbia. Joining me this evening are Commissioners Hood and Parsons.

I declare this public hearing open.

The case that is the subject of this hearing is Case No. 98-19. The Case 98-19 is an initiative of the Zoning Commission resulting from the District of Columbia financial responsibility and management assistance authority resolutions, orders and recommendations on regulatory reform.

The proposed amendments relate to Chapters 30 and 31 of 11 DCMR and Z.C. Order No. 62. The Zoning Commission will consider the advertised proposal, any modifications thereto, or alternative proposals that are presented and reasonably related to the scope of the proposed amendment.

The specific proposal to amend the zoning regulations is contained in the notice of public hearing for this case. Copies of that notice are available for the public. Notice of today's hearing was published in the D.C. Register on September 18th, 1998, and the Washington Times on September 25th, 1998. This hearing will be conducted in accordance with provisions of 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 www.nealrgross.com

1 The order of procedure will be as follows:

- 2 1. Preliminary matters;
- 3 2. Comments from the D.C. Zoning Commission;
- 4 3. Report of other Agencies;
- 5 4. Reports of the Advisory Neighborhood
- 6 Commissions;
- 7 5. Persons in support, and,
- 8 6. Persons in opposition.

9 The Commission will adhere to this schedule as

10 strictly as possible. Those presenting testimony should be

11 brief and non-repetitive. If you have a prepared statement,

12 you should give copies to staff and orally summarize the

13 highlights. Please give us your statement before summarizing.

14 Each individual appearing before the Commission

15 must complete two identification slips and submit them to the

16 reporter at the time you make your statement. If these

17 guidelines are followed, an adequate record can be developed

18 in a reasonable length of time.

19 Thank you.

20 With that, I will go to preliminary matters.

21 MS. PRUITT-WILLIAMS: None.

22 CHAIRPERSON KRESS: There are none?

23 MS. PRUITT-WILLIAMS: Not from staff.

24 CHAIRPERSON KRESS: Not from staff. Then there

25 will be from the Zoning Commission.

26 I would like to recognize Mr. Williams at this

1 time.

2 MR. WILLIAMS: Madam Chairperson, Lindsley  
3 Williams for the record.

4 I believe the notice was published in the D.C.  
5 Register on September 25th. That's the volume that I took my  
6 copy from. Is the discrepancy --

7 CHAIRPERSON KRESS: To correct the discrepancy.  
8 Thank you. And we will take note of that.

9 I will start by saying that we have, and unless  
10 I hear any objections, decided to waive the Office of Planning  
11 report due to the unusual nature of how this came about. The  
12 Office of Planning as well as representatives, myself from the  
13 Zoning Commission, and Sheila from the BZA, participated in  
14 the task force that helped create this.

15 That's not to say we are in total unanimity on  
16 issues but it was a consensus of the task force's that worked  
17 to prepare this and as was the Office of Planning. So, we are  
18 waiving their report for this evening.

19 With that, I will move on to the report of other  
20 agencies. I believe there are none.

21 MS. PRUITT-WILLIAMS: No, ma'am.

22 CHAIRPERSON KRESS: Next is the reports of the  
23 advisory neighborhood commissions. Is there anyone here  
24 representing the advisory neighborhood commissions who would  
25 like to testify?

26 Next we'll move on to persons in support. And

1 if I could, I'd like to recognize Mr. Williams first in that I  
2 think some things need to be formally put in the record that  
3 Mr. Williams has spoken to me. He is prepared to do this, is  
4 that correct?

5 MR. WILLIAMS: Somewhat.

6 CHAIRPERSON KRESS: Somewhat. All right. And  
7 somewhat in support.

8 MR. WILLIAMS: Generally, yes.

9 CHAIRPERSON KRESS: This is a little out of  
10 order of the witness list, but there is a reason, because I  
11 have spoken with Mr. Williams and he does want to put some  
12 things in the record that I think should be in the record.

13 MR. WILLIAMS: What I've done, Madam  
14 Chairperson, if I misunderstood the nature of our call, this  
15 was a legislative case which allows me to speak with you and  
16 other members. I just want that on the record.

17 What I've put in the first page of my letter to  
18 you, Madam Chair, is an identification of a series of  
19 documents that I believe should be in the record. Many of  
20 these are documents that I have previously supplied to the  
21 Office of Zoning. And it was my hope that by identifying  
22 these documents by name, or date, or otherwise, that they  
23 could be located within the confines of this office and put  
24 into the record in this case.

25 If there's any difficulty, I will, of course,  
26 work with staff to resolve it. But I did not come down

1           tonight with a stack of these things to particularly thicken  
2           up the record with my own personal copies.

3                         CHAIRPERSON KRESS: Can we take just a second  
4           for the others, my colleagues, to recognize. Basically what  
5           Mr. Williams is putting in the record is all of the history of  
6           what transpired to bring us to this point, which I think is a  
7           good idea so that we can have the option of considering all of  
8           the past history as we consider this this evening.

9                         Is that comfortable with you?

10                        COMMISSIONER HOOD: That's fine.

11                        CHAIRPERSON KRESS: Is that comfortable with  
12           you, Commissioner Parsons?

13                        COMMISSIONER PARSONS: That's fine.

14                        CHAIRPERSON KRESS: Thank you.

15                        Mr. Williams, would you continue?

16                        MR. WILLIAMS: Thank you.

17                        Madam Chairperson, what I'd like to do is to  
18           spend a few moments without paying particular reference to my  
19           document. And then I'll turn over and begin to go through it  
20           in some detail.

21                        This case, I believe, has its origins quite a  
22           number of years ago, even before the Business Regulatory  
23           Reform Commission got started. Because there have been any  
24           number of studies of difficulties the District of Columbia has  
25           in the regulatory environment, and during the time when the  
26           BRRRC was active, there were issues within this office and

1 issues in the development community that were leading up to a  
2 situation that's producing some pretty grim statistics. We've  
3 been over them before.

4 Statistics that would show that it took often  
5 more than a year for an action to get from application, to  
6 hearing, to a decision, to the write up of the orders so that  
7 you could get out and do something with it. There were  
8 situations where the backlog was measured not in months but in  
9 years. And some cases, it went up as much as six years. And  
10 this was a pretty dreadful situation. I think we all  
11 recognized that.

12 A number of things happened to make that  
13 improve. There were staffing changes. There were staffing  
14 additions that came into this office. And I think we've seen  
15 in recent periods of time a considerable reduction in those  
16 kinds of delays and problems.

17 In saying that, I want to say that that's good  
18 and at the same time I want to say that we did not have a  
19 chance to focus as much on the regulations them selves to the  
20 extent that we could identify ways in which the regulations  
21 could be amended in some ways to further streamline, speed up,  
22 rationalize, the process.

23 That's what this case is about, because of a  
24 number of studies that were commissioned, some of which I had  
25 the pleasure to be associated with. And, of course, I have  
26 some background on the commission and am somewhat familiar

1 with these procedures.

2 And so, the effort has been, now, to try and  
3 look at things that we can do within the rules of practice and  
4 procedure before the Zoning Commission and the BZA to identify  
5 things which could be compressed, or eliminated, without  
6 sacrificing the basic purpose for which those are set out.  
7 Which is to allow people to ask for things and at the same to  
8 allow others that are concerned about what that first person,  
9 the applicant, is asking for, to say, hey, wait a minute. I'm  
10 troubled by this, that, or the other, and then to present to  
11 the board, or to the Zoning Commission, some orderly means for  
12 hearing evidence and getting a decision out.

13 And that's what I think this case is about. And  
14 I think that what you have from -- in the public record right  
15 now, in the proposal that I'm going to say is the Control  
16 Board's proposal, is a number of ways in which the process  
17 itself could be amended.

18 I'd also like to take time to give credit to the  
19 work of Arnold & Porter who are the Control Board's immediate  
20 consultants in this effort, who are presented with a long list  
21 of demands, orders, recommendations, and so on. It was a  
22 rather frightening list in a certain sense, and then they were  
23 given next to no time in which to draft up the proposal.

24 And you all had to suffer through a summer of, I  
25 will say, indignity, having to thrash through this. And  
26 basically kind of hustle through a process that in all honesty

1 I would have preferred to have seen have a little bit more  
2 time. But sometimes when things are done urgently, get the  
3 dang job done, and I think we're on the verge of completing  
4 it. And so, I fell generally pretty good about that.

5 Now, having tried to say that, tried to give  
6 some credit where I think credit is certainly do, both at your  
7 desk and at the desk of the BZA, at Arnold & Porter, and with  
8 others that are here in the room, I've gone on to identify in  
9 my letter a number of things that I think are opportunities  
10 for further improvement in the spirit in which all of this was  
11 done.

12 And what I'd like to do is to spend a few  
13 moments talking about the flexibility rule for the zoning  
14 administrator, then talk about a number of issues, about a  
15 half a dozen, that relate to the rules of practice and  
16 procedure before the Zoning Commission, almost all of which  
17 transfer over to the BZA rules as well. And I will not repeat  
18 them because they basically, what, it's the one is good for  
19 the other. And then I want to address a specific issue within  
20 the BZA which is unique to that particular body, with your  
21 permission.

22 The flexibility rule for the zoning  
23 administrator in terms of the original Control Board  
24 recommendation talks about having two things, a percentage  
25 test and a six inch test. Having been introduced in that  
26 fashion, the language that emerged for some reason didn't seem

1 to keep track of the six inch test and so I've drafted up some  
2 materials for you which appear in the middle of page 2 of my  
3 letter, which would identify a way in which you could have  
4 both certain percent or six inches, whichever is the greater.

5 So that you could have, for example, when you're  
6 dealing with a wall check on a construction project, you would  
7 not have to look and see, okay, you have two percent of a six  
8 foot side yard which is next to nothing, or an eight foot side  
9 yard. But rather, there would be six inches of flexibility.  
10 That's the kind of thing that I've tried to work into this  
11 language.

12 And also, I tried to work into it what seemed to  
13 be an omission of consideration on the linear standard  
14 governing the width of lots. And so, I've proposed, just for  
15 the sake of argument, that that particular flexibility, since  
16 those measurements tend to be somewhat larger than the other  
17 linear measurements that we're talking about. Width of lot  
18 tends to be, where it's specified, as low as 18 feet but it  
19 goes up from there depending upon the zone district in  
20 question, if there's any specification at all.

21 And so, I've identified that and you can see  
22 that in the middle of the text. I tried to make, also, a  
23 distinction that on the percentage test that what we're  
24 talking about is percentage of lot occupancy and not  
25 percentage points of lot occupancy. I'm sure you understand  
26 the distinction there and I just want to make sure that as it

1 gets over to the zoning administrator that there's not some  
2 misinterpretation, not on their part but on the part of  
3 somebody that would be reading it and taking it impermissibly  
4 past the point that it was intended to.

5 And I further suggested that the language be  
6 modified slightly to just allow the break out of the first  
7 three parts into A, B, and C. So, I made the second sentence,  
8 or the proviso, another subparagraph. But the language itself  
9 tracks the original, I believe, rather completely.

10 For the record, Madam Chairperson, let me also  
11 state that I have spoken with Mr. Armando Lorenzo about this  
12 hearing on Tuesday evening. It was my hope that he could not  
13 only review what I was suggesting but also share his wisdom  
14 and experience with the commission on the provision that  
15 somewhat similar to this that you adopted earlier this year in  
16 residential zone districts. I called his office yesterday and  
17 did not get a response. I'm calling again today. I was  
18 informed that he was ill. I don't know whether he was  
19 yesterday or not. And it's my --

20 CHAIRPERSON KRESS: I was informed the same  
21 thing.

22 MR. WILLIAMS: And it would be my suggestion,  
23 whatever else the commission may do about leaving the record  
24 open or closing it this evening because of the urgency to  
25 complete the case, that you consider leaving the record open  
26 for any statement that he can provide the record about either

1 his experiences to date, his views on the advertised text, or  
2 views on my comments, a copy of which he has.

3 I could pause now and discuss this or continue,  
4 whichever you prefer, Madam Chair?

5 CHAIRPERSON KRESS: No, please continue, unless  
6 my colleagues --

7 MR. WILLIAMS: Concerning the revised rules of  
8 practice and procedure, I suggest that basically this is being  
9 done in the name of streamlining the regulations which will  
10 allow them to accomplish needed function to the greatest  
11 efficiency and timeliness, leveraging available technology,  
12 and insuring the procedures are in keeping with the practices  
13 of surrounding and competing jurisdictions.

14 I also want to suggest that the rules be  
15 simplified to provide that similar processes be governed by  
16 similar rules, and go on in a table that appears in page 3 of  
17 my letter, to identify, oh, about eight different sets of  
18 provisions that appear in the zoning regulations relating to  
19 rules of practice and procedure before zoning commission for  
20 which there are usually, or maybe there should be in two  
21 instances, similar provisions with respect to the BZA.  
22 General provisions read virtually identically. The  
23 computation of time provisions read virtually identically.  
24 The appearance and representation provisions are somewhat --  
25 are virtually the same as is service of papers, meetings and  
26 hearings, and evidence.

1 I call to your attention that there is no  
2 section in the BZA dealing with minutes and transcripts, nor  
3 is there a specific section on ex parte communications, which  
4 raises an interesting question as to why there wouldn't be  
5 such a thing. Although I think I haven't got any direct  
6 evidence that says the BZA has been suffering under a massive  
7 amount of ex parte communications, it just -- it isn't found  
8 as a whole section in the regs.

9 And, the larger point of this is, if those  
10 sections were combined into a single section which governs, in  
11 effect, the business of both the BZA and the zoning  
12 commission, not only would you have a shorter set of  
13 regulations in terms of total number of pages, you would be  
14 forcing upon the two that they operate in a similar manner  
15 instead of having little opportunities for slip ups because  
16 one place does it one way. What the issue, Chris, is it  
17 telegrams or mailgrams, or something -- where the language  
18 says you can serve papers one way in one world and you can  
19 serve papers another way in another world.

20 Well, that makes no sense to me. And yet, if  
21 the paper should be served in the wrong world by the wrong  
22 medium, you've got a technical problem that really should --  
23 that was created right in this room, not by the action of the  
24 person who actually did it, in my view.

25 And so, the general recommendation I'm giving  
26 you is that these sections be consolidated. I don't believe

1 that does any disservice to the recommendations and the  
2 purposes for which is set out from the control board. And I  
3 would be glad to assist staff in this endeavor, should you  
4 want to pursue it in any degree.

5 We then go on to identify a series of places  
6 where I offer some specific comments. What I've done is to  
7 break it out into four columns. First is the page number in  
8 the D.C. Register where the issue appears, in case you're  
9 trying to track this with me and watches the peas under the  
10 shell or whatever. Then I identify the section number. I  
11 quote portions of it, or at least characterize it. And then  
12 give my comment.

13 And the first one has to do with a provision in  
14 the zoning rules of practice and procedure where it is talking  
15 about the service which, in this case, case by mail, by  
16 telegram. When was the last time anybody here got a telegram.  
17 Or as otherwise authorized by law. The comment, which is not  
18 a very profound one, is that telegram is not needed. If it's  
19 relevant at all, it certainly should be captured by the  
20 otherwise language and it can just be deleted without great  
21 harm.

22 The next comment is that exhibits -- has to do  
23 with exhibits which can be offered in evidence at the hearing.  
24 And I just wanted to make it clear that that language should  
25 be rewritten, at least in my view, to say or with the  
26 prehearing submissions made by an applicant or perspective

1 party. Because the rules should permit -- should encourage or  
2 at least permit evidence to be included with the prehearing  
3 submissions and be served on the then known parties such as  
4 the applicant and ANC.

5 For the record, Madam Chairperson, the third  
6 comment I want to do has to do with your favorite subject, the  
7 set down hearing. And I just -- having been a part of the  
8 original -- some of the work that was done by Holland and  
9 Knight, what I wanted to do in this record is to clarify that  
10 the recommendation that was provided was intended to relate to  
11 owner initiated map change cases and not planned unit develop.  
12 And the question is whether the set down hearing is needed.

13 And I certainly know from my -- from when I sat  
14 where you're sitting now, that that type of discussion in the  
15 face of a PUD was essential because there's an important  
16 process of sharing what are the amenities, what's the  
17 location. You begin to get a number of issues identified.  
18 But for a direct map where I want to take a parcel at the  
19 intersection of so and so and change it from R-1A to R-1B, or  
20 something of that order, there's no covenants. It's a pretty  
21 straight forward application. And to my way of thinking, the  
22 applicant should have the right, I'm not saying that tit  
23 should be required, but should have the right to proceed  
24 straight to hearing without benefit of an OP report. If --  
25 They run some risks but they should know what they're doing.

26 And so, that's what that third comment is about.

1 I'm not expecting you to embrace it but I thought I should  
2 clear it up for the record.

3 Fourth comment, whether -- has to do with ANCs.  
4 And it has to do with whether proper notice of that meeting  
5 was given by the ANC. And I want to suggest that that section  
6 of the language be written to the public, which is what it's  
7 intended to cover, and to the applicant. Because, when an  
8 applicant is the subject of a possible action with the ANC, it  
9 seems to me that the ANC, perhaps by no means more elegant  
10 than sending a fax, should let the applicant know that they're  
11 at risk of being considered by the ANC.

12 One of the proposals -- this is the fourth one  
13 on page five of my letter. I don't know its origins but it  
14 perhaps can be clarified in the record. But there's something  
15 here that says, if the materials are going to include a report  
16 by a transportation consultant or an expert, you want to get a  
17 copy of the report provided to DPW at least 20 days before the  
18 public hearing. This is the supplemental filings for an  
19 applicant.

20 And my question to you, and it's just that, it's  
21 a question, is should the provision to extend to planning  
22 consultants, with a copy to the Office of Planning, the same  
23 20 days? I don't have a recommendation but I don't -- if  
24 there was a reason for having the transportation language come  
25 in, the other question merges in my mind and I thought I would  
26 share it with you.

1                   The most important thing that's in this  
2                   immediate area, however, is that I want to suggest that you  
3                   add a Section 3013.11 which is to permit, not require, permit  
4                   and applicant to submit a proposed order with the other  
5                   prehearing materials. It is my belief, again having sat where  
6                   you are right now, that if the prehearing materials contained  
7                   an order, it would help discipline the case. You would know  
8                   what evidence had been submitted or what was going to be  
9                   forthcoming. And more important, in my view, is that it  
10                  provides an opportunity if it is with the prehearing materials  
11                  to come back at the question of party status that we're  
12                  addressing a little later on in a somewhat different fashion  
13                  which I'll get to in a moment.

14                   But the point here is to allow, specifically  
15                   allow, and encourage applicants to submit a proposed order  
16                   that basically outlines their case. And basically what would  
17                   happen if nobody showed up? You'd have a proposed order that  
18                   the commission or the BZA could look at.

19                   CHAIRPERSON KRESS: And a bench decision that  
20                   was made.

21                   MR. WILLIAMS: And a bench -- and so it would  
22                   dispose to allowing things to flow along very nicely, in my  
23                   view.

24                   The next suggestion in the sequence in which the  
25                   matters arise in the notice has to do with the condominiums  
26                   and co-ops. And it goes on to say, Mailed notice may be

1 provided to the board of directors of the association of such  
2 condominium or co-operative." Well, you've spent some time  
3 earlier in the regulations talking about service of papers.  
4 And it would seem to me that if there are a variety of ways in  
5 which appears could be served, whatever the breadth of that  
6 service provision is earlier should apply to how it can be  
7 served on the board of the condominium. So, I would not  
8 restrict it to mail which it seems unnecessarily narrow.

9 Now, about co-ops and condominiums, and I know  
10 you're going to hear something about this from DCBIA as well.  
11 It seems to me that if you decide to go with this notice  
12 provision to boards instead of to the entire population, a  
13 case could be made, a question could be asked, about whether  
14 an applicant, if they're going to sort of instead of mailing  
15 something to 400 people that are in a particular building go  
16 to one board, maybe a placard should be put up outside the  
17 front door of that building. Not because it's on the  
18 immediate square but because that's where the people will see  
19 that yellow sign that should mean, or the green one, that says  
20 something is about to happen down in this room and you might  
21 want to know about it since they're not going to get it  
22 directly. That's a question.

23 On cross examination, now we're warming up to  
24 where i was hoping to get at before. On cross examination  
25 there's a provision in there that says, "nothing herein shall  
26 prohibit the commission," or BZA, "from placing reasonable

1 restrictions, including time limits, and limiting the scope of  
2 cross examination to matters in dispute on cross examination  
3 by the" application -- or, "by the applicant or parties in  
4 support or opposition."

5 What I'm trying to do is suggest in these words  
6 that the purpose of cross examination is not to tease out  
7 things that -- the distinctions that aren't in dispute but to  
8 be focused on the things that are critical to the decision  
9 making in the case and that are being disputed. So, this is a  
10 sort of a guidance to the cross examining community, not all  
11 of whom are real skilled at it, to help them understand what  
12 it is for.

13 And, on the next page, and having to do with  
14 seeking and obtaining party status, what I'm suggesting is  
15 that there be an added section, 3022.7(f), Paragraph 4, and  
16 then renumber existing paragraph 4 as 5, which says that if  
17 you want to seek party status and if the applicant has  
18 submitted that proposed order we just talked about in my  
19 earlier remarks, then the person seeking party status would be  
20 obliged to obtain it to identify the facts and issues in the  
21 proposed order with which the party takes exception.

22 That is, in my view, a way of bringing focus to,  
23 on the parties, to identify the salient facts that they  
24 believe are in particular dispute. They're not likely to  
25 argue with the first finding of fact which is the location of  
26 the property question. They're not likely to argue with the

1 characterizations of what is permitted in the zone district in  
2 question. And so on. But I believe that with this type of  
3 provision, you would be able to find that you would be able to  
4 focus the hearing, and particularly the cross examination, on  
5 a half dozen or so issues instead of everything from covering  
6 all four corners of this room and other rooms in this  
7 building.

8 And that, Madam Chairperson, concludes the  
9 remarks that I have that I believe relate to both the zoning  
10 rules, and by extension, to the rules of practice and  
11 procedure of the BZA.

12 CHAIRPERSON KRESS: But you didn't speak to the  
13 BZA and --

14 MR. WILLIAMS: But the BZA is what I'm going to  
15 speak to next.

16 CHAIRPERSON KRESS: Oh, I'm sorry.

17 MR. WILLIAMS: What I'm trying to say is that  
18 everything I've said so far --

19 CHAIRPERSON KRESS: Is up to that, all right.

20 MR. WILLIAMS: -- is sort of -- is put under the  
21 banner of zoning -- of the zoning commission but it also  
22 relates to the BZA. The next comment is a BZA comment only  
23 and it has to do with the fact, and I think this is a sheer  
24 inadvertence that came along, the direct words of the control  
25 board were to consolidate the two chapters, two chapters that  
26 currently govern the rules of practice and procedure of the

1 Board of Zoning Adjustment.

2 Well, one of those chapters has a waiver  
3 provision in it to allow the BZA to waive its rules. And as  
4 consolidated, the new consolidated chapter has the same  
5 language in it which thereby allows the BZA to waive not only  
6 the rules that it could waive before, but a host of additional  
7 rules that I don't believe are waivable, or that should be  
8 waive. Like what's a variance. I mean, it's getting -- it  
9 would have some things, if you examine what is in former  
10 Chapter 32, those are all things that ought to have been  
11 waivable and they are waivable right now. It's now swept  
12 together with other provisions in Chapter 31 that were never  
13 waivable before, and that's what's been inadvertently caught  
14 up in it.

15 Again, I would attribute this not to the Arnold  
16 and Porter's skills, but to the fact that everybody was  
17 operating under such pressure that this little subtlety  
18 probably just escaped folks' attention. But I think it needs  
19 to be addressed so that the BZA isn't inadvertently granted  
20 broader authorities than it can be under law.

21 Finally, ladies and gentlemen, I'm suggesting  
22 that you look at some transition issues in this case. And  
23 essentially would bring to your attention that the current  
24 rule that is under consideration does provide some  
25 transitional provisions with respect to the BZA but  
26 unfortunately has the 1979 dates for the zoning commission

1       itself. And essentially, while it does do what -- does a  
2       proposal for the BZA, my sense is that what we really need to  
3       do is to find a specific date certain effective date, which  
4       you'll be able to determine later on. And let's suppose that  
5       you're able to say after it's been to NCPC that this thing is  
6       going to be ready for final adoption some time in January.  
7       Well, then, because of the fact that people take time and it  
8       costs money to prepare applications, I don't think we should  
9       say, okay, it's going to be effective in 12 days or 14 days,  
10      whenever it hits the streets on the D.C. Register.

11                   I would rather give the practice community, the  
12      public, the neighborhoods, and everybody else a date certain  
13      that would say anything that is filed after this date is going  
14      to have to be under these rules. Anything that comes in  
15      between the date of final -- when it could be final and that  
16      date certain may be under these new rules but only if they  
17      specifically request it and then everybody knows that we're  
18      operating under those rules. And that anything that was filed  
19      before that time will continue to be heard under the rules  
20      under which the thing was originally filed.

21                   Those, ladies and gentlemen, are the comments  
22      that I have to offer for you this evening. I want to thank  
23      you once again for taking up this case on an expedited basis.  
24      I know once I'm through that others will probably have some  
25      other things to add, but I think the commission can complete  
26      this case by December and move through the processes so it can

1       become something that will really serve to govern the practice  
2       of both the BZA and the zoning commission for a good number of  
3       years to come.  It's still not going to be perfect but I think  
4       we can get something pretty solid out of this by very early  
5       next year.

6                       And I want to thank you once again for you time  
7       and attention to this matter.

8                       CHAIRPERSON KRESS:  Well, I want to thank you  
9       for your testimony and, of course, I think I and my colleagues  
10      have some questions.

11                      Would anyone like to begin?

12                      COMMISSIONER HOOD:  I do have a question, Madam  
13      Chair.

14                      Mr. Williams, first of all, I want to make sure  
15      I understand what I'm -- your document.  Where it says  
16      proposal, where you say -- I'm down here where it's the set  
17      down hearing.

18                      MR. WILLIAMS:  Pick a page, would you, Mr. Hood?

19                      COMMISSIONER HOOD:  It's the fourth page.

20                      MR. WILLIAMS:  Page 4?

21                      COMMISSIONER HOOD:  Right, page 4, Section --  
22      down where you have Section 3011.1-6.

23                      MR. WILLIAMS:  Yes sir.

24                      COMMISSIONER HOOD:  I guess I want you to  
25      elaborate and explain a little more to me.  I'm trying to  
26      figure out, are we trying to do away with the set down?

1 MR. WILLIAMS: No, the --

2 CHAIRPERSON KRESS: No.

3 MR. WILLIAMS: No, quite the contrary. There  
4 had been a recommendation that had been provided by the  
5 original consultants to this process, Holland and Knight, with  
6 which I was associated, to eliminate the set down hearing.  
7 And it was written in such a way that it read like it would  
8 just blow the whole thing away. And what I wanted to clarify  
9 for the record, that it was the intent of those that were  
10 writing it. I admit that what came over basically said do  
11 away with it. But it was intended to relate to map cases only  
12 and not to the PUDs. And so, it has been somewhat  
13 misunderstood and I felt obliged to clarify the original  
14 purpose.

15 But right now, there is no proposal to eliminate  
16 the set down hearing. And all I am stating in my testimony is  
17 that I feel that a case could be made to allow for the  
18 elimination of it, or to at least make it optional for a  
19 person that has a map case and that's ready -- and that is  
20 prepared to go straight. I see it as a process that is going  
21 to take at least a month that is not necessarily going to  
22 contribute much to the overall outcome.

23 COMMISSIONER HOOD: Let me take it back a step  
24 further. Maybe I've jumped ahead of myself.

25 I guess my question is, on your document here,  
26 the proposal, and you have to bear with me. I've seen a lot

1 of different changes and trying to learn zoning, and now this  
2 is coming up.

3 What you have here in your letter, these  
4 proposals, are these from you or are these from -- where are  
5 these proposals coming from?

6 MR. WILLIAMS: The dark language that you see,  
7 by which I mean, for the record, bold faced type, where you  
8 see bold faced type, that is directly taken out of the hearing  
9 notice itself. Where you see bold face type that has been  
10 underscored, italicized, or treated in some differential or  
11 struck through, that generally means what I would add, strike  
12 out, or otherwise do to sort of make the language read a  
13 little differently.

14 With respect to the specific section about which  
15 you just asked which was the set down, there you see a  
16 bracketed remark which is where I was trying to characterize,  
17 without repeating all the words of that section, what it was  
18 about so that there would be some context for the comment that  
19 is to right.

20 COMMISSIONER HOOD: Okay. Understand.

21 CHAIRPERSON KRESS: Commissioner Parsons.

22 COMMISSIONER PARSONS: I'm still not clear what  
23 you're saying on the set down thing. Are you saying that you  
24 do feel that map changes should go forward without a set down?

25 MR. WILLIAMS: I feel that an applicant should  
26 have a right to go straight forward without a set down

1 decision, yes sir, at his or her risk. But if they feel that  
2 confident or that eager to get it onto the hearing agenda, I  
3 see no reason, in the case of a map case alone, to not to  
4 allow them to proceed to do that.

5 COMMISSIONER PARSONS: I guess we're fresh on  
6 the heels of turning somebody down before a hearing on just  
7 that case. It was an application to zone an individual lot in  
8 R-4 to C-1. I mean, it was crazy. So, we said no.

9 MR. WILLIAMS: Good -- probably a good decision.

10 COMMISSIONER PARSONS: So, why have a hearing on  
11 that?

12 MR. WILLIAMS: I'm -- What I'm trying to say is  
13 that there are other cases where you have an applicant that is  
14 -- that really understands the land, that really understands  
15 the community, understands the planning parameters, and they  
16 have a solid case. And if they're prepared to pay the fee, I  
17 think they should be allowed to go forward.

18 COMMISSIONER PARSONS: Whether we agree or not?

19 MR. WILLIAMS: Whether you agree or not. Not  
20 with -- they don't get the rezoning. What they get is a  
21 hearing.

22 COMMISSIONER PARSONS: We just see them at the  
23 hearing?

24 MR. WILLIAMS: That's right.

25 COMMISSIONER PARSONS: I disagree totally.

26 MR. WILLIAMS: That's fine. But I'm giving you

1 my perspective and I didn't expect you to agree with  
2 everything.

3 COMMISSIONER PARSONS: Thanks.

4 CHAIRPERSON KRESS: I'd like to talk about  
5 something that is somewhat troublesome. As I understand,  
6 you're coming in, of course, on what we have written and sent  
7 out for comment today.

8 Is it not true, or is it to your knowledge not  
9 true, that a certain service is talked about being changed and  
10 notification by the city council? Has there not been  
11 recommendations to the city council by the control board to  
12 change all of our notification procedures? And I'm looking at  
13 the one that you circled, telegram, which I agree. Telegram,  
14 I can't remember the last time I got a telegram. I happen to  
15 agree with that.

16 But, aren't we facing some of these same  
17 recommendations having gone to the city council about  
18 notification?

19 MR. WILLIAMS: You could be right, Madam  
20 Chairperson. I am not familiar with anything council is  
21 considering on notice requirements more generically, or even  
22 if it may specifically relate to zoning. I'm going to turn my  
23 head to Mr. Collins and ask him -- He's shaking his head  
24 negatively for the recorder's benefit.

25 MS. PRUITT-WILLIAMS: Madam Chair, I believe  
26 you're speaking of the provision that would require that the

1 notice be for 30 days instead of 40 days. Is that --

2 CHAIRPERSON KRESS: And more than that. That it  
3 meet the city standard.

4 MS. PRUITT-WILLIAMS: The APA.

5 CHAIRPERSON KRESS: Meet the APA.

6 MS. PRUITT-WILLIAMS: To use that. Which only  
7 calls for a 30 day notice provision instead of the 40 day.

8 CHAIRPERSON KRESS: And it also does not call  
9 for notification in as many places as we give it right now.

10 MS. PRUITT-WILLIAMS: Correct.

11 CHAIRPERSON KRESS: And I just wanted to make  
12 sure that was clear in front of this hearing. Because I think  
13 that is an issue that needs to be discussed.

14 MS. PRUITT-WILLIAMS: I believe counsel will be  
15 --

16 MR. WILLIAMS: I'm delighted you're catching  
17 that issue and I'm embarrassed that I didn't.

18 CHAIRPERSON KRESS: Thank you.

19 Do we have any other questions of Mr. Williams?

20 COMMISSIONER HOOD: I did want some -- Madam  
21 Chair, I did want a little more clarification.

22 CHAIRPERSON KRESS: Sure.

23 COMMISSIONER HOOD: Mr. Williams, on page 4,  
24 again, you have to bear with me. About the ANCs, 3012.5.  
25 Could you just elaborate a little more for me, give me some  
26 clarification on your comments?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 [www.nealrgross.com](http://www.nealrgross.com)

1 MR. WILLIAMS: Yes sir.

2 The point I'm getting at here goes to the fact,  
3 or arises from the fact, that an advisory neighborhood's  
4 recommendations are to be accorded great weight. And, in my  
5 view, there is a matter of, I'm going to call it  
6 administrative protocol that needs to be followed, that an ANC  
7 might want to be -- would be well served in terms of  
8 representing its interest in being a part of the city's  
9 governance, to make sure that if they're going to be taking up  
10 a matter of an application about which they're asking great  
11 weight, to make sure that the notification of the meeting is  
12 not only stapled in two places in each SMD, but a faxed copy  
13 of that notice is sent to the applicant so that they can come  
14 to the meeting where their property is going to be discussed.

15 Most of the time they know about it, from y  
16 experience. But I can see situations where they wouldn't and  
17 that seems to me is not appropriate. That's what I'm getting  
18 at.

19 COMMISSIONER HOOD: I know that happens but I  
20 believe that's the law. They're supposed to post it in two  
21 places.

22 MR. WILLIAMS: And what --

23 COMMISSIONER HOOD: So, that's already on the  
24 books, I believe.

25 MR. WILLIAMS: Oh, that is on the books. And  
26 what I'm suggesting here is that the commission might want to

1 suggest that they also -- they're getting in material from the  
2 applicant. The applicant, under these rules, is obliged to  
3 provide copies of the application to the ANC. There's a  
4 reciprocal function which it seems to me the ANC ought to say,  
5 hey, Mr. Applicant or Ms. Applicant, we're going to be meeting  
6 on X date at X location and we're probably be talking about  
7 your application.

8 COMMISSIONER HOOD: You're saying give them  
9 notification, the applicant?

10 MR. WILLIAMS: And I don't see that it has to be  
11 anything more than a fax to them. Faxes provide a receipt  
12 that say you've gotten it off of -- and most of the people are  
13 going to have a fax number on their application, if you  
14 structure the application form correct.

15 COMMISSIONER HOOD: Point well taken. But I  
16 think a lot of times ANCs usually have the applicant come in  
17 anyway. Well I believe.

18 MR. WILLIAMS: Most of the time I think that's  
19 true.

20 COMMISSIONER HOOD: All right. Point well  
21 taken.

22 MR. WILLIAMS: Thank you.

23 CHAIRPERSON KRESS: Anymore?

24 I guess we're finished. Thank you very much  
25 for your very considered testimony. We appreciate having it  
26 in front of us. Thank you.

1                   With that, I will go back to the agenda and go  
2 back to the D.C. Building Industry, Mr. Fazakerley and Mr.  
3 Collins.

4                   And again, thank you all for putting up with  
5 our changed schedule and spending your delightful evening with  
6 us.

7                   MR. FAZAKERLEY: I think that was a good order  
8 to go in.

9                   CHAIRPERSON KRESS: Thank you.

10                  MR. FAZAKERLEY: I am Greg Fazakerley. I'm  
11 Chairman and Chief Executive Officer of Development Resources,  
12 Inc. We're located in Washington, D.C., do a lot of  
13 development in downtown. I also live at 4436 Edmonds Street  
14 in Washington. With me tonight -- I'm a past president of  
15 DCBIA and they've asked me to testify on its behalf with Chris  
16 Collins who does all the work, who is with Wilkes, Artis,  
17 Hedrick & Lane and secretary of DCBIA. Vice President.

18                  CHAIRPERSON KRESS: He moved up.

19                  MR. FAZAKERLEY: Thank you.

20                  I don't think I have to state for the record the  
21 wide range of members that we have DCBIA. And I do appreciate  
22 the order which you've selected tonight for the testimony. I  
23 think a lot of that was very instructive, for me personally.

24                  The things that -- And I'm going to depart from  
25 the prepared testimony because of the small group and the  
26 absolute importance of what is before you tonight. And then

1 Chris is going to talk about some of the specifics because I  
2 know we have to get down to the specifics.

3 But, what I'd like you to think about, and what  
4 we have been talking about in these various consultants, and  
5 various commissions, and various groups that have been talking  
6 about how can we make positive changes tot he way in which we  
7 do business in the District Columbia, is that I think it needs  
8 some kind of shroud as you go through each one of these  
9 suggested changes.

10 And my personal opinion on that shroud is, or  
11 measure of does this make sense, is does this particular item  
12 cover these three bases. Do we have am ore understandable  
13 process if we do this? Do we have a more predictable process  
14 if we do this? And, do we place ourselves in a more  
15 competitive position within our region if we do this?

16 So, understandable, predictable, and  
17 competitive. Because, there will be a lot of things that  
18 you're going to sort through here. You probably placed this -  
19 - in my opinion, all right, in my strong opinion, what is  
20 before you tonight is a huge opportunity for economic  
21 development. Because economic development, I think I find in  
22 doing business in the different parts of the region which I  
23 have done, is found, is based on a foundation of how you can  
24 do business within that jurisdiction.

25 We have almost gotten jaded by the term of,  
26 well, we want to be business friendly, or we want to be a one

1 stop shop. And we forget that the heavy little -- heavy  
2 lifting is dealing with each and every one of these items that  
3 will make us a more understandable place to do business.

4 So, to just highlight one particular issue for  
5 you that I think strikes all of these cords, is the process of  
6 the BZA application and getting a hearing. Simply making  
7 application and getting a hearing. Do we have a process  
8 today, is there an individual who wanted to put on a deck on  
9 their house for instance. Could they go into the particular  
10 government agency they're supposed to go to, the particular  
11 office, and say, I want to put a deck on my house. My  
12 architect says I need a side yard variance, or a rear yard  
13 variance. What do I do and when will I be heard.

14 Right now you can get the answer that you need  
15 to do this application. This is what you need to do, submit,  
16 but you can't get an answer to the question when will I be  
17 heard. If you go to Alexandria or you go to Arlington, two  
18 other jurisdictions over the last 20 years that I have  
19 developed in, whether you're a homeowner or a developer, when  
20 you walk into that office of zoning and you say, I'd like to  
21 put a deck on my house, my architect tells me I need a rear  
22 yard variance. Can you tell me what I need to do, they hand  
23 you a form that tells you exactly what to do.

24 And you precisely what is they need to do. And  
25 you know, I'd like to enjoy this deck this summer. I've got  
26 the contractor ready to go. How long will this take me to go

1 through this process? And in both jurisdictions, they turn  
2 and they say, and it's right up on the wall, they say, if you  
3 get your application in by this date, Mr. or Mrs. Citizen, and  
4 it's complete, and we'll tell you by this date if it's not  
5 complete, then you will be heard on this date.

6 It's a simple concept but I plead with you. I  
7 plead with you that as you go through all the fine comments of  
8 all these great guys, that we not take our eye off the ball.  
9 Economic development, a desire to live in a place, all boil  
10 down to those very, very simple beginning processes.

11 You know, I want to digress for just a minute.  
12 It was about four years ago that I had to go for a BZA -- an  
13 adjustment. It wasn't going to be a contested case. And the  
14 story I'm about to tell you is not my story. It's the story  
15 that I heard by observing at the same time. I put in my  
16 application for my case July of one year. I went through the  
17 same thing. Well, we're running about six months, we think, to  
18 get a hearing. In February we were heard. In February we  
19 were heard. But the story goes as follows.

20 Just before the meeting commenced, there's  
21 administrative matters, I think, or something like that. And  
22 the staff person got up and said is Ms. so and so here, and of  
23 course she was there. A woman of about 45 years old who kept  
24 looking at her watch. Probably had to get back to her job,  
25 got up and said, yes, I'm here. We're sorry to inform you  
26 that we can't hear your case today. We have just reviewed

1 your application and for your deck you need a lot coverage  
2 variance as well. We've only advertised per your application  
3 for the rear yard variance. So, we will not be able to hear  
4 your case today.

5 And the woman goes, and you could just see she  
6 was crestfallen. She goes, Oh, my God. And I point out this  
7 example because often times we as developers get the air time.  
8 We get to speak of ourselves. We get to hire these guys to  
9 fend for us, all right, and complain to them about. But here  
10 is an average resident of the District of Columbia who simply  
11 wants to put a deck on her house. And she says as follows.  
12 Oh, do you realize that I put this application in last July?  
13 That I was hoping to have this deck for my family reunion for  
14 Labor Day. And now you're telling me that my application  
15 isn't complete? Well, we just can't hear it today and the  
16 best we can do is make sure that you get heard next month.

17 Not one member of the BZA paused for a moment  
18 and said I'm sorry. That was just the way it was. I'm not  
19 trying to be dramatic. I'm trying to drive home a point. The  
20 BZA doesn't discriminate against big developers. It takes us  
21 all into that same ball of wax. If you do anything, you will  
22 send a major message if you simply start accountability with  
23 the permitting process that begins often times with the need  
24 for some kind of variance. And that is to say, for an  
25 applicant, whether you're the big, bad developer or whether  
26 your this average citizen, if you get your application in by

1 this date, you'll be heard by this date. You will then have a  
2 process that is understandable. You will then have a process  
3 that is predictable.

4 Now, the last part is, what is that date, and  
5 that's whether it's competitive. We compete in a region that  
6 is highly competitive right now. The residents for the last  
7 15 years in the District of Columbia have voted with their  
8 feet. We want them to come back. We want them to stay.  
9 Putting on a deck of your home is a form of economic  
10 development the last time I checked. We need to remember the  
11 little things that make a community better.

12 So, what is the time frame that we're competing  
13 with with other jurisdictions? And I want to go on the record  
14 and tell, in Alexandria or Arlington, that date that they're  
15 referring to is 45 days within the date of filing. So, that  
16 homeowner, that developer, that applicant, that final filing  
17 date, they're heard within 45 days. If there are a lot of  
18 cases, all right, you know what they do? They keep hearing  
19 them and then they don't adjourn, what is it they --

20 MR. COLLINS: Continue.

21 MR. FAZAKERLEY: Continue. Thank you. All  
22 right. And they throw in another meeting. Now, that doesn't  
23 happen all the time. But the point is, they're committed to  
24 a certain accountability, a certain level of standard.

25 So, as you listen to all the individual things  
26 that we have to do to make it better again, and believe me,

1 I've read many of them and they will. They will be for naught  
2 unless we start the process with something that people  
3 understand when they're going to get through it.

4 Now, for the larger part of economic development  
5 that we do as developers, that's particularly important. Ten  
6 years ago we were in a period of gross speculation of building  
7 construction. And that means you're building way ahead of  
8 knowing even who you're going to put in there. Today, much of  
9 the development that you see in the suburbs and some of the  
10 development downtown, most of the developments downtown, is  
11 not speculative development. And this is a very key point  
12 that I'd like to make to you.

13 It's development that occurs because some  
14 company says I want to be in a building there. If a developer  
15 of a particular building to be built cannot turn to his  
16 prospective tenant and his cadre of lawyers and reasonably  
17 take them through, the first question they ask is, how do you  
18 know you can get a permit and how much time will it take  
19 because we have to be in by such and such a date. If you  
20 can't answer that question, you won't get that building built.

21 So, I'm pleading with you as part of our  
22 leadership, whatever you can do, whether it's on the zoning  
23 side or the BZA side, having everybody understand what the  
24 play book is and having everybody understand when they file  
25 and when they'll be heard is of utmost importance, whether  
26 it's the single home homeowner or whether it's the development

1 deal that might get done if a tenant could really bank on the  
2 fact that that building would get built. Understandable,  
3 predictable, and competitive. If other jurisdictions can do  
4 it, I know we can do it. And once you establish what that  
5 accountability will be, then all these other things, all the  
6 other points, will become the measure of will that contribute  
7 to us being a competitive process.

8 And that is the major point that I wanted to  
9 make this evening. And I appreciate so much having the  
10 opportunity to address you to make that point.

11 CHAIRPERSON KRESS: Thank you.

12 MR. FAZAKERLEY: Thank you.

13 CHAIRPERSON KRESS: I think we'll hold our  
14 questions until Mr. Collins has testified.

15 MR. COLLINS: DCBI is an organization that's  
16 dedicated to -- it's a non-profit trade association  
17 representing commercial and residential development industries  
18 in D.C. And attached to the testimony that we submitted this  
19 evening is a one page document which spells out in more detail  
20 what is DCBIA and what it's all about.

21 Also, I want to call your attention to the last  
22 document that's attached and that's our specific comments on  
23 these proposals. And most of our comments focus on, as Greg  
24 mentioned, the BZA process. It touches a large number of  
25 people, a broad cross section of people in the city. And we  
26 are not here simply to talk about the commercial development

1 industry.

2 We're here to talk about what we believe to be a  
3 crucial issue and that is the betterment -- good government.  
4 The betterment of the city. We're losing population.  
5 Population is a major tax base. So, we're concerned about  
6 what's good for the District of Columbia as a whole.

7 We started meeting about three years ago with  
8 representatives of the D.C. Department of Consumer and  
9 Regulatory Affairs, specifically the building and land  
10 regulation administration, and also with the various directors  
11 of DCRA over time to explore the very things that we're  
12 talking about tonight. So, we're very glad to be here to be  
13 able to talk to you about these issues.

14 We've also, during the course of that time, have  
15 spoken with the staff members of the Office of Zoning, the  
16 previous director specifically, about some of these variations  
17 that we'll be going over tonight.

18 But let me go through what those points are.  
19 I'll just summarize and speak, and spend a little more time on  
20 some of the more, what we believe to be some of the more  
21 important issues. I've taken them in the order that they've  
22 been presented.

23 First, the Section 2522.1 which spoke of the --  
24 Mr. Williams talked of the deviations, the authority. We  
25 believe that for the linear requirements, it should be  
26 extended to be the greater of one foot or the specified

1 percentage. Specifically in a side yard situation, you're  
2 talking about a matter of just a few inches. If you have a  
3 case that needs a small side yard issue, we're suggesting that  
4 you may be able to go up to one foot providing you go and talk  
5 with the zoning administrator and the zoning administrator  
6 would apply the criteria that's set forth in that section.

7 Section 3000.10 is, if you look at it, suggests  
8 that it may be more constraining than is the current provision  
9 that allows the zoning commission to seek corporation counsel  
10 advice. Right now, the way the language is currently written,  
11 the zoning commission can seek advice on virtually anything.  
12 And let me give an example, on the fair housing amendments  
13 that are a crucial issue about the CDRS that I know the  
14 commission has taken up in the past.

15 The current -- the new proposal talks about the  
16 commission only being allowed to seek advice on compliance  
17 with and enforcement of the provisions of the zoning  
18 regulations.

19 CHAIRPERSON KRESS: I don't think that was meant  
20 to be, I'm afraid. I mean --

21 MR. COLLINS: I don't think so, either. I don't  
22 think so either. I'm suggesting -- I'm not suggesting that  
23 that was deliberate. I just think that that ought to be taken  
24 -- you should take a look at that and maybe keep the existing  
25 language, or tinker with it somewhat so that it's not so -- so  
26 your hands are not tied. Just when you seek advice, I think

1 you want to seek advice from things -- how does that  
2 regulation effect the zoning regulation. Or what is the  
3 city's view on those issues. So, I think you'll want to have  
4 more broad leeway on that.

5 Section 3003 and 3111 all talk about the issue  
6 that Mr. Williams touched on, that is, service. The BZA may  
7 allow service by telegram or mailgram. The zoning commission  
8 allows service by telegraph but not by mailgram. Are either  
9 one really necessary in this day and age. You should take a  
10 look at that if that's something that you haven't had in the  
11 past, in recent memory, maybe you want to take a look at  
12 deleting those. You also may want to consider adding service  
13 by fax or by e-mail. With technology proceeding the way it is  
14 these days more and more people using e-mail and fax, that  
15 that may be considered a more expedient way to provide  
16 service.

17 Again, as Greg mentioned, all -- our comments  
18 here are really geared toward making sure that the process --  
19 that there's more certain tot he process.

20 The new sections, 3005.1., 3105.1 for both the  
21 zoning commission and BZA, we think are great ideas which  
22 would require that there be a schedule posted every three  
23 months setting forth one of the hearing dates, one of the  
24 filing dates, by which you must meet in order to get a hearing  
25 by a certain date.

26 We think that for the BZA, that Section 3105

1 should be amended to require the same type of schedule as  
2 Section 3005.1 gives for the zoning commission. That is,  
3 every three months you publish a schedule one year in advance  
4 on a 12 month -- 12 months out rather than just every three  
5 months. You can see if you only publish a BZA schedule every  
6 three months for just that three month period, you have no  
7 context in where you fit in. If you file, for instance, a BZA  
8 case on day one, you have to have at least 30 days before you  
9 can have a hearing, sometimes 40 days or 45 days. Does that  
10 mean there's no hearings held during that first month. I  
11 don't think that's what was intended. I think that the  
12 schedule should be a 12 months schedule.

13 We also suggest that an additional section  
14 should be added under Section 3105 to state that a hearing  
15 shall be held on a BZA application no later than 45 days after  
16 the filing date.

17 Sections 3005.8 and 3105.11 would allow --

18 CHAIRPERSON KRESS: I would just say, I hope you  
19 would be willing to help support us in budget. I mean --

20 MR. COLLINS: That comes at the end of --

21 CHAIRPERSON KRESS: That would be wonderful.

22 MR. COLLINS: Absolutely. We have done that in  
23 the past. I don't want to skip too far in advance but we have  
24 done that in the past. We've done that this year, most  
25 recently, and we will continue to do that.

26 CHAIRPERSON KRESS: Thank you.

1 MR. COLLINS: We're very cognizant of that  
2 factor. Our three years of discussions, off and on  
3 discussions with BLRA and with the Office of Zoning, we were  
4 made painfully aware of the lack of funding. We actually with  
5 the previous director identified a solution which we called  
6 the \$64,000.00 solution which really, we went through and  
7 identified money that we needed in order to satisfy concerns.  
8 It talked about detailing people from TO over to OZ, some of  
9 which has happened. This discussion was over three years and  
10 we're heartened to see that some of that has happened.  
11 Earmarking money from BLRA that was going to be -- BLRA was  
12 offering to hire a person and then detail that person over  
13 here. So, we have been working with creative -- well, what we  
14 hope were creative solutions. Some of which have been  
15 implemented, some of which have not.

16 CHAIRPERSON KRESS: Terrific.

17 MR. COLLINS: But we're continuing to fight the  
18 fight.

19 CHAIRPERSON KRESS: Thank you.

20 MR. COLLINS: Those two sections, 3005.8 and  
21 3105.11 say that an agency shall not, but the BZA and zoning  
22 commission, shall not postpone or continue a public hearing  
23 for more than 30 days unless all parties agree or unless the  
24 agency orders otherwise. Well, we think that in order to add  
25 predictability and certainty, that the discretion of the  
26 agency to order otherwise should be tempered somewhat to give

1 some guidance. When should that be allowed to happen. We  
2 think that it should be amended to require showing  
3 extraordinary circumstances as to why it couldn't be continued  
4 for within the 30 day period.

5 Sections 3010.2, 3010.4, 3010.5, 3010.7, and  
6 3011.7 all go to define the types of cases which are rule  
7 making and which are contested cases. The point of our  
8 comment there is that there be no inconsistency with what you  
9 have stated, or what's been stated in these draft regulations  
10 and what is reality in terms of what the DCAPA sets for and  
11 what the case law from the D.C. Court of Appeals sets forth.

12 I'm not sure that this kind of language is  
13 necessary in the zoning regulations. It's not a point we feel  
14 very strongly about. We just don't think that -- this might  
15 be an opportunity for inconsistency if it's not thoroughly  
16 checked and scrutinized with the current provision.

17 CHAIRPERSON KRESS: I'm sorry, and I don't mean  
18 to ask questions early. I don't understand your point here.  
19 You're saying what has been written?

20 MR. COLLINS: Right. What's been written.

21 CHAIRPERSON KRESS: Am I repeating your --

22 MR. COLLINS: One of the provisions says rule  
23 making cases are generally those which do the following. And  
24 another one says contested cases are those generally those  
25 which do the following. Well, that, to me, is not what rules  
26 are supposed to say. Rules are supposed to tell you what you

1 file, when you file, not things like generally. That kind of  
2 term. And if generally is all encompassing to maybe encompass  
3 something else other than what DCAPA says, or what the Court  
4 of Appeals has said what a contested case is or what a rule  
5 making case is. There's an opportunity for some inconsistency  
6 here that I think that you can avoid by simply deleting that  
7 section or maybe taking out the word generally, or doing some  
8 other way, or making sure --

9 CHAIRPERSON KRESS: No, because I thought that  
10 was one of the comments, that they wanted, and I thought DCBIA  
11 wanted it, was more definition of these categories.

12 MR. COLLINS: Well, maybe it should be tightened  
13 up. As I said, we don't feel strongly that it should go or  
14 not go. It's a point we're making that there's a possibility  
15 of inconsistency the way it's written. And one way to solve  
16 that is to take it out. Another way is to keep it in and make  
17 sure that it is actually --

18 CHAIRPERSON KRESS: Would it work if we just  
19 struck the words generally?

20 MR. COLLINS: Possibly, but that needs to be  
21 looked at.

22 CHAIRPERSON KRESS: That needs to be studied?

23 MR. COLLINS: It's probably -- it's something to  
24 take a look at.

25 The idea of expediting a case before the zoning  
26 commission. Sections 3011.7 and 3011.8 talk about expediting.

1 There really needs to be some language in there to mean what  
2 is meant by expediting a case. What it is that the applicant  
3 must do in order to be entitled to it. And once the applicant  
4 shows that entitlement to expedition, what they consider for  
5 expedition, not to be entitled to expedition but to be  
6 considered for expediting, what, then, are the obligations of  
7 the commission to carry that out. What does that mean? It's  
8 not spelled out.

9 Section 3013.6, 3015.3, and 3113.13 all go to  
10 the point of service when you have a condo or coop with 25 or  
11 more dwelling units. This is an issue that Mr. Williams  
12 touched on. Our point here is that we think the commission  
13 should consider the propriety of that. We support it. We  
14 want to call to your attention that there is no statutory  
15 provision for requiring individual notice of a BZA or zoning  
16 commission application to owners. That's simply a regulatory  
17 provision. The DCAPA requires that there be reasonable notice  
18 of a hearing for all agencies, including BZA and zoning  
19 commission.

20 So, our point is that if you determine to adopt  
21 this, that you make a specific finding in your statement of  
22 reasons or however you do that, that you make a finding that  
23 this is in your opinion reasonable notice so that there's no  
24 question as to the fact that that agency adopting this  
25 determined that this was reasonable.

26 Section 3014, 3015, and 3113 provide that notice

1 of BZA and zoning commission hearings be published at least 40  
2 days prior to the date of the hearing. We're suggesting that  
3 that be limited to 30 days. In other jurisdictions it is 30  
4 days, as Mr. Fazakerley mentioned. Sometimes even 20 days  
5 depending on the jurisdiction.

6 The D.C. Code requires 30 days notice of a  
7 zoning commission action but doesn't have any specific  
8 provision for BZA action. The ANC law requires 30 days  
9 notice. The DCAPA requires reasonable notice. Looking at all  
10 those together, we believe that this 40 day provision in those  
11 particular sections should be limited to 30 days. And if  
12 that's the case, then that would work nicely with our  
13 suggestion that for the BZA, Section 3105 be amended to  
14 require that hearings be held within 45 days. We think that  
15 if a hearing is -- a hearing can be held within 45 days of  
16 filing and also -- and with adequate time to provide the 30  
17 day notice that we're suggesting here.

18 The sections on time limits on public testimony  
19 and application, we think this is good and will help  
20 streamline the process. It may also provide opportunities for  
21 more BZA hearing dates, hearings -- cases per session of the  
22 BZA. These Sections 3020.3 and 3117.5 should be amended in  
23 our view to make sure that if the commission or the board  
24 gives more time to one side of an issue, that equal time  
25 should be given to the other side of an issue. If the  
26 applicant is given more time, then if there's opposition, the

1 opposition should be given more time. If the opposition is  
2 given more time, the applicant should be given more time. It  
3 should be equal time for both. That if the time is extended,  
4 it be extended for all. So there's equal time on both sides.

5 CHAIRPERSON KRESS: Go ahead. I've been  
6 breaking the rules. Mr. Hood has some questions so I'll let  
7 him break the rules.

8 COMMISSIONER HOOD: I just want to ask a quick  
9 question. If you had one applicant who pretty much has his  
10 stuff together when you come down to present a case, and you  
11 have opposition, which you may have 65 people in opposition  
12 that want to testify, I cannot see -- I mean, if the applicant  
13 has 60 minutes, you can't give 65 people the same 60 minutes.

14 MR. COLLINS: Correct.

15 COMMISSIONER HOOD: So you're saying that  
16 additional time because of the many people who want to  
17 testify. If you have to add 15 or 20 minutes to their time,  
18 you're saying the applicant should get an additional 15 to 20  
19 minutes?

20 MR. COLLINS: Well, I guess what I'm saying is  
21 in that example, that's probably, I think we'd all agree that  
22 that's an extreme example. You're not going to give each of  
23 the 65 people an hour if you give the applicant an hour.  
24 That's 66 hours of hearing.

25 COMMISSIONER HOOD: But what I'm saying is just  
26 I think we need -- where is the fairness in the whole deal?

1 The applicants most of the time they come down here, usually  
2 have theirselves together and they have lawyers, and whatnot.  
3 A lot of your opposition are community people who come down.  
4 They're actually a lot of times not together. Sixty-five  
5 people in a room, unorganized, pretty much most of the time  
6 but have general concerns that need to be addressed. And I  
7 think they should be applied the same amount of time or more  
8 so they can express theirselves to the commission. And I just  
9 can't see where we can add time. And maybe I'm missing your  
10 point.

11 MR. COLLINS: Most times there's not that  
12 number, great number of people. If there is a case and  
13 there's opposition, there may be one or two at most. I'm  
14 thinking more of the situation where you have a homeowner and  
15 a neighbor. Where you give the homeowner 25 minutes to make  
16 their presentation, it's unfair to give the neighbor an hour  
17 to make their presentation in opposition. I'm saying equalize  
18 it. If there's an ANC that gets involved, of course, that's  
19 going to temper the issue as well.

20 I think that the chair has to exercise  
21 discretion in what is fair and I think fairness, the word  
22 that's used is the appropriate word. What is fair.

23 CHAIRPERSON KRESS: I think the way this is  
24 written, ANC testimony isn't meant to be part of this. Did  
25 you read it that way?

26 MR. COLLINS: No, no. I just -- I just pulled

1 an example out of the air.

2 CHAIRPERSON KRESS: That's not the way I read  
3 it. You just drew an example where -- to me, the ANC is  
4 outside of the applicant, the opposition --

5 MR. COLLINS: True.

6 CHAIRPERSON KRESS: -- not knowing even where  
7 the ANC stands. To me that's with the -- because they come in  
8 a special place, that the way I read that, and you tell me if  
9 I'm reading it wrong, I didn't consider that the ANC, be they  
10 in opposition or in support, that their time was in this?

11 MR. COLLINS: No, I think, going back to -- No,  
12 I agree, the ANC is not part of it. I just used that as an  
13 example. But going back to Mr. Hood's example, the  
14 chairperson heretofore of both the BZA and commission has  
15 always said unduly repetitive testimony will be -- please  
16 don't repeat. If you have something new to say, say it. And  
17 in that same -- in that time frame, I think that there's some  
18 way that you can get those 65 people who are going -- you're  
19 going to boil that down to probably three or four messages.  
20 And if that's the case, and sometimes you can get those 65  
21 people to elect a spokesperson or spokespersons, to come and  
22 state their case, even as they're sitting there saying okay,  
23 well, who's going to talk. We're all going to say the same  
24 thing or what, because we're going to get gaveled down and  
25 thrown out, and get repetitive. They're not going to listen  
26 any more. So, why don't we pick one of us to go up there and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 [www.nealrgross.com](http://www.nealrgross.com)

1 be the spokesperson, the advocate.

2 That's all I'm saying, is that there be -- to  
3 the extent that the chairperson can do it, equalize the time  
4 for both sides to an issue, that's all.

5 COMMISSIONER HOOD: And I did use a far fetched  
6 example. But I wanted --

7 MR. COLLINS: No, it was a good example to --  
8 for discussion purposes. But I think the idea is to equalize  
9 to the extent that the chairperson can.

10 Section 3026 and 3121 are -- really deal with  
11 proposed orders rather than proposed findings. We think it  
12 should be amended to say proposed orders. And the language we  
13 believe should be amended to state the parties -- that parties  
14 may submit proposed findings of fact.

15 CHAIRPERSON KRESS: Wait a minute. You skipped  
16 3024.7. Did you mean to do that?

17 MR. COLLINS: Oh, I'm sorry, I did. I did. I  
18 kind of lost my train.

19 CHAIRPERSON KRESS: I'm sorry, we messed you up  
20 by interrupting you.

21 MR. COLLINS: No, that's, in my view, in reading  
22 it, that section refers to a final decision. But it really is  
23 --it's in the section that really requires where the decision  
24 is being made before the case goes to NCPC. So, it really  
25 cannot be a final decision until it goes to NCPC. I just  
26 wanted to make that -- that's a technicality. If you look at

1 it, you'll understand what I'm talking about.

2 CHAIRPERSON KRESS: No, I do understand and this  
3 is something of great concern.

4 Your opinion is that if we change some wording  
5 that this can work?

6 MR. COLLINS: Yes. Sure. Just change the word  
7 final action, final decision, to proposed action.

8 The next section, 3026 and 3121, we suggest that  
9 the heading be changed to proposed orders rather than proposed  
10 findings. There's also findings and there's conclusions. So,  
11 it's proposed orders that contain both of those. We also  
12 suggest that the language be amended to say the parties may  
13 submit to the Office of Zoning proposed findings of fact,  
14 conclusions of law, that certainly the applicant will want to  
15 do that in most every instance. But if there are parties in  
16 support or opposition who may not be inclined to submit a  
17 draft order for whatever reason, maybe they don't feel that  
18 they have the time or the knowledge, or the wherewithal to do  
19 that, they should not be required to do it.

20 But if, on the other hand, if the zoning  
21 commission is intending that that be a requirement for party  
22 status, what is the enforcement mechanism? The persons --  
23 they've already gotten their party status. They've already  
24 put their case forward. They've already had an opportunity to  
25 cross examine. If they don't submit a draft order at the end  
26 of the case, withdrawing party status is a meaningless gesture

1 at that point. Because they've already had, they've already  
2 enjoyed, the fruits of the party status.

3 So, was it really intended to mean it's a  
4 requirement that they submit, or just that they're able to do  
5 it? It's a question more than a suggestion. You may want to  
6 think about that.

7 There's a section in the BZA. It's actually a  
8 carry over from existing. It's in Section 3101.4 that talks  
9 about the chairperson or vice chairperson shall preside over  
10 hearings. There's another provision that talks about a quorum  
11 is three. So, you can see a situation -- there may be  
12 situations and there have been in the past where there have  
13 been three members of the Board of Zoning Adjustment here but  
14 neither one -- none of them are the chair or vice chair. Does  
15 that mean that someone could challenge a hearing because the  
16 chair and vice chair are not there, that the hearing should  
17 not take place? It's just a matter of cleaning up the  
18 language to say that--

19 CHAIRPERSON KRESS: I don't think -- We can't do  
20 that without readvertising, can we?

21 MR. COLLINS: I don't know. It's a thought.  
22 Yes, there would be the chair pro temp or something like that.  
23 There may be a way to insert a word or a phrase without really  
24 changing the intent of it. I think the intention was that a  
25 chair or vice chair preside over the hearing. And if neither  
26 the designated chair or vice chair is there, I don't think the

1 case should be -- the day should be canceled because neither  
2 one is there if a quorum is present. That wasn't the  
3 intention and that is, I think, in our view, it's antithetical  
4 to the kind of good government suggestions we're trying to put  
5 forth here.

6 CHAIRPERSON KRESS: I just wanted your opinion  
7 on whether that would -- you thought that would require --

8 MR. COLLINS: I don't think -- I think you could  
9 make amendments that are consistent in a very minor way, maybe  
10 by using the phrase pro temp or something like that.

11 Section 3105.2 has probably an omission error.  
12 It says that all meetings should be open to the public. It  
13 applies to the BZA procedures. It probably should have said  
14 all hearings as well as meeting be open to the public. The  
15 original language, existing language, talks about meetings and  
16 hearings being open to the public. I don't think it was any  
17 intention on anybody's part to say there should be non-public  
18 hearings.

19 CHAIRPERSON KRESS: Especially hearings.

20 MR. COLLINS: Right.

21 Another clean up, Section 3105.6 sets forth the  
22 duties of the director. And it should be expanded to include  
23 the authorization of the director issue zoning confirmation  
24 which the director does not. The fee schedule certainly  
25 allows the zoning director to charge a fee for zoning  
26 confirmation. So, to be consistent, the regulation should be

1 amended to reflect that the director has the authority to do  
2 that.

3 3105.7 should be amended to reflect that the BZA  
4 public hearing notice shall be posted in the Office of Zoning  
5 and made available at least 30 days prior to the hearing.  
6 That's the current practice. I think the regulation as  
7 written says seven days notice goes to the public, goes to the  
8 ANC 30 days in advance. It might as well get posted down here  
9 30 days in advance.

10 We like the idea of parties to BZA cases  
11 requesting filing to request party status in advance. There  
12 are certain criteria set forth in that Section 3106.2. We  
13 suggest that there be a sixth criteria that the proposed party  
14 set forth in writing why that proposed party believes that the  
15 applicant either meets or does not meet the relevant criteria  
16 for BZA approval.

17 Next is the Section 3113.2, is -- reflects the  
18 new provision that's been about a year old that allows direct  
19 filing with this board. That is one of the things that DCBIA  
20 fought strenuously for. We were instrumental in getting it  
21 done. It was actually with DCBIA that wrote the form and  
22 submitted it, and Director David Watts adopted it in  
23 consultation with Madeline Dobbins.

24 CHAIRPERSON KRESS: And this commission.

25 MR. COLLINS: And this commission.

26 But, we're questioning whether that section is

1 necessary in the regulation. Because this section, this is  
2 one of -- this now allows a second way to get to the BZA. The  
3 first way is to file the normal course with the zoning  
4 division at BLRA. File your plans, your application form, you  
5 plat, and you get rejected. And you get a memo that tells you  
6 to then go the BZA. Well, that's still in place. The only  
7 place that that appears anywhere in any publication from this  
8 office is on the back of the BZA application. It does not  
9 appear in the zoning regulations. It's not there.

10 It never was there. It was a process that was  
11 started in the late 60s. It used to be the case that you had  
12 direct filing at the BZA. And then it was changed through  
13 administrative practice to require you to go to the zoning  
14 administrator. It only appears on the back of Form 2. It  
15 doesn't appear in 11 DCMR.

16 So, if you put this provision in, this new  
17 Section 3113.2, you want to also put in a provision that  
18 reflects the status of the procedure that's been in place for  
19 the last 30 years, which is filing with the Office of Zoning.  
20 I'm sorry, the zoning division, getting rejected, and then  
21 coming here. Just a matter of good housekeeping. Either  
22 delete this section or add another section.

23 CHAIRPERSON KRESS: As you perhaps know, our  
24 hope is that eventually with regulatory reform, that you will  
25 be able to start any place equally, including the DCRA or over  
26 here. But then we're a ways away from that happening. I can

1 see your point about cleaning up our regs so that we reflect  
2 what we do do.

3 MR. COLLINS: Either one or the other. I'm not  
4 sure it's necessary-- you can put it on the back of Form 2 as  
5 an alternative. That way you wouldn't require rule making  
6 here. Or, you can -- You can add it in the section. Either  
7 way.

8 Section 31 --

9 CHAIRPERSON KRESS: You don't propose language,  
10 did you?

11 MR. COLLINS: No, we do not. We simply rate the  
12 issue.

13 CHAIRPERSON KRESS: Shame on you.

14 MR. COLLINS: Well, our first suggestion was to  
15 delete it.

16 CHAIRPERSON KRESS: I'm sorry. I'm just way  
17 ahead.

18 MR. COLLINS: So, as I was listening here, I  
19 thought, well, depending on what you want to do. If you want  
20 to delete it or add the other section.

21 Section 3113.9 is the section that says, as for  
22 the BZA, that report of the transportation consultant or  
23 expert be submitted 20 days in advance of the hearing. Why  
24 not make it consistent with the time table for submission of  
25 all the other documents which is 14 days. It seems to me  
26 there really is no reason why it needs to be 20 days.

1                   Section 3116 should be -- the heading should be  
2 amended to call that section expedited applications.

3                   CHAIRPERSON KRESS: I'm sorry, what did you just  
4 say?

5                   MR. COLLINS: Section 3116. I'm on the top of  
6 page 6 now.

7                   That heading, the heading of that new section  
8 should be amended to -- so that it's called expedited  
9 application. It should explain what is meant by an expedited  
10 application. And as I said before, what are the obligations  
11 of the Office of Zoning and the applicant in processing  
12 expedited applications. It really -- it doesn't go into a lot  
13 of detail at all as to what is meant by expedited application.

14                   And we're suggesting that the section be amended  
15 to authorize expedited applications in all instances. And  
16 where there's no written opposition filed by -- either by a  
17 potential party or by the ANC, or by the Office of Planning,  
18 and we believe the section should be expanded to allow the  
19 broader use of expedited applications and not simply limited  
20 to those which are, as that section states, cases that are of  
21 exceptional public benefit to the District of Columbia.

22                   We think that the homeowner who has got a deck  
23 and everyone supports it, and it's a classic variance case,  
24 why can't that be an expedited case? That certainly isn't  
25 going to have any exceptional public benefit to the District  
26 of Columbia. But it may just be a good idea that there's

1 opposition by your neighbors, by the ANC, by the Office of  
2 Planning. Why must the individual applicant be put to that  
3 heavy burden in order to get an expedited application.

4 We support Section 3125.4 that requires the  
5 board to issue written orders on an application no more than  
6 25 -- 45 days after the board's final vote to take action.  
7 There is no enforcement mechanism in that section. And we  
8 suggest that, just as a suggestion, the commission may want to  
9 add a requirement that a summary order be issued within 45  
10 days if no full order is issued within that time frame. The  
11 issuance of a summary order, even under today's practice,  
12 allowed the BZA to issue a full order later on in those cases  
13 if someone appeals. In this case, issuance of a summary order  
14 within 45 days would allow the process to continue.

15 The BZA, as you know, is not the last stop for  
16 an applicant who wants to build a project, or build a deck, or  
17 build a kitchen addition, or a ten story building. It's one  
18 of the first stops. In order for an applicant to file an  
19 application with the DCRA people, DCRA does not accept an  
20 application for filing until the written order is issued.  
21 It's not to say, it's very important. It's not say they don't  
22 issue the permit until the BZA issues their order. They won't  
23 even accept an application until the BZA issues their order.

24 Now, the issuance of a summary order, some kind  
25 of interim order, within 45 days if the board did not have the  
26 staff or other resources to do that, by issuing some kind of

1 interim order, allows the applicant, then, to take the next  
2 step and to file with the DCRA and go through the four month  
3 process of getting your permits reviewed.

4 CHAIRPERSON KRESS: You do know, the, the  
5 regulatory requirement DCRA they are looking at, from their  
6 point of view, changing the way they do things over there and  
7 being willing to accept things so that things can run at the  
8 same time.

9 MR. COLLINS: Right. Yes, I'm aware.

10 CHAIRPERSON KRESS: But nothing can be issued  
11 until all of these things are finalized?

12 MR. COLLINS: I'm aware of that. I'm not sure  
13 if that's been finalized yet. We're just kind of working both  
14 ends on that issue.

15 CHAIRPERSON KRESS: Just wanted to make sure we  
16 were talking the same thing.

17 MR. COLLINS: Right.

18 MR. FAZAKERLEY: But, can I interject here?

19 MR. COLLINS: Sure.

20 MR. FAZAKERLEY: I'd like to interject that all  
21 of these discussions, and some of the nuances of these  
22 paragraphs, and even this discussion you and Chris were just  
23 having, are really become secondary if we establish that  
24 filing dates for a 12 month period are here and you are  
25 entitled to a hearing date within 45 days there. You start to  
26 close this gap of uncertainty that everybody is feeling the

1 need to talk about expedited cases and the need to talk about  
2 getting DCRA to start processing applications, all of which  
3 are good. Anything that will move the process along.

4 But, if leadership, all right, if your  
5 leadership says this is the accountability now of the system  
6 and this is how we're going to go forward from here,  
7 everything flows from that.

8 CHAIRPERSON KRESS: Oh, I think so. I think  
9 that's why you're seeing this in front of you. And I think  
10 that's why we joined the task force. We're an independent  
11 agency. We weren't even invited. We asked to be invited, to  
12 join, to work on this with the regulatory reform task forces.  
13 And so, I hope you understand, we do have a commitment to some  
14 reform and a commitment to doing things in a more expedited  
15 and in a manner that people can conceive of and perceive, and  
16 know dates, and have some certain sure ending to them. There's  
17 a lot that has to happen to make that happen.

18 We wouldn't have put this out if we didn't  
19 believe in that very concept ourselves.

20 MR. COLLINS: Finally, I think the last section,  
21 3130, may have been another possibly a typographical error.  
22 We would oppose that section the way it is written. That  
23 section requires a, or allows a, BZA order to be valid for a  
24 period of six months.

25 That section was changed several years ago to  
26 extend the validity of a BZA order to two years. We don't

1 think there was an intention to pull it back to be six months.  
2 And if there was an intention to do that, we would oppose  
3 that. Otherwise, we simple call to your attention that that's  
4 not consistent with existing regulation.

5 There was a very good reason why it was extended  
6 to two years. Because it turned out that --

7 CHAIRPERSON KRESS: I was on the task for then.  
8 I don't think there was any intent to do that but we'll hear a  
9 little bit later. But I don't think there was.

10 MR. COLLINS: And that concludes -- Thank you  
11 very much for your time and attention.

12 CHAIRPERSON KRESS: Again, thank you for your  
13 well thought out ideas.

14 Questions?

15 COMMISSIONER HOOD: None.

16 CHAIRPERSON KRESS: I think we kind of broke the  
17 rules on that, the questions as we went.

18 MR. FAZAKERLEY: Thank you very much.

19 CHAIRPERSON KRESS: Thank you very much.

20 Ms. Hubbard.

21 Is there anyone else who wishes to testify other  
22 than the folks from Arnold and Porter? I didn't know if you  
23 wished to testify.

24 MS. HUBBARD: My name is Harriet D. Hubbard and  
25 I'm a resident of the District and have been active in zoning  
26 affairs since the 1940s. And have been through all of the --

1 oh, quite a lot of the big changes in the procedures here.  
2 And I must say that I'm appalled by the way this is being  
3 done. Because, on the task force, as compared, for example,  
4 to when we had the administrative procedures act pass, and  
5 other things relating to notice, there was a great deal of  
6 citizen participation.

7 CHAIRPERSON KRESS: You're addressing the notice  
8 issue especially, I hope?

9 MS. HUBBARD: Well, I'm not -- No, I'm -- the  
10 production of this entire document. There was a citizen  
11 participation in the production of that and also in 1958 when  
12 the zoning regulations were revised, there was a great deal of  
13 citizen participation.

14 And you -- I followed this and have drafts of  
15 this and that since Mr. Patton, you know, was the head of the  
16 -- this little organization that pulled themselves together  
17 here.

18 Now, let me just say that I would like to have  
19 at least a week to furnish written material because I had an  
20 eye operation, you know, with lasers and everything.

21 CHAIRPERSON KRESS: I'm having that in about two  
22 weeks. I'm right with you.

23 MS. HUBBARD: All right. But I'm not -- I  
24 cannot typewrite. I can't even read my own handwriting  
25 without a magnifying glass. You know. Just give me a week  
26 after this to, say, maybe a week from Friday, to get my things

1 in and I will get it all in writing to you.

2 Now, there are many other citizens in this city  
3 who have been active in zoning and civic affairs who would  
4 agree with what I have to say, I feel sure. And they probably  
5 would add a lot of other things that they have to say. But  
6 please, do not sell the citizens out to making --

7 CHAIRPERSON KRESS: No, absolutely. In fact,  
8 that's right. This is initially -- the first draft of this  
9 came out like August 7th, I believe, and there was like two  
10 weeks for a response. And I personally was very upset about  
11 that because it was right in August when organizations,  
12 citizens organizations, weren't meeting, people were on  
13 vacation.

14 MS. HUBBARD: That's right.

15 CHAIRPERSON KRESS: Then they extended it  
16 another 30 days. And then we took it even past that to do a  
17 revised version that took in to account some of the comments,  
18 or most of the comments that were received during that time  
19 period. So, this has actually been out for comment since  
20 about August 7th. And I'm just saying that to you because I'm  
21 surprised I don't see more citizens here tonight.

22 MS. HUBBARD: Well, they would be here. But we  
23 have a lot of things going on, as you may know.

24 Let me just say, I have talked to some of the  
25 lawyers that were involved in the city and in the Corporation  
26 Counsel's office. And also to Judge Finner about this, whom I

1 saw the other night. And you would just be surprised. Maybe  
2 you're not. But how little they know about what's going on.

3 I mean, here are all these people who are  
4 supposed to be responsible for our laws and regulations and  
5 even then, they have never even read them. Did you know that?

6 CHAIRPERSON KRESS: That's a little frightening.

7 MS. HUBBARD: Yes, it is. And that's because  
8 nobody ever took the trouble to make sure that they did know.  
9 I mean, how you can have people that are responsible land use  
10 regulators that didn't even know about these -- they knew  
11 about them generally, that they were being drawn up and  
12 everything, you see. But they've never even read them. So, I  
13 ask you to use a great deal of caution and thinking yourself.

14 Now, a great deal of reference has been made by  
15 people, Lindsley Williams and people from Wilkes and Artis,  
16 and everything, about the delays, the terrible delays in  
17 getting out the orders. Now, I've all been through that over  
18 the years. You know what happens is that in the old days when  
19 we had the engineering commissioner, we had the commission  
20 assistant, the person who was the head of the zoning  
21 commission, was from the Army Corps of Engineers. And usually  
22 a person flag ranked or a general or something. These people  
23 could write.

24 I mean, people on -- we have had a few people on  
25 our commission over the years could actually sit down and  
26 write an order themselves. Now, we don't have people now that

1 either have the ability or the time.

2 CHAIRPERSON KRESS: I think it's the time.

3 MS. HUBBARD: All right.

4 CHAIRPERSON KRESS: This is basically volunteer  
5 and we all have other jobs.

6 MS. HUBBARD: One of the big things is that we  
7 notice as a result of their never having to write the orders  
8 themselves, that when you hold the hearings, they never  
9 develop the information that developed the good order. In  
10 other words, if you knew you had to write it, you would  
11 probably ask better questions and write a better order if you  
12 had to write it yourself.

13 And one of the things that I have advocated, I  
14 put this in when I talked about appointments to the zoning  
15 commission and the BZA, that a writing test be administered to  
16 all the applicants so that we could actually see that they  
17 could write an order. That would be part of your general --  
18 we could develop a panel of people in the city who could serve  
19 on the zoning commission.

20 CHAIRPERSON KRESS: And I did hear you testify  
21 to that and I have to tell you, I'm a little personally  
22 offended that you think I can't and that many of us here can't  
23 do that.

24 MS. HUBBARD: We'll see what you can do. Now,  
25 in the old days, when the BZA operated a little better, the  
26 head of the zoning office, Mr. Klauzer, was a lawyer and a

1 real expert in land use planning. And he sat on the BZA and  
2 he wrote the orders.

3 CHAIRPERSON KRESS: Well, I believe it should be  
4 being done by the staff and edited. We have a difference of  
5 opinion.

6 MS. HUBBARD: No, but what I mean, he was a  
7 lawyer and an expert. And he sat right on the BZA and he  
8 could ask questions along with everybody else.

9 CHAIRPERSON KRESS: Could you really help me,  
10 and I know that your eyes are bad and you haven't had a  
11 chance. But you have read the testimony and --

12 MS. HUBBARD: Oh, I have a -- lots of testimony.  
13 After listening to all these people in their little --

14 CHAIRPERSON KRESS: Can you just hit some high  
15 points for us, and I will leave this -- At your request, I will  
16 leave this open for one week. Can you hit just some --

17 MS. HUBBARD: Well, I have some very -- I have  
18 some very specific comments to make.

19 For example, with regard to party status, people  
20 who represent citizens organizations like the civic  
21 organizations or the citizens organizations, should be given  
22 party status in every contested case that comes along.

23 CHAIRPERSON KRESS: I'm sorry, that represents  
24 any citizens organization?

25 MS. HUBBARD: No, now you're --

26 CHAIRPERSON KRESS: I'm trying to hear you.

1 MS. HUBBARD: A citizens organization which has  
2 in its bylaws as purposes that zoning, historic preservation,  
3 land use, planning, whatever there is within their thing. As  
4 you may know, I want to give you some background so that  
5 you'll have the support for this. When we had zoning set up  
6 in the first place back in the 1920s, remember we didn't have  
7 any ANCs or anything else like that. But we did have -- And  
8 also the city was segregated. And the zoning commission and  
9 the -- which we didn't have any BZA then, they wanted to hear  
10 what the citizen had to say. And so, the citizens  
11 associations, they spent a great deal of their time testifying  
12 before the zoning commission back in those days. Remember?  
13 Now that's not --

14 CHAIRPERSON KRESS: I wasn't born yet.

15 MS. HUBBARD: I know you weren't, but you must  
16 realize that the basis of citizen participation here.

17 CHAIRPERSON KRESS: Absolutely.

18 MS. HUBBARD: It comes from the original days of  
19 buildings. And of these two organizations, the civic and the  
20 citizens, the citizens were always better than the civic  
21 because the citizens organizations had committees for  
22 different subjects.

23 CHAIRPERSON KRESS: I agree.

24 MS. HUBBARD: Zoning, education, this and that.  
25 Whereas, the civic organization had block clubs which means  
26 they never developed any experts on zoning or anything else.

1 Because they just took up what happened right there in their  
2 block. In my opinion, I've examined all this in detail and  
3 looked at a lot of the testimony in the old records.  
4 Therefore, you will find the citizens associations, they have  
5 zoning committees whereas the civic associations, they just  
6 have block clubs.

7 Now, you have to give great weight to this when  
8 you're talking about party status and all these things.

9 People who represent civic associations --

10 CHAIRPERSON KRESS: You think that they don't  
11 deserve the great weight that the citizens --

12 MS. HUBBARD: No, no, no, no, no. What I think  
13 is, you should do better cross examination of all the  
14 applicants. They're the ones that get rooked in this  
15 business. I've seen it happen. I've spent hours down here  
16 listening to hearings of all kinds and seeing how an  
17 organization that does not have a zoning committee that has  
18 been going on for years.

19 The same is true of ANCs. ANCs, after all, are  
20 only elected people. And they address all kinds of questions.  
21 They have no more expertise than Joe on the street with regard  
22 to anything. They have never read the regulations. Their  
23 opinion on this and that is just ridiculous. Often they've  
24 never -- I mean, they don't know anything about zoning very  
25 often.

26 I have been to many, many ANC meetings. And I

1 know in the DuPont Circle area, this was years ago when I was  
2 active, we tried to have a representative of the ANC, the  
3 civic association, and the citizens group, and everybody meet  
4 together so we could make a joint decision and all stand up  
5 for the same thing. But that doesn't work all over town, as  
6 you well know.

7 CHAIRPERSON KRESS: I think you're right. I  
8 think you're making a point and that we should look on a case  
9 by case basis and see if they have the --

10 MS. HUBBARD: No, not a case by case basis.

11 CHAIRPERSON KRESS: No, I meant an organization  
12 to see if they have the kind of qualified people that you're  
13 talking about.

14 MS. HUBBARD: On the other hand, you may find  
15 out that the only people that are really qualified in the  
16 zoning belong to the police advisory committee.

17 CHAIRPERSON KRESS: I won't disagree.

18 MS. HUBBARD: And they never --

19 CHAIRPERSON KRESS: Talk to me about the  
20 notice. I am --

21 MS. HUBBARD: No, I want to talk about party  
22 status.

23 CHAIRPERSON KRESS: Okay.

24 MS. HUBBARD: Now, you don't have here in your  
25 procedures. At the beginning of every hearing, you should  
26 recognize people who are parties. That they should be given -

1 - and that the citizen -- in the 1930s --

2 CHAIRPERSON KRESS: Oh, you mean it's not  
3 written in here that at the beginning of every meeting--

4 MS. HUBBARD: No, it's not. At the BZA it is  
5 but not in the zoning commission in contested cases.

6 CHAIRPERSON KRESS: I'm sorry, you know we do do  
7 that. But that --

8 MS. HUBBARD: I know that they do not have to  
9 file anything before the meeting, including their intention to  
10 be a party.

11 CHAIRPERSON KRESS: I'm sorry, you're saying  
12 they shouldn't have to?

13 MS. HUBBARD: No. And that was all argued out  
14 when we had the administrative procedures put in. Back in the  
15 1970s -- I wish you would take the trouble to read the  
16 testimony that developed the original administrative  
17 procedures plans. Why that is so.

18 CHAIRPERSON KRESS: Pardon me, though. I have  
19 problems with that because I personally have problems with the  
20 30 days. I don't think that gives a local citizens group, if  
21 you get caught in the wrong time frame.

22 MS. HUBBARD: No. No, we've got to have 40  
23 meetings because --

24 CHAIRPERSON KRESS: But that's not what the  
25 administrators -- from what I'm hearing, the act is saying 30  
26 days. I'm going to tell you personally, I don't speak for

1 these people. But personally I'm worry about 30 days because  
2 if you hit the wrong time, you can just miss it totally in  
3 your ANC meetings.

4 MS. HUBBARD: No, we have 40 days.

5 CHAIRPERSON KRESS: No, that's what we have now.  
6 But what I'm saying is --

7 MS. HUBBARD: No, it should not be reduced.

8 CHAIRPERSON KRESS: I want you to help make a  
9 case for that because I have --

10 MS. HUBBARD: I'll tell you why. The original  
11 case that was made back when we had the thing passed, at least  
12 in these organizations meet usually once a month.

13 CHAIRPERSON KRESS: The administrators --  
14 correct me if I'm wrong. Doesn't it say 30 days? It does not  
15 say 40?

16 MS. PRUITT-WILLIAMS: Correct.

17 MS. HUBBARD: No, 40.

18 MS. PRUITT-WILLIAMS: APA only requires a 30 day  
19 notice.

20 CHAIRPERSON KRESS: Thirty. That's why I need  
21 you to testify on this 40.

22 MS. HUBBARD: No, what I mean, though, to say  
23 the zoning regulations administrative procedures.

24 CHAIRPERSON KRESS: Right. I'm talking about --

25 MS. HUBBARD: Require 40.

26 CHAIRPERSON KRESS: -- the city council is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 [www.nealrgross.com](http://www.nealrgross.com)

1 talking about us meeting all of their obligations.

2 MS. HUBBARD: I'm sorry, no. I'm sorry.  
3 Because it's a practical thing. You want to get the citizens  
4 opinion. They meet just once a month.

5 CHAIRPERSON KRESS: Exactly.

6 MS. HUBBARD: All right. You have to get your  
7 zoning committee chairman, like me, to go down here to the  
8 office, investigate the cases, find out what's being coming  
9 up, hold a meeting of the committee, decide what our position  
10 is, go to the association and get our cases voted on by the  
11 whole association.

12 CHAIRPERSON KRESS: That's the testimony I  
13 wanted on this.

14 MS. HUBBARD: Now, that is why we have to have  
15 the time to do that. And the length of time has got to give  
16 us time to hold a meeting and get the thing voted on.

17 CHAIRPERSON KRESS: And we've heard too many  
18 times 30 days is just --

19 MS. HUBBARD: No, 40 days. And that was all  
20 argued out back in the 1970s. Remember the -- Mr. Parsons,  
21 the participation of Capitol Hill Restoration?

22 COMMISSIONER PARSONS: Yes.

23 MS. HUBBARD: You know all about that. We've  
24 got to have 40 days.

25 And not only that, we don't have to submit  
26 anything beforehand. I'll tell you, I'm really good at this.

1 I mean, I've even taken cases to the Court of Appeals that I  
2 can write. But I've had BZA days where I had four BZA cases  
3 to do. I mean, I can't do that. I'm just one person, don't  
4 have any secretary. Every word I write is being looked over  
5 my shoulder by a lot of hawks saying who told you you could do  
6 that, who told you you could do that, you know. I mean, I  
7 don't have to do anything.

8 Not only that, I often find when I hear the  
9 applicant's case that there are a lot more things wrong with  
10 it than I ever thought. We have to have a complete look at  
11 the applicant's case. In my opinion, the time for them to  
12 submit their entire case should be at least ten days before  
13 the hearing.

14 You see, I've got to come down and look at the  
15 case, examine all those papers in the file, look up the  
16 previous cases on that site, what happened to that. Go out  
17 there, have a meeting of my committee, tell them all about it,  
18 persuade them. For me to get up and write this all down, then  
19 I come down here and find out there's a whole lot more stuff  
20 they're introducing at the hearing. I mean, you've never said  
21 that they couldn't bring a lot of stuff in.

22 Now, one thing I --

23 CHAIRPERSON KRESS: So, you're suggesting  
24 absolutely a cut off?

25 MS. HUBBARD: A cut off for them. But we don't  
26 have to submit anything. And that was a case that was

1 completely argued out, too, when we adopted the Administrative  
2 Procedures Act. Just the point I'm making, that for us to  
3 have to submit a prehearing objection to the case with our  
4 reasons and everything. Now, we often -- another thing  
5 about that is, this is true in both contested cases before the  
6 commission and before the BZA. We often get very unfriendly  
7 commission members or BZA members, the citizens do. Remember  
8 Mr. Marietti, Mr. Parsons?

9 COMMISSIONER PARSONS: I remember many arguments  
10 between you and Mr. Marietti.

11 MS. HUBBARD: No, no. Well, anyway, I mean to  
12 say that Mr. Marietti, for example, when he was the chairman  
13 of the commission, you see, we would have Wilkes and Artis  
14 coming in and their applicant. And they would make the  
15 application and everything.

16 So then, you -- the people on the commission  
17 avoid certain subjects in connection with all this. And then  
18 you get up and you ask the applicant certain questions. And,  
19 Mr. Marietti would say, they didn't say anything about that.  
20 They didn't say anything about that. And so, you can't cross  
21 examine. It's just as if certain people on the commission  
22 just don't want these subjects brought up. And they don't want  
23 it to appear in the record.

24 And, I must say that our freedom to cross  
25 examine on relevant questions, I would like to see something  
26 specific about that. Whether or not a member of the zoning

1 commission or the applicant has brought up the question.

2 Now, I also don't think we should be required to  
3 furnish any findings of fact or conclusions of law.

4 Let me just say to all you members of the  
5 commission, and everybody on the commission, if you had to  
6 write the thing, you would ask the questions that would enable  
7 you to write the findings of fact and conclusions of law  
8 yourself. It doesn't have to be a long piece of paper.

9 Now, there's another thing there that I feel is  
10 very important. That's the prehearing set down.

11 CHAIRPERSON KRESS: The set down. What do you  
12 say about that?

13 MS. HUBBARD: Now, it was the custom in the past  
14 to allow the applicant to speak at the set down hearing before  
15 the zoning commission. The citizens have always felt that was  
16 grossly unfair.

17 CHAIRPERSON KRESS: No, they're only allowed to  
18 speak if we're turning them down.

19 MS. HUBBARD: Well, no --

20 CHAIRPERSON KRESS: They're not allowed to speak  
21 at our set down hearings right now --

22 MS. HUBBARD: No.

23 CHAIRPERSON KRESS: -- unless we're turning them  
24 down.

25 MS. HUBBARD: All right. Now, let me ask you  
26 another thing.

1 CHAIRPERSON KRESS: And then we give them, as  
2 we're getting prepared to turn them down and not allow their  
3 case to be heard, we allow them to make a statement.

4 MS. HUBBARD: Why? Why don't you allow the  
5 citizens to -- I mean, the thing you'd have to --

6 CHAIRPERSON KRESS: If a citizen was asking for  
7 something, we would allow them to speak --

8 MS. HUBBARD: At the set down hearing?

9 CHAIRPERSON KRESS: We allow no one to speak at  
10 the set down hearing unless we're turning it down and we're  
11 not going to hear the case.

12 MS. HUBBARD: Well, why do you allow them to  
13 speak? There's no rationale for that.

14 Now, Mr. Parsons brought up this question of the  
15 rezoning for a certain lot. One of the things I recommended  
16 to -- in examination for the sitting positions on this  
17 commission and the BZA, is that you examine the cases from the  
18 Court of Appeals. And you will find that there are cases  
19 there that absolutely forbid the rezoning of lots or a small  
20 piece of property for the benefit of one property owner.

21 Please make your own examination from the Court  
22 of Appeals. This was all tried in the past by people --

23 CHAIRPERSON KRESS: We did and we have done  
24 that.

25 MS. HUBBARD: All right. Doesn't it say right  
26 in there that you can't rezone a small piece of property for

1 the benefit of one owner? It does. So, I mean, there's your  
2 reason.

3 COMMISSIONER PARSONS: And we turned them down.

4 CHAIRPERSON KRESS: And we turned them down.

5 MS. HUBBARD: All right.

6 CHAIRPERSON KRESS: Unanimously, as I recall.

7 MS. HUBBARD: No, you turned them down on their  
8 prehearing, I mean, on the set down hearing.

9 CHAIRPERSON KRESS: Yes, they were. Not even  
10 hearing them.

11 MS. HUBBARD: Another thing, if you didn't have  
12 any PUDs, I have always been against -- for the abolition of  
13 PUDs. And no transfer of air space.

14 Let me just say one thing. You know, these  
15 people talk about the suburbs in Virginia and what they do in  
16 Virginia and Maryland, and everything. Your competition is  
17 Paris. It's a great European capital. This is the capital of  
18 the United States. And you are the guardian of the land and  
19 what's built here. It's not what they're doing in Maryland  
20 and Virginia, or Peoria or Chiapuk, or something.

21 I mean, the way this place -- the reason it  
22 looks the way it does, is because that's all they ever talk  
23 about. How they're going to move to Virginia if they don't  
24 get their this and that. Let them go. I'll tell you, I could  
25 hardly wait.

26 You are the guardians of this place.

1 CHAIRPERSON KRESS: I think we see ourselves as  
2 that.

3 MS. HUBBARD: All right. When we had almost a  
4 million population back in the 1947, we had no Department of  
5 Economic Development. Think of that. No one will -- No PUDs.  
6 We had --

7 CHAIRPERSON KRESS: So, you're advocating that  
8 we add -- I'm trying to get to the issue here.

9 MS. HUBBARD: No, I'm trying to tell you. These  
10 people who want PUDs, put the PUDs regulations back the way it  
11 was originally proposed, which was 15 acres. Fifteen acres,  
12 and it was supposed to take care of the unzoned land in  
13 Northeast. I mean, that is what the original thing is.

14 Mr. Marietti and his little friends all back  
15 together, that PUD, PUD, PUD. You're like acne sprouting up  
16 all over the place. We got so many of them. I mean, I hate  
17 PUDs and I should think you would, too. You just look around  
18 the District and look at the PUDs. Can you think of one  
19 reason why those horrible building should ever have been  
20 built? For a bank, for example. Ain't it gorgeous. Oh, what  
21 an amenity. Makes you -- Look at the horrible thing at the  
22 Horrick Mansion, that building up there. That's another  
23 little PUD. I mean, why don't you revise the PUD regulations.

24 And for this transfer of air rights, you don't  
25 have to be like Charlene Drew Jarvis. She's going to sell the  
26 land off -- the air off over Union Station. I mean, you're

1 talking about doing where these poor little fire station and  
2 police station at 21st Street. I mean, in Paris they don't  
3 sell off the air.

4 You want to make a good looking city. Something  
5 that looks great. And you're never going to get it if you go  
6 along with this I want to build my building right here.

7 CHAIRPERSON KRESS: Now, the PUDs -- I just have  
8 to say that the things that you're talking about now  
9 definitely aren't in here.

10 MS. HUBBARD: Yes, they are. You could always -  
11 - look at all these amenities you've got in here.

12 CHAIRPERSON KRESS: No, no. I meant as far as  
13 in these regulations that we're putting out --

14 MS. HUBBARD: Yes, you do. You've have the --  
15 as a contested case. But I mean, we're -- some of our worst  
16 contested cases that go on for years and years are the PUDs.

17 CHAIRPERSON KRESS: I'm not saying these are  
18 things that shouldn't consider. Perhaps you're not hearing me  
19 clearly. I'm just saying that they cannot be heard because  
20 this is a total reversal. They cannot be heard in the context  
21 of this case because they are not the advertised changes to --

22 MS. HUBBARD: Well, what about the -- all right.  
23 What about the amenities. You've got a list of the amenities  
24 here. Now what --

25 CHAIRPERSON KRESS: The amenities were not  
26 advertised as a part of this case either.

1 MS. HUBBARD: Oh, yes they were.

2 CHAIRPERSON KRESS: And I'm sorry, if it were  
3 count 30, I'd like to talk on --

4 MS. HUBBARD: Thirty -- On page 3013.

5 CHAIRPERSON KRESS: As a change?

6 MS. HUBBARD: 30 --

7 CHAIRPERSON KRESS: Made a change on 3013, I  
8 don't believe so. Let me take a quick look.

9 MS. HUBBARD: Section 3013. Isn't it amenities.

10 CHAIRPERSON KRESS: No, there's -- I see no  
11 changes to the amenities.

12 MS. HUBBARD: Here it is. Provisions of 3013.4  
13 show a --

14 CHAIRPERSON KRESS: But, they just reprinted the  
15 whole thing but that is not a proposed change.

16 MS. HUBBARD: Well, then why is it in here?

17 COMMISSIONER PARSONS: It's only the items in  
18 bold print that are being changed. We printed the whole  
19 regulation.

20 MS. HUBBARD: Since it's in here, why don't you  
21 just take all that out, then.

22 COMMISSIONER PARSONS: While we're at it.

23 CHAIRPERSON KRESS: I'm sorry, that is very  
24 misleading and with your eyes like my eyes, I can see how you  
25 had a problem with that.

26 MS. HUBBARD: Why don't you just take all that

1 out?

2 CHAIRPERSON KRESS: Well, I can tell you why  
3 that we presented it this way. We wanted people, when you  
4 read things in small context, a paragraph here and a paragraph  
5 there, sometimes you don't get the full impact. The reason it  
6 was done this way is that the things that were changed were  
7 put into bold so you could read them in the context of the  
8 whole.

9 MS. HUBBARD: You mean to say I can't make any  
10 suggestions except with regard to what's in bold?

11 CHAIRPERSON KRESS: Exactly.

12 MS. HUBBARD: Well, I don't think that's fair.  
13 And I bet you a lot of other people don't know that.

14 I believe --

15 CHAIRPERSON KRESS: I think this has commonly  
16 done. I don't think --

17 MS. HUBBARD: I believe the entire regulation is  
18 up --

19 CHAIRPERSON KRESS: We did the building codes  
20 like that. I mean, many codes are done like this. I'm sorry.

21 MS. HUBBARD: Let me just say another thing  
22 about notice. The big notice case, notice to the citizens,  
23 the big notice case is the one about that office building, I  
24 think it's on N Street, that we won in the Court of Appeals.  
25 You know, when they set the 200 foot rule and said that you  
26 had to notify the tenants who lived in the building where they

1 were going to throw them all out and build this office  
2 building. Now, the question of notice, about who you're going  
3 to give notice --

4 CHAIRPERSON KRESS: Now, that -- I'd like your  
5 opinion on that.

6 MS. HUBBARD: All right. Now, you read that  
7 Court of Appeals opinion. I would -- that you probably have  
8 that here. And read the notice part of the administrative  
9 procedures thing we had back when we gave notice. Notice has  
10 got to be so that it's not misleading.

11 And, I believe a lot of the notices that you  
12 give now are misleading in the sense that they never tell a  
13 person enough about what is really proposed. I mean, you look  
14 at the one for 2100 M Street. In my opinion, that's very  
15 misleading. And so are the orange signs being put up outside.

16 Now, can you get some kind of a very short, say,  
17 ten word message on a board or something like that, or  
18 something that says a huge, enormous building is going to be  
19 built here that's going to block your view, clog your traffic  
20 --

21 CHAIRPERSON KRESS: Can I tell you my fantastic  
22 dream as a part of the regulatory reform, if we can get the  
23 money, we're going to have a web site. And this is going to  
24 be information that is available on a regular and a daily  
25 basis. I mean, we have informational system we're going to  
26 try to work on with new technology to help.

1 MS. HUBBARD: I -- I have -- All right. I have  
2 just one more thing to say and then I'll stop.

3 You know, you refer all these cases to the  
4 Department of Planning for their opinion and this and that.  
5 Why don't you refer them to NCPC first? In Paris they have  
6 just one planning agency. Just imagine. And they would tell  
7 you, recommend to you, whether or not you should put it down  
8 to a hearing. That's the way they do it in Paris.

9 CHAIRPERSON KRESS: Well, that's an interesting  
10 concept.

11 MS. HUBBARD: NO, I mean to say, we only used to  
12 have one planning agency. Now we've got urban renewal  
13 planners. We've got NCPC planners. We've got Charlene Drew  
14 Jarvis. We've got -- I mean, we've got everything else in the  
15 world, planning, planning, planning. And I mean, we should  
16 have just one planning agency.

17 And, instead of referring your cases, your big  
18 cases, for an opinion to our planning agency, to NCPC.  
19 They've got the staff. They've got the money. Let them look  
20 it all over. And we'll fire Reginald Griffith and get  
21 somebody in there that really likes us. But I mean, they  
22 would furnish you a nice --

23 And we're trying to get the legislation changed  
24 in Congress anyhow to put it back to what it was before 1952.  
25 See. So, we have just one planning agency for the District.

26 CHAIRPERSON KRESS: Well, I --

1 MS. HUBBARD: And we don't have any baseball  
2 commission, you know.

3 CHAIRPERSON KRESS: I do want to thank you for  
4 your testimony. And because of you and you only, I am leaving  
5 this record open for one week at your request. I would like  
6 to offer Arnold and Porter, Lindsley, I mean, Mr. Williams.  
7 You had some -- you just raised your hand.

8 MR. WILLIAMS: Will the record be left open for  
9 Mr. Lorenzo?

10 CHAIRPERSON KRESS: One week.

11 MR. WILLIAMS: One week.

12 CHAIRPERSON KRESS: I'll be saying that in a  
13 moment.

14 MR. WILLIAMS: It isn't just for --

15 CHAIRPERSON KRESS: No, it's not just for Ms.  
16 Hubbard.

17 MS. HUBBARD: I'm --

18 CHAIRPERSON KRESS: Pardon me?

19 MS. HUBBARD: You know, we've got 30 people that  
20 want to be heard. They told me they're all -- we're having  
21 meetings tonight about this matter.

22 CHAIRPERSON KRESS: Well, we have one week and  
23 we will leave the record open.

24 Would the folks from Arnold and Porter, Mr.  
25 Maszak or Mr. Gross, like to make any final comments on any of  
26 the comments you've heard today or your own personal ones?

1 MR. GROSS: Madam Chair, I'm Nate Gross from  
2 Arnold and Porter and I'm with Peter Maszak.

3 We were here mainly to monitor and just to  
4 follow through. We, of course, drafted the regulations for  
5 the control board based upon fairly specific mandates from  
6 the. But we did try to broaden that by meeting with the  
7 zoning commission, the BZA, and the zoning task force of the  
8 executive agency.

9 I don't believe we have any instant responses to  
10 anything that was brought up tonight. But we just wanted to  
11 follow through and see how it all comes out. If there's  
12 anything we can do, we'll be happy to do more. But it seems  
13 to be the comments are all well within the frame work of the  
14 spirit of the regulations and it's fine tuning, it seems to  
15 be.

16 MR. MASZAK: The spirit is really -- I mean, Mr.  
17 Williams is absolutely right. If you undo this to where it  
18 began, you'd almost go back to the BRRC report and then follow  
19 it through. I think the Holland and Knight report was where  
20 we began because that's what was adopted by the control board.  
21 And none of what we heard tonight, at least none of what I  
22 heard and I don't think what Nate has heard, is at all  
23 inconsistent with what the Holland and Knight report said.

24 Obviously, some of the matters before counsel,  
25 the notice question for example, and counsel also had other  
26 issues it was dealing with such as the competition --

1 CHAIRPERSON KRESS: And I really wanted Ms.  
2 Hubbard to know it's before counsel on this notice issue.  
3 Because this --

4 MS. HUBBARD: -- get the counsel enlarged or  
5 abolished.

6 MR. MASZAK: And --

7 MS. HUBBARD: Enlarged.

8 CHAIRPERSON KRESS: Right. I just want you to  
9 know because we're talking about one thing here that we  
10 proposed and that came out of our task force which was 40  
11 days, and the counsel is talking about different notifications  
12 than what we're talking about. And it's much more stringent.  
13 And if notification is important, you need to be aware of that  
14 so that you can handle it at the counsel level.

15 They're due to make their report and decisions  
16 by December 23rd, for your information.

17 MR. MASZAK: What Mr. Collins and Mr. Fazakerley  
18 said for DCBIA, I believe, were, again, within the spirit of  
19 the Holland and Knight report. Even what Ms. Hubbard said at  
20 some -- in some ways in terms of balancing the interests of  
21 the citizens with respect to notice and with respect to  
22 participation, are also broadly within the boundaries. But I  
23 think Nate and I have decided that it's best for us to act as  
24 we have before, as a resource. If you have questions of a  
25 technical nature, we can always answer them. But I think the  
26 substance of what was said tonight, if I'm not mistaken, Nate,

1 has all been within the spirit of -- the broad spirit of the  
2 Holland and Knight report.

3 And I think what Mr. Williams did and what Mr.  
4 Collins, Mr. Fazakerley, and what Ms. Hubbard said, was all --  
5 was terrific. And I think these are -- these aren't tough  
6 decisions any more. Everyone wants to get things done and  
7 everyone wants to get it done right. And I think Mr.  
8 Fazakerley said it right. He said it would be nice to know,  
9 to have a system that was accountable, and certain, and  
10 predictable, so that -- for everyone, for citizens as well as  
11 developers.

12 So, I think that that's the spirit of the  
13 Holland and Knight report. So, I think we were happy to be  
14 here and we act as a resource if you need us.

15 CHAIRPERSON KRESS: Thank you.

16 Before you leave, and I didn't allow questions  
17 of Ms. Hubbard, I just wanted to make sure if my colleagues  
18 have any questions for -- since there's so few, anybody in the  
19 audience even?

20 Thank you very much. I appreciate your coming  
21 and listening to the full testimony.

22 Mr. Williams, I'll recognize you once more and  
23 then I believe we'll close the meeting.

24 MR. WILLIAMS: Thank you again, Madam  
25 Chairperson. Lindsley Williams.

26 I presume you'll be reading each of the written

1 sets of comments. And one of the things that I buried in mine  
2 was a question about what the cost implications of this would  
3 be to the Office of Zoning for its operations. And I  
4 suggested that you invite staff to look at those implications  
5 and put them into the record. And if there were to be added  
6 costs, that you document that and forward it to the sources of  
7 funds. And that you not forward it to another hearing on  
8 increased fees.

9 But I think --

10 CHAIRPERSON KRESS: No, in fact, we're going to  
11 be meeting with an increased budget. Anybody who wants to put  
12 in a good word, we're meeting with Mr. RESnick on Monday at  
13 10:30 at 1 Thomas Circle to talk about the increase in budget  
14 that's going to be needed to --

15 MR. WILLIAMS: Well, that's fine. Some of these  
16 things don't come cheap. They're the right thing to do but  
17 they need to be budgeted so we don't run into the kinds of  
18 problems we had last fiscal year.

19 CHAIRPERSON KRESS: I mean, I hope people in the  
20 audience --

21 MR. WILLIAMS: Thank you.

22 CHAIRPERSON KRESS: -- can understand. We don't  
23 want to run as slow as we do. I mean, how can anybody want to  
24 do that. But there's certain limitations that we're held to.  
25 Financial is the biggest.

26 With that, ladies and gentlemen, and I've got to

1 put my glasses on and read real close, like you do, and other  
2 members of the commission, I wish to thank you for your  
3 testimony in this hearing.

4 The record in this case will be kept open until  
5 November 13th for submissions of any additional information.  
6 Any special information and reports specifically requested by  
7 the commission must be filed no later than the close of  
8 business, 4:45 p.m., on November 13th in Suite 210 of this  
9 building.

10 The commission will make a decision on this case  
11 at one of its regular monthly meetings following the closing  
12 of the record. And I can tell you already it's going to be  
13 the December meeting. These meetings are held at 1:30 p.m. on  
14 the second Monday. So, whatever that date is, that's what it  
15 is. We could have put it in.

16 If any individual is interested in following  
17 this case further, I suggest that you contact staff to  
18 determine whether this -- when this case is on the agenda.

19 You should also be aware that if the commission  
20 proposed affirmative action, the proposed action must be  
21 referred to the National Capital Planning Commission for  
22 federal impact review. The zoning commission will take final  
23 action at a public meeting following the receipt of the NCPC  
24 comments, after which a written order will be published.

25 I now declare this meeting closed. And thank  
26 you all for putting up with our time schedule and coming so

1 late this evening.

2 (Whereupon, at 10:41 p.m., the public meeting of  
3 the commission was concluded.)

4

5

6

7

8

9

10