

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

PUBLIC HEARING

In the Matter of:

CONSOLIDATED PUD

Case No. 98-2M/97-12M/

and

94-17C

MAP AMENDMENT @ I-395

Monday,
March 15, 1999

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

The above-entitled matter came on for public hearing, pursuant to notice, at 7:00 p.m.

ZONING COMMISSION MEMBERS PRESENT:

JERRILY R. KRESS	Chairperson
ANGEL F. CLARENS	Commissioner
ANTHONY HOOD	Commissioner
JOHN G. PARSONS	Commissioner

STAFF PRESENT:

Stefanie D. Brown, Office of Zoning
Alberto Bastida, Office of Planning
Bruce Brennan, Office of Corporation Counsel

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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, Clarens, and Parsons.

I declare this adjourned public hearing reopened. The case that is the subject of this hearing is Case No. 98-2M, 97-12M, 94-17C. This case is the second amended application from the Washington Development Group requesting the Zoning Commission to approve a modification to a previously approved planned unit development granted by D.C. Order No. 664-B, to approve a map amendment and to approve an extension of the life of the originally approved PUD.

The Commission opened the public hearing in this case on May 21st, and continued the case on July 23rd, 1998, September 28th, 1998, and March 4, 1999, at which time it addressed preliminary matters, the applicant's presentation, and cross examination of the applicant.

This evening the order of procedure will be as follows. One, preliminary matters. Two, continuation of cross examination of the Applicant. Three, Office of Planning report. Four, other agency reports. Five, report of the Advisory Neighborhood Commission 2C and 6A. Six, parties and persons in support. And seven, parties and persons in opposition. The Commission will adhere to this schedule as

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1 strictly as possible.

2 Those presenting testimony should be brief and
3 non-repetitive. If you have a prepared statement, you should
4 give copies to staff and orally summarize the highlights only.
5 Please provide copies of your statement before summarizing.

6 Each individual appearing before the Commission
7 must complete two identification cards and submit them to the
8 reporter at the time you make your statement. If these
9 guidelines are followed, an adequate record can be developed
10 in a reasonable length of time.

11 The decision of this Commission in this case
12 must be based exclusively on the record. To avoid any
13 appearance to the contrary, the Commission requests that
14 parties, counsel, and witnesses, not engage the members of the
15 Commission in conversation during any recess or at the
16 conclusion of the hearing session. While the intended
17 conversation may be entirely unrelated to the case that is
18 before the Commission, other persons may not recognize that
19 this discussion is not about the case. The staff will be
20 available to discuss procedural questions.

21 All individuals who wish to testify, please rise
22 to take the oath.

23 (Whereupon, the prospective witnesses rose and
24 took the oath.)

25 MR. BASTIDA: Madam Chairperson, I have a couple
26 of preliminary matters I would like to discuss before we go

1 into the hearing. One is not related to this case. One is
2 related to the scheduled hearing you have for April 1st, 1999,
3 in which it has been brought to my attention that in fact
4 that's Holy Week and is the first day before Passover. I
5 would recommend that maybe that we consider changing the time
6 of the hearing to May the 6th at 7:00.

7 CHAIRPERSON KRESS: I would agree with that.
8 Fellow commissioners?

9 COMMISSIONER PARSONS: No objection.

10 CHAIRPERSON KRESS: No objection?

11 COMMISSIONER CLARENS: No objection.

12 COMMISSIONER HOOD: No objection.

13 CHAIRPERSON KRESS: All right. With that, we
14 will timely -- we will move the meeting of April 1st to May
15 6th and if you would take care of that for us?

16 MR. BASTIDA: Yes, Madam Chairperson. It will
17 be in the Register on March 26th. It will be ample time to
18 provide to everybody notice of the change of the schedule.

19 CHAIRPERSON KRESS: And you will try to get in
20 touch with those people who we would be aware would be
21 testifying on April 1st to make them aware of this change?

22 MR. BASTIDA: That will also be done, Madam
23 Chairperson.

24 CHAIRPERSON KRESS: Thank you.

25 MR. BASTIDA: The second matter is a letter
26 received from -- signed by Mr. Monts regarding a request for

1 the postponement of this hearing due to the lack of
2 authorization from the Control Board regarding Parcel 51B or,
3 in the alternative, that the record shall be open for 60 days
4 for them to have an opportunity to solve the matter with the
5 Control Board.

6 Copies of that letter are in front of you. It'
7 dated March 15, 1999 and was received at 5:48.

8 CHAIRPERSON KRESS: Thank you.

9 Discussion, fellow commissioners? It's my
10 opinion since we are gathered here and that we have already
11 had several extensions and continuances on this case, is to go
12 ahead and to take the second alternative put forward to us
13 which is to continue with the hearing but that we leave the
14 record open for 60 days to allow the clarification and
15 finalization of this issue for our record.

16 Any discussion?

17 COMMISSIONER PARSONS: I agree.

18 COMMISSIONER CLARENS: I agree.

19 COMMISSIONER HOOD: Agree.

20 CHAIRPERSON KRESS: All right.

21 MR. BASTIDA: In addition, Madam Chairperson, we
22 have received two letters, one from Mr. Graham, council member
23 for Ward 1, and Charlene Drew-Jarvis, a council member from
24 Ward 4, and which basically they are opposed to this proposal.

25 Copies of those letters are in front of you.

26 CHAIRPERSON KRESS: All right.

1 MR. BASTIDA: They are both dated March 12th,
2 1999.

3 CHAIRPERSON KRESS: And in addition, you might
4 want to go on and mention the other supplemental material that
5 we have received for the record. We have not reviewed it yet
6 and we'll be asking for some testimony on that tonight. I
7 would also say for the other parties who have not received
8 this material, there was a comment made at the last meeting
9 that material hadn't been received and they hadn't had a
10 chance to review that. And so, I want any of the parties to
11 know that they can request this information to be reviewed
12 from our staff.

13 MR. BASTIDA: Madam Chairperson, the applicant
14 submitted, in response to your request, a documentation dated
15 March 12, 1999. It was received at this office shortly after
16 4:00 on Friday. And that is in front of you but it was not --
17 it wasn't in a timely fashion to have been sent to you prior
18 to this meeting.

19 CHAIRPERSON KRESS: All right. Thank you.

20 With that, I would think it would be appropriate
21 to ask the applicant to present the material briefly that they
22 have given us, knowing that we will read this in the future.
23 But particularly as it relates to answering the questions that
24 we put forth at the end of our last meeting when we scheduled
25 this continuance.

26 Yes, Ms. Dwyer.

1 MS. DWYER: Madam Chair, as a preliminary issue.
2 For the record, Maureen Dwyer with Wilkes, Artis, Hedrick &
3 Lane, Chartered, counsel for Georgetown University Law Center.
4 And I'm speaking to either support the request for
5 postponement that was filed by DHCD or to even support
6 dismissal at this point in time.

7 This case was originally filed on August 15th,
8 1997. Two hearings have been postponed at the request of the
9 applicant. Two other hearings have been devoted to
10 preliminary issues. After a year and a half, we still do not
11 have an application that meets the filing requirements of the
12 zoning regulations, nor do we have the proper parties before
13 the commission.

14 At the last hearing, the commission identified
15 several deficiencies in the filing, including the discrepancy
16 in the site area on the plans. Chairperson Kress also asked
17 whether the appropriate parties were before it, and
18 specifically where were DHCD and RLA. The applicant then said
19 it would file letters of support from both agencies in the
20 record.

21 Commissioner Franklin then asked about the
22 status of the ERA before the Control Board and was told that
23 that was in process. The Commission then identified 11
24 specific requests for information to be filed in the record in
25 advance so that all parties would have the opportunity to
26 review the information and prepare for tonight's hearing.

1 Where are we tonight? Of the 11 requests for
2 information, only three have been filed. The three filed are
3 the lease agreement with DHCD, a revised proposed agreement
4 with Mount Carmel Church which has not been executed and is
5 just filed in draft form, and the listing of the parking
6 requirements under the zoning regulations.

7 What we are missing is a letter of continued
8 support from DHCD which is a co-applicant, a letter of
9 continued support from RLA which is a co-applicant, a plan
10 showing the additional landscaping and greenery for the
11 surface parking area, incorporation of the vent tower into the
12 project plans, specific information on the scholarship fund,
13 Control Board approval of the ERA, a plan showing residential
14 townhouse development on the new site, and a plat defining the
15 exact boundaries of the new site.

16 As Commissioner Parsons said at the last
17 hearing, the slope is slippery here and we believe this case
18 should be dismissed. You do not have the parties before you
19 that are the co-applicants. Neither DHCD nor RLA have filed
20 anything indicating continued support and, indeed, they have
21 requested postponement. You do not have the property before
22 you that is the subject of the modification requests. The
23 applicant has conceded that the ERA has not been reviewed and
24 approved by the Control Board. And, thus, the applicant has
25 no control over that site which is supposed to be the new
26 housing site.

1 The lease that was filed by the applicant for
2 the original PUD site states that any changes in use must be
3 approved by the Federal Highway Administration and the
4 Department of Public Works. That is a clear provision of the
5 agreement dating back to 1990. There is nothing in the record
6 from the Federal Highway Administration and there is nothing
7 in the record from the Department of Public Works. In fact,
8 the record is devoid of any comment from DPW when, in the
9 prior cases, in 1991, there was an elaborate, detailed
10 agreement between the applicant and DPW that must be modified
11 and part of this record if we are to proceed.

12 You do not have a properly filed application
13 that meets the zoning regulations. In addition to the absence
14 of key parties, we do not even know the exact dimensions of
15 the site, nor has the applicant filed any information to the
16 best of our knowledge clarifying the discrepancies that were
17 raised at the last hearing. This commission required back in
18 September of 1998 a perfected submittal. We have yet to see
19 that perfected filing which is what we have been requesting
20 for the last year and a half.

21 Our question is, how many more nights do we have
22 to spend down here before we get the information so that every
23 party in the room knows exactly what is before you and what is
24 being proposed? In the absence of that information, we
25 request dismissal or, at the very least, postponement.

26 CHAIRPERSON KRESS: Questions of Ms. Dwyer?

1 COMMISSIONER CLARENS: Only a brief question.
2 There is in the record a previous agreement between DHCD and
3 RLA, and the applicant. So, in the absence of a document that
4 in fact nulls and voids that agreement, that agreement, as far
5 as we're concerned, is still there. So, we don't need a
6 replication of that.

7 MS. DWYER: The only caveat I would add is we
8 have a new administration. We have new comprehensive plan
9 language. We have the specific request of the commission at
10 the last hearing for something to be filed in the record. In
11 the past, DHCD and RLA were listed as parties who would be
12 testifying. They're not here tonight. They haven't filed a
13 letter of support. And they have requested postponement. And
14 they are the co-applicants.

15 COMMISSIONER CLARENS: Well, postponement or
16 maintaining the record open, they did give us that option.

17 MS. SCHNEIDER: Good evening, members of the
18 Commission. I'm Pauline Schneider, counsel for the developer,
19 Washington Development Group. I'm a partner with the law firm
20 of Hunton & Williams.

21 Can you hear me?

22 CHAIRPERSON KRESS: We can. Can the rest of the
23 audience hear?

24 I think we're all right. Please proceed.

25 MS. SCHNEIDER: Thank you.

26 I guess I'd like to take issue with Georgetown's

1 counsel's position and lay out for this commission our reasons
2 for believing you have no only jurisdiction, you have an
3 application that is the fact that, yes, you did ask us for
4 some additional information. We've responded to some of that
5 in our filing that we filed last week and we're prepared to
6 respond to other portions of it this evening.

7 I think Commissioner Clarens notes correctly
8 that DHCD, RLA, was a co-applicant here and in the filing that
9 we made on January 6th which was signed by the Department, it
10 makes it clear that they are still in support of this project.
11 It is correct to say that certain political pressure, I think,
12 has been attempted to be brought to bear to scuttle this
13 project. But quite frankly, there is a lease with respect to
14 this property and that lease had a 49 year life and is subject
15 to renewal. We have a legal contract currently.

16 And the only issue before this commission is
17 whether this commission will agree to modify the existing
18 planned unit development on the leased property that currently
19 exists, to incorporate the site north of Massachusetts Avenue
20 to allow us to move the housing off the existing site.

21 It may be correct that the Federal Highway
22 Administration and DPW might have to approve a change in use,
23 but we're not changing the use for which the site will be
24 used. It will continue to be used for a commercial
25 development with mixed use consistent with the original plan.

26 The only change is whether we're moving housing

1 from the site to accommodate commercial space, office space,
2 as opposed to keeping the commercial office -- I mean, keeping
3 the housing on the site. So, I do not consider that a change
4 in use that would require the Federal Highway Administration
5 or the Department of Public Works to approve it.

6 You asked us last time if we would consider some
7 additional housing on the east side of the site. We will show
8 you some boards this evening that shows that our architects
9 have looked at that possibility and have come up with some
10 suggestions for consideration. We will also tell you the
11 logistical issues that are involved with that possibility.

12 You've asked us to look at things like the vent.
13 We have told you that the vent is sa part of the Department of
14 Highway structure that vents the Share Computer site that's
15 owned by the District and we, I think, responded to that in
16 our submission to you, and made it clear that we will consult
17 with the government to see if the government would allow a
18 different use. But, from our perspective at this moment in
19 time, we are not aware that we would be able to do anything
20 differently with that because the structure is such that you
21 have to allow it to be vented in order for the gases to be
22 removed.

23 It is correct that the ERA has not been fully
24 approved yet by the Government. It has been executed by the
25 developer. It has been reviewed by corporation counsel and
26 signed off on for legal sufficiency. It has been submitted by

1 the Department of Housing and Community Development, the RLA,
2 to the Control Board. Our understanding is that there has
3 been some miscommunication and I tell you, I've probably
4 gotten more gray hairs over this than almost anything else.

5 I mean, so we're going back and forth between
6 government agencies trying to figure out whose court it is.
7 It is not through any lack of effort on the part of the
8 developer that this agreement hasn't been fully executed.
9 However, there is an agreement. It has been signed by the
10 developer. It has been approved by the agency. It did go
11 over to the Control Board. There are -- who knows. I mean,
12 this magical dark hole that some of these things fall into.

13 But, we do believe, based on our conversations
14 today, that there are attempts being made to resolve, to
15 determine what, if any, additional information is being
16 requested by the Control Board in order for them to be able to
17 act on it. And we will make every diligent effort to make
18 sure that that is concluded within the 60 days that the agency
19 has requested for continuance of this.

20 I think this matter is ready to go forward. I
21 think, as you correctly note, Commissioner, there are a number
22 of us here and architects and traffic consultants, and others,
23 who come in from various parts and are prepared to go forward.
24 And I would request that this commission respectfully allow us
25 to proceed with our presentation.

26 MR. AGUGLIA: I would like to speak with respect

1 to the issue on the plats. This is Richard Aguglia. I'm with
2 Hunton & Williams.

3 We submitted the plans from the surveyor's
4 office along with drawings from maps and titles as part of our
5 exhibits. The drawings from maps and titles were part of our
6 exhibits to our second amended application. In the cover
7 letter, I said we would get the plats from the surveyor's
8 office as soon as available and they were submitted to the
9 commission, I'm going to say, about three weeks ago with
10 copies to all parties. And they clearly identify the project
11 to the north, Parcel 51B.

12 In fact, that wasn't an issue that was even
13 raised last year. I don't remember that issue being raised by
14 the commission at all. But it's been satisfied.

15 COMMISSIONER CLARENS: Mr. Aguglia, the
16 boundaries of the parcel north of Massachusetts was clearly an
17 issue at the last hearing. That's what you're referring to?

18 MR. AGUGLIA: I did not realize that. But the
19 plats, I had --

20 COMMISSIONER CLARENS: Yes, we -- it was
21 difficult to determine what was in fact the boundaries of the
22 site. So -- But that's not the gist of what we're discussing.
23 So, we can do that.

24 CHAIRPERSON KRESS: Do you have any questions
25 for the applicant's attorneys before we make a decision on
26 this preliminary matter?

1 COMMISSIONER PARSONS: I'm really troubled by
2 this. I mean, my first instinct when I read the letter from
3 DHCD was to go with the option of proceeding. And then I read
4 the applicant's submission which I hadn't read until I got
5 here this evening, I'm afraid.

6 CHAIRPERSON KRESS: Well, then you're ahead of
7 me because I haven't read it.

8 COMMISSIONER PARSONS: And I see little progress
9 over the past two weeks over some of the questions that we
10 asked, including what is the ownership. And that's serious
11 business because Mr. Monts came forward and said I don't own
12 this. The exhibit showed that -- Or, I don't have any
13 responsibility for this property and the exhibit seemed to
14 show that he did. And we left it hanging. And I don't see
15 anything here that helps us with that.

16 So, what I see happening is the lack of response
17 on the vent tower, the housing along the street, is, we'll be
18 back here in 60 days hearing this again when these matters
19 finally get resolved. So, I'm a little troubled by proceeding
20 tonight, although that wasn't my first instinct. Because our
21 time is valuable and so is everybody else's in the room. But
22 I don't think we're going to come to closure on this. There's
23 so many things left undone tonight that we'll be postponing
24 this for 60 days to get more information later. So, I don't
25 know whether it's worth proceeding or not. That's where I am
26 at the moment.

1 MR. BRENNAN: Madam Chair, I was going to point
2 out, was that the parties have suggested that you have a
3 choice of either finding that you cannot continue because all
4 11 of the matters that I think Ms. Dwyer correctly enumerated
5 for us haven't been resolved before you begin and the
6 developer's attorneys suggesting that they have all been
7 satisfied and that's the reason you can proceed. I think
8 part of the reason the commission came here this evening was
9 to review the record on those 11 matters. I mean, those are
10 all still before you. If not all of them have been submitted,
11 then that -- it remains for the commission to get the
12 information and evidence that it suggested it wants on those
13 11 matters, either by submissions before this hearing,
14 testimony whenever it determines that this hearing should
15 continue, this evening, another time, or both this evening and
16 another time, or by written submission afterwards, if you keep
17 the record open. I don't think it's the either/or that the
18 parties have submitted.

19 CHAIRPERSON KRESS: Necessarily.

20 MR. BRENNAN: Necessarily. And if by continuing
21 either now or at some other point, you should make it clear
22 that you're not waiving your option -- you're not conceding
23 that any of those matters are resolved if you don't think they
24 have been.

25 CHAIRPERSON KRESS: Yes, Commissioner Clarens.

26 COMMISSIONER CLARENS: Yes, and that would be

1 where I kind of sit at this point. And that is that we're
2 here and we're ready to proceed. And that I don't see any
3 harm done to any party by proceeding with the hearing tonight.
4 And if at the end of that hearing there are issues, whether
5 they are part of the 11 or they are even other issues that are
6 raised as a result of not only the applicant's testimony but
7 the opposition's testimony, that at that point we might in
8 fact find that we can either wait 60 days that has been asked.
9 And, I mean, a decision, we're not going to do a decision.
10 We're just going to hear.

11 COMMISSIONER PARSONS: That's to see.

12 COMMISSIONER CLARENS: So, we're going to hear
13 the case. So, we can proceed with hearing the case just like
14 we did a couple of weeks ago and make a determination as to
15 what else we need, if anything, keep the record open. And I
16 cannot imagine that none of the parties would be harmed by
17 proceeding in such a way.

18 CHAIRPERSON KRESS: Commissioner Hood.

19 COMMISSIONER HOOD: Then on the second hand,
20 Madam Chair, being a devil's advocate, if we have questions
21 about what's submitted to us after 60 days, then that would
22 not allow us an opportunity to be able to question. If we go
23 forward to just listening today, all we would be able to do is
24 take in whatever they give us after the 60 days and we have no
25 method of asking either parties any questions.

26 COMMISSIONER CLARENS: We can reopen the case.

1 We can --

2 COMMISSIONER HOOD: But then that goes back to -

3 -

4 CHAIRPERSON KRESS: We can continue it again.

5 COMMISSIONER CLARENS: We can continue it.

6 CHAIRPERSON KRESS: We can continue it another
7 time to get -- if we need to.

8 COMMISSIONER HOOD: Well, then I think it goes
9 back to I believe what Commissioner Parsons was saying. We're
10 kind of going around in circles.

11 MR. BRENNAN: It is true, Madam Chairman, too,
12 that I think the attorneys for the developer may wish to speak
13 a little bit more fully to you about why it is that the
14 directive of their principle is one that they think we should
15 not listen to at this point.

16 CHAIRPERSON KRESS: I'm sorry, say that again?

17 MR. BRENNAN: What you have as to the
18 preliminary matter is the request of the applicant to postpone
19 or to let the record remain open. And --

20 CHAIRPERSON KRESS: You're saying they haven't
21 addressed that clearly?

22 MR. BRENNAN: I think it's important -- I think
23 it's important for the spokesperson for the applicant to
24 explain fully for the record why that request is not one that
25 they are embracing?

26 MS. SCHNEIDER: I assume you're asking us to

1 address -- this is Pauline Schneider -- address why we think
2 it would be better to proceed and to keep the record open as
3 opposed to continuing the hearing this evening.

4 I think there are three points that I would like
5 to make. First, I think we're prepared. We did address in
6 writing a number of the issues that were raised. I think
7 we're prepared to address this evening a number of the other
8 issues that you were -- that you raised.

9 As you probably recognize when you ask us to
10 consider things like housing on a site, on a portion of the
11 site where we hadn't really fully explored it before, it
12 required some review of the site. It required our architects
13 to come in. We have drawings this evening to show you what we
14 were going to -- what we think might be possible on this site.
15 But it's not something that takes a day or two. It did take
16 some careful analysis. It took drawings and we have drawings
17 this evening, and we're going to discuss that with you.

18 Secondly, our architects are here from
19 California. It's not an insignificant cost to the developer.
20 We are trying to be responsive to you. We are trying to
21 comply. And, quite frankly, in our conversations late this
22 afternoon, when we learned for the first time that DHCD might
23 suggest a continuance, we suggested to them, we thought at
24 this late date when this had been scheduled and they knew it
25 had been scheduled for some time, we thought it was an undue
26 hardship on us and burdensome to suggest it when we've paid to

1 have folks here that you should sort of at the very last
2 minute decide to continue this.

3 And thirdly, I think we can really answer your
4 questions or many of the questions you've raised this evening.
5 And I do think that even if you left the record open for 60
6 days, if we got the matters resolved in less time than that,
7 we can file our answers sooner than that, and particularly I'm
8 referring to the ERA issue. And presumably this commission
9 wasn't going to reach a final decision tonight. There was
10 presumably going to be another session in any case, or that
11 was our assumption. So, hopefully, nobody has been prejudiced
12 by the decision to have a hearing tonight and then continue it
13 until a later date to wrap up all final issues and have an
14 opportunity to review what's been submitted to the record and
15 ask for DHCD or RLA to be present to answer any questions you
16 might have about that submission or any other submission that
17 might come in the record from any other party or any other
18 individual in opposition. Or in favor.

19 COMMISSIONER PARSONS: Madam Chairman, I have a
20 couple remarks.

21 I think we ought to schedule a hearing in 60
22 days. And we ought to hear the housing on the studies that
23 have been done over the past month because the architects are
24 here from California. I don't want to hear anything about an
25 unsigned agreement from Mount Carmel Baptist Church. I just
26 don't want to listen to it. I mean, the parties -- I don't

1 even see Carrie Thornhill here.

2 CHAIRPERSON KRESS: Carrie said she wasn't going
3 to be here.

4 COMMISSIONER PARSONS: So, an unsigned agreement
5 is no progress. And I don't want to spend an hour drawing it
6 out of the applicant, which is what we did last time. We
7 spent an enormous amount of time drawing out of the applicant
8 what this case was about. I got very impatient with that.

9 So, I don't want to do that tonight. I don't
10 want to -- I want a much more completed case. And certainly
11 the co-applicant ought to be here. And that probably will
12 mature in 60 days. But in deference to the fact that they've
13 flown people in here who have done studies on an idea we came
14 up with -- which I think is a superb idea. I hope it works --
15 that we should hear that tonight. But not proceed through
16 listening to the fact they've been denied permission to listen
17 to tapes and they haven't really gotten together with the
18 Federal Highway Administration. We can read all that. It's
19 unfinished business and it ought to come before us later. So,
20 that's my suggestion.

21 CHAIRPERSON KRESS: Ms. Dwyer, you wanted to
22 comment?

23 MS. DWYER: Madam Chairperson, I think we would
24 support that. One of our concerns about this evening is that
25 we haven't seen the material that's going to be presented
26 tonight. It's very difficult for us to analyze it, to have

1 our team of architect and traffic consultant, and planner,
2 review it. And we would like you to schedule the additional
3 hearing. We can then hold our cross examination and our
4 issues for that hearing when we've had a chance to review
5 this.

6 I would also suggest at that additional hearing
7 that we also have the Department of Public Works and Federal
8 Highways, some report from them. The lease agreement, as I
9 said, that was filed and Section 201 says that any change in
10 the use of a lease property, and the leased property is the
11 original PUD site, requires prior approval by the Department
12 of Public Works and Federal Highway. And I think that that
13 should be a requirement in addition to the participation of
14 DHCD and RLA as the parties.

15 CHAIRPERSON KRESS: I don't have a problem with
16 asking to see the reports of FHA and the Public Works. I
17 think we want to and I guess we would ask Office of Planning
18 and whichever hat that our acting director is wearing to help
19 assist us and see to it we do get those reports in writing.
20 And also one of the things that was a little disturbing is we
21 had talked about hoping to get this information ahead of time
22 enough that the parties could see it, and obviously we didn't.
23 We didn't get it until late Friday. And so, I see that as a
24 valuable concern, that the parties and the ANCs have not had a
25 chance to really review this information.

26 What is your feeling, Commissioner Clarens?

1 COMMISSIONER CLARENS: Well, I am a little bit
2 troubled by Commissioner Parsons' suggestion. I would prefer
3 to proceed, perhaps stepping back and allowing the applicant
4 to address the issues that were left open on our last hearing
5 and then proceed with the hearing. If there are issues such
6 as an unsigned agreement, but there are people in the audience
7 that can in fact explain why the -- there might be
8 explanations to why these things are not completed. And I
9 understand that the record would not be complete and the
10 record perfected until these issues are resolved.

11 But it seems to me that to just hear one part of
12 the case, the architects are going to have to come back for
13 any other hearing that we do because they have to answer -- if
14 we have a hearing, they would have answer if there's any cross
15 examination or any issues raised by the commission.

16 So, I don't know. To me, we are here. We can -
17 - If we find that in fact they do not give us what we need, we
18 can cut them short and we can move on to the next issue, if
19 Commissioner Parsons doesn't want to -- I understand what he's
20 talking about but it seems to me that we've already spent
21 almost an hour dealing with this preliminary issue where we'd
22 already be halfway done through the hearing if we had
23 proceeded.

24 CHAIRPERSON KRESS: All right.

25 COMMISSIONER HOOD: Madam Chair, I would just
26 like to add, echo, part of what Mr. Clarens say, also part of

1 what Commissioner Parsons. I think whether they come from
2 California or up the street, I still think that everyone's
3 here and there's a lot of people that are volunteering their
4 time such as the ANCs and others. But also from what I'm
5 hearing and what I'm -- haven't had a chance to read this
6 document, and trying to listen and read sometimes is kind of
7 difficult for me to do personally.

8 CHAIRPERSON KRESS: It's difficult for me as
9 well.

10 COMMISSIONER HOOD: So, I guess we do need to
11 set it down for another hearing. I don't know to what extent
12 we can move forward with this hearing, but I think as far as
13 from hearing from others in the audience whether it's the
14 architects from California or the people up the street, I
15 think we need to be fair across the board.

16 So, I -- whatever fashion you think we need to
17 move.

18 CHAIRPERSON KRESS: Well, I believe my tendency
19 is to go along with Commissioner Parsons. The reason being
20 that the information has not been out here for the community
21 to review. And one of the criticisms that was made at the end
22 of the last hearing was we had received letters here on the
23 podium and they had not had a chance to see them or review
24 them, and that came from the community. And I just -- I feel
25 that we should be able to share this information because
26 otherwise how can they appropriately do cross examination.

1 If we want to do selected items this evening,
2 your concern is that people from the community have come, if
3 we want to do certain selected items, we can perhaps do that
4 and then go back and double back in a different way at our
5 next hearing.

6 Obviously we're not going to be completed today.
7 They're -- and again, I haven't read this. I'm going by
8 Commissioner Parsons, what he has read, if there are major
9 things outstanding, we can't progress further, then we just
10 stop and continue like we did last time.

11 So, I would tend to go ahead and allow the
12 applicants to continue and then when we hit the roadblocks
13 where we don't have the information and we need further
14 information, we'll go ahead and continue the hearing at that
15 point. And then ask that that information be submitted to us
16 like a week ahead so that the parties and we can review it
17 before the next hearing, which would be in approximately 60
18 days, which would then meet the request of DHCD as well.

19 COMMISSIONER HOOD: So, Madam Chairman, I guess
20 what's on the table, what you've put on the table, is that we
21 would hear from the applicant and not move any further?

22 CHAIRPERSON KRESS: Yes, basically. I don't see
23 how we could -- we haven't been -- We haven't given the other
24 parties appropriate time to prepare for rebuttal. And from
25 what I understand, there are open issues. Perhaps as
26 Commissioner Clarens says, once we hear them, maybe they won't

1 be open and we'll be -- we'll have them resolved and we can
2 continue.

3 COMMISSIONER CLARENS: Well, but with all due
4 respect, Madam Chairperson, all the time we hear during
5 hearings the applicants present fact. And I think the
6 corporation counsel was right that the material can be
7 presented in a pre-hearing submittal, during the hearing, and
8 by determination of the commission after the hearing. And we
9 are not denying any party the right to review the material and
10 to answer or respond to it before the commission because the
11 material will be served on them and they will have plenty of
12 time to address it.

13 In terms of cross examination, the only issue is
14 the cross examination of this material that we have received
15 and that is -- that might be the only issue really. But in
16 terms of the testimony, we can continue and complete the
17 testimony of the applicant, go through cross examination of
18 that part of the material. This material that has been
19 presented to us will be explained verbally to the commission,
20 and therefore will be open for cross examination. And then we
21 can proceed with the Office of Planning and with the other
22 parties in opposition and hear their case. Then we can
23 continue the case for specific items which is the resolution
24 of some of the issues such as the ERA, et cetera, et cetera.

25 But I don't know, I really -- But, I'll -- I'm
26 new in this chair and I will go along.

1 CHAIRPERSON KRESS: Well, would someone like to
2 make a motion?

3 COMMISSIONER PARSONS: We're both saying the
4 same thing. What I'm saying is what you're saying. They have
5 produced for us over the past couple of weeks limited
6 information. And for them to come forward and testify, and
7 spend ten minutes tonight telling us what we can read here is
8 of no value. That they're working with Mount Carmel Baptist
9 Church. They'll get back to us. I don't want to hear about
10 that. Let's postpone that. Get back to us with a signed
11 agreement. Get back to us with an agreement of some kind,
12 whether they have any ownership or jurisdiction, or reason to
13 be here on lot 51. And it's not here. And I think that's why
14 we're being asked to postpone.

15 So, I'm very intrigued by following through on
16 your idea of the architectural solution north of there, even
17 though they don't have control over the site. They don't.
18 It's an idea. Because the Control Board hasn't given them
19 that control. So, I'm willing to hear that. I just don't
20 want to spend an hour listening to what's on this piece of
21 paper that they've made a good faith effort and they'll get
22 back to us.

23 COMMISSIONER CLARENS: But we can proceed to
24 hear from the Office of Planning or you're saying let's hear
25 this part and then we go home? And then we come back --

26 COMMISSIONER PARSONS: I think the Office of

1 Planning will say they're a little troubled because they don't
2 have a complete proposal before them.

3 COMMISSIONER CLARENS: Well, the Office of
4 Planning will deal with whatever they have to do.

5 COMMISSIONER PARSONS: And we'll go on through
6 the night that way.

7 COMMISSIONER CLARENS: I see.

8 COMMISSIONER PARSONS: But we can try. Let's
9 try. We're here.

10 COMMISSIONER CLARENS: Let's try, Madam
11 Chairperson.

12 COMMISSIONER PARSONS: But I'm going to get
13 obnoxious which is not my style, as you know, to shut off
14 conversation that's leading us nowhere.

15 CHAIRPERSON KRESS: Well, perhaps, let's see if
16 this compromises. Hearing the applicant's testimony and then
17 making the -- dealing with these 11 issues, and then make a
18 decision then whether we continue at that point or whether we
19 go on.

20 COMMISSIONER CLARENS: That's solid wisdom.

21 MR. BRENNAN: Madam Chair, I think you should
22 make sure that the record is clear as to whether you, after
23 hearing the testimony this evening, wish additional
24 submissions or testimony from the co-applicants as you earlier
25 indicated, or not. Or whether this is satisfaction. That we
26 shouldn't leave that hanging as to whether you wish to hear

1 testimony or further submissions from the co-applicant, the
2 agency person.

3 CHAIRPERSON KRESS: I think we can say that
4 right now, that that's going to be the case unless we hear
5 something else in the testimony. I think -- Thank you. We
6 will say that right now.

7 MR. BRENNAN: I think this discussion might be
8 better --

9 CHAIRPERSON KRESS: All right.

10 All right, our decision is, then, to go ahead
11 and hear the responses to the 11 issues that we have asked the
12 applicants to investigate. And then at that point, we'll make
13 the decision what we do from there.

14 Thank you.

15 MR. MONTS: Good evening, Commissioners.

16 CHAIRPERSON KRESS: Good evening.

17 MR. MONTS: My name is Conrad Monts and I'd just
18 like to respond before we get into the housing to a couple of
19 issues.

20 At the last hearing I made the statement that I
21 wasn't sure that we owned the dirt site as part of 51B. It is
22 part of the site. We've had a chance to check the survey. It
23 is part of the site.

24 We also were asked about the stack, what could
25 be done with the stack. We got several different answers and
26 one of the answers we got, we don't really agree with. The

1 Federal Highway Administration told us they had nothing to do
2 with the stack. The Department of Public Works said the stack
3 was ventilating the Share Computer site. Having been down
4 there, we have not seen any duct work running from the stack
5 that runs literally across Mass Avenue. What was saw was the
6 original drawings which showed the stack ventilating the
7 parking garage north of Mass Avenue. That's what we've seen.

8 But the Department of Public Works seemed to
9 think it was Share Computer. And basically, one of the things
10 in trying to get a resolution to all of this, much of the data
11 didn't get here until Friday. And the drawings didn't come
12 into our office until 3:30 this afternoon. So, we have to
13 apologize for not getting them to you earlier but we didn't
14 see the drawings until this afternoon.

15 Regarding DPW and Federal -- and FHWA, as it
16 relates to the use of the sites, the two agreements -- first
17 of all, there is no agreement with the Federal -- with FHWA
18 because their control of the site was ceded to DPW. My
19 conversations with DPW said what if we were changing what we
20 were building over the road, then we would have to get the
21 lease -- we would have to amend the lease. There is no such
22 change. We are building exactly the same thing. There is no
23 change to the deck. SO, there is no requirement as we
24 understand it and we've obviously talked to both of them and
25 wrote the agreements. In fact, if you look at the agreement
26 with the Department of Public Works, it deals with exactly

1 what we would be doing over the road which is what their
2 charge is from the Federal Highway people. There is no
3 requirement to go back.

4 Relative to the housing plan, we looked at, and
5 you're going to see where we wound up. We looked at three or
6 four different schemes about how to use that site. We're
7 going to tell you today what we found. We're going to show
8 you drawings of what we think might be possible. There is
9 still a bunch of analyses that would have to be done and I
10 don't -- and I'm not real sure that we're certainly not ready
11 to show -- to share that plan to say this is what can be
12 built. There are some serious questions about where water and
13 sewer is. We know there's water and sewer in the road bed.
14 And if one has got to tap into that line as opposed to going
15 into the street, it seriously effects the economics of housing
16 in that site as the market does. But we're going to share
17 that.

18 Most of that data got to us between Friday and
19 this afternoon which is the reason it was not given to you
20 earlier. Once we get a plan, if we come out of here this
21 evening with a plan for that house north of Mass Avenue that
22 makes some sense, then we'd certainly be glad to share it to
23 all the parties.

24 MS. SCHNEIDER: I think we'd like to start with
25 the housing since that was the issue which required some new
26 and original thought.

1 CHAIRPERSON KRESS: Architectural study.

2 MS. SCHNEIDER: Architectural studies, yes. And
3 let us understand that we were trying to balance what we heard
4 were two different messages coming from the commission. One
5 message that we heard was that you would like --

6 CHAIRPERSON KRESS: And, by the way, that's not
7 unusual. We speak for ourselves.

8 MS. SCHNEIDER: One message that we heard was
9 that you would like to see a finish along the east side of the
10 site and with some low rise housing. But we also heard, I
11 think it was Commissioner Hood, suggest that he was concerned
12 about exactly how many parking space we would make available.
13 And so, in developing this plan, we need you to understand
14 that there are some trade offs in parking with any plan to
15 develop housing along the east side of the site.

16 As our submission makes clear to you, however,
17 in any scenario that's being considered here, we believe we
18 would have more than the required number of parking spaces for
19 the condominium, the apartment building, and the townhouses
20 if, in fact, that is the option that's chosen.

21 With that, I would ask David Hobstetter who is
22 with the architectural firm of Kaplan, McLaughlin & Diaz, and
23 who is with us this evening, to describe to you what his
24 renderings and the considerations he went through in coming up
25 with this proposal. And then we'd be happy to take any
26 questions that you might have.

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David.

MR. HOBSTETTER: I think I'll use that.

David Hobstetter, KMD Architects, one of the, I think, two infamous architects from California at this point.

COMMISSIONER HOOD: H-O-F-F-S --

MR. HOBSTETTER: H-O-B-S-T-E-T-T-E-R.

This board here is the same as you have at your desk there. So, I'll use this but it may be easier --

CHAIRPERSON KRESS: What about members of the audience, they don't have any hand outs. You might, if you have it. Thank you.

MR. HOBSTETTER: We were asked to look at the viability of housing to create an urban edge along Second, shielding the surface parking and the structure parking behind.

As some of you may know, there is about a 30 foot, a 32 foot wide strip of land on a portion of 51B that sits in front of the garage and also in front of the ventilation strip that fronts the garage. So, that was the logical place to start in terms of looking at the housing, building there didn't take any of the stalls away from the structure that's already there and also allowed us to create an appropriate edge along the street.

The section to the right, housing there would be built over a deck. Now, we've been told that the deck will support residential but we certainly haven't done any

1 engineering studies to confirm that. So, with that, we have
2 shown a series of two story row houses which you can see the
3 conceptual plans in the upper right-hand corner. They're two
4 bedrooms although they certainly could grow to three depending
5 on the market requirements.

6 We've also on these plans showed a potential
7 parking level beneath if it was decided that parking integral
8 to the unit was required. But it certainly would be much more
9 economical to use the existing deck parking and to essentially
10 build housing in this here.

11 So, the housing is a row style housing. There
12 are a total of, in this scheme, a total of 22 units along
13 Second. The housing does not accommodate any backyard open
14 space because the site limitations. That would have to be
15 worked out. There is some open space that's been created for
16 the child care. Perhaps that could be shared in some way.

17 I think that's --

18 MR. MONTS: David, if you want to describe the
19 problems in each one of those two -- why don't you describe
20 them.

21 CHAIRPERSON KRESS: Also, describe the parking.
22 Right now you're section doesn't seem to match what your
23 plans, and I know you're --

24 MR. HOBSTETTER: The section shows to the left
25 the existing deck, parking deck, which is here, and the
26 ventilation shaft that exists to the right of that. And then

1 a zone where the housing occurs. Now, below the housing is a
2 void area that is a long ramp that goes down to what appears
3 to be a tunnel that has been blocked off and I don't know what
4 the nature of that tunnel is. But, that space in here expands
5 as you move down the site to, I believe it was about 22 feet.

6 MR. MONTS: Twenty-two feet.

7 MR. HOBSTETTER: Twenty-two feet here.

8 So, what you would be doing here would be
9 decking over the void space. I think that would probably be
10 more economical and feasible than building that. And building
11 parking, or building housing, that would sort of step up the
12 hill as you walk up here.

13 When you reach this point, you would be building
14 on the concrete deck. Again, the lower. It's not where the
15 parking is. There's a strip here that's along the street.

16 CHAIRPERSON KRESS: So, are you suggesting
17 there's a different section because there's no way that you
18 can get in and park off of the street level by looking at your
19 section?

20 MR. HOBSTETTER: That's right. Well, initially
21 we discussed the possibility of parking directly off the
22 street. But because of the traffic flow there, we thought
23 that that probably wasn't going to work out. So, what we're
24 anticipating is that the parking would be provided on these
25 existing decks for the units.

26 CHAIRPERSON KRESS: So, basically, your floor

1 plan, you're not really recommending, and they really don't
2 work, that parking on that lower level?

3 MR. HOBSTETTER: We're not recommending at this
4 point that you would build the parking as part of this.
5 Again, it's expensive construction for this type of housing.
6 And since you have a great deal of parking that's already
7 available, perhaps that can be better utilized for the
8 housing.

9 CHAIRPERSON KRESS: And, by the way, I
10 personally agree. I wouldn't want to see that parking coming
11 in off of that the way it's shown. I just wanted to
12 understand it.

13 MR. HOBSTETTER: That's all right.
14 Anything else, Conrad?

15 MR. MONTS: Well, you should talk about that
16 there are vent pipes running -- there is actually mechanical
17 piping running in that ditch. This ditch that runs --

18 CHAIRPERSON KRESS: You mean the ditch or what's
19 now looking like a basement under the townhouses?

20 MR. MONTS: What looks like a basement. But it
21 -- But that is a ditch that actually starts at one point and
22 it drops -- it goes all the way down to 22 feet. There are
23 mechanical pipes in that ditch so we have to stay above that.
24 Because that has to do with the ventilation, if one will.

25 MR. HOBSTETTER: And I believe you already
26 pointed out the utilities in the area here are at this point

1 an unknown. We don't know where we would tap for gas and
2 electric, water, et cetera.

3 MR. MONTS: There is water and sewer in 395.
4 There is gas on Second Street but I'm not sure it's on New
5 Jersey Avenue. And at that point, it's New Jersey Avenue.
6 So, we've got to get some utility data in.

7 But if we've got to go into the roadbed to tap
8 the water and sewer lines, then that's serious. That is
9 serious. I'm not sure of that yet. But we've got to just
10 find where the water and sewer lines are. But there are water
11 and sewer lines in the 395 roadbed. We're not sure they are
12 in New Jersey Avenue. Which is what that street is. It's
13 really not Second Street. That's New Jersey Avenue.

14 Second Street is actually the next street over
15 where that park runs in and they sort of come together at the
16 end there. But -- So -- I'm mean, there's a lot of stuff
17 we've got to find out. But if you were going to do it to get
18 an edge on that property, you could put some row houses there.
19 You would not be able to do them as a matter of right. They
20 would have to be part of the PUD. We don't have the rear yard
21 space. The total area is, I think, 29 feet. And under the
22 matter of rights zoning, you've got a 20 foot rear yard --

23 COMMISSIONER CLARENS: That's why we're here.

24 MR. MONTS: Yes, yes. So, we'd have to do
25 something like that. But it's going to take probably another
26 two to three weeks just to get the utility data to see if this

1 really works.

2 MR. HOBSTETTER: I would also say, I think,
3 there would need to be some confirmation on the structure
4 capacity of this deck here, even though we've been told --

5 MR. MONTS: Whether you can bear on it.

6 MR. HOBSTETTER: -- it will support light frame
7 housing. It's 35 years old. So, it would need to be, I
8 think, examined.

9 COMMISSIONER CLARENS: But you contemplate light
10 weight construction anyway?

11 MR. HOBSTETTER: It would be stick built. But
12 the codes have changed over 35 years. And it probably will
13 work but it would just be part of the due diligence to confirm
14 the structure capacity.

15 COMMISSIONER CLARENS: Sure.

16 MS. SCHNEIDER: I think the other point to be
17 made is that when they drawn these up, they drew them up as
18 two bedroom units. I think our view is that probably it would
19 probably be better as a three bedroom unit in this area.
20 Because that's just not something that we see much of in the
21 city and we're not sure that a two bedroom unit would work.

22 CHAIRPERSON KRESS: Well, and there's a lot of
23 space being utilized in a stair for parking that isn't going
24 to exist that you could then put -- throw into make that third
25 bedroom. So, I think that's a great idea, personally.

26 MR. MONTS: You're right.

1 CHAIRPERSON KRESS: I wanted to ask, I'm a
2 little concerned now. I'm excited about the idea, personally,
3 as several of my colleagues are, of doing the townhouses here.
4 The space that's now shown between the parking structure and
5 the townhouses is required for ventilation in your section,
6 correct?

7 MR. HOBSTETTER: That's right.

8 CHAIRPERSON KRESS: How -- In fact, I want to
9 ask about the trees on the parking surfaces as it is. The
10 ones that are drawn right now on top of that deck, are you
11 foreseeing those would be in planters?

12 MR. HOBSTETTER: They would have to be in
13 planters, substantial planters, to grow a tree.

14 CHAIRPERSON KRESS: Because I'm concerned also
15 about the green space that would be around on the townhouses.

16 MR. MONTS: Pull out that curb cut that's
17 actually there now. No, no, where the curb cuts in to allow
18 parking on the street on New Jersey Avenue.

19 MR. HOBSTETTER: Oh, there's currently a strip
20 of parallel parking along here that accommodates probably
21 eight to ten cars.

22 CHAIRPERSON KRESS: I'm sorry, say that again?

23 MR. HOBSTETTER: In this zone here, there's in
24 fact a curb cut that we're not showing that has parallel
25 parked cars in it. We didn't intentionally eliminate it but
26 now that it's drawn, it might be a bad thing to do if you did

1 do the -- build the housing there, to create a little bit more
2 buffer zone to the street.

3 CHAIRPERSON KRESS: Questions?

4 COMMISSIONER HOOD: I just have one quick
5 question in reference to one of the questions that I did ask
6 at the last hearing. I see here on your new plan that you
7 submitted, the revised version, you still have 250 spaces.
8 And then when I come down to the bottom, where you're
9 providing one car for a unit but you have 259 units, or did
10 something change that I missed?

11 MR. HOBSTETTER: It's not quite. It's not quite
12 one per unit.

13 COMMISSIONER HOOD: So, this information I have
14 here in incorrect?

15 MR. HOBSTETTER: The information that's on the
16 --

17 COMMISSIONER HOOD: I'm looking at the same
18 thing that you just handed us, one car per unit.

19 CHAIRPERSON KRESS: They've got to be --

20 MR. HOBSTETTER: That's for the townhouses.

21 COMMISSIONER HOOD: Right. That's what I'm
22 speaking about.

23 MR. HOBSTETTER: Yes, we're assuming there would
24 be one spot on the deck for each of these units. That drops
25 these below one -- one per -- one per unit. The code is four
26 per --

1 MS. SCHNEIDER: That was the point I tried to
2 make at the beginning, that in order to accommodate this
3 housing, we were going to be in conflict with your desire to
4 have one for one parking space per unit. And the desire to
5 have some additional housing here and which would require
6 additional units.

7 Now, under the regs, what's currently required
8 for the housing, before you look -- before you think about the
9 addition of townhouses, is a total of 65 units.

10 MR. MONTS: Sixty-five spaces.

11 MS. SCHNEIDER: Sixty-five spaces. I'm sorry.

12 It's one per four. On the townhouses, I believe
13 the requirement would be one for one. What we're showing here
14 is approximately 22 units. We believe that if you did three
15 bedroom units rather than two bedroom units, you'd probably
16 end up with closer to 18 units rather than 22. So, if you
17 assume 250 spaces and assume that you'd need to set aside 18
18 to 22 of those spaces for the townhouses, then the rest would
19 be available for the multi-family dwellings.

20 COMMISSIONER HOOD: Let me back up. How many
21 townhouses are you proposing to build?

22 MS. SCHNEIDER: Between 18 and 22.

23 COMMISSIONER HOOD: Between 18 and 22.

24 MS. SCHNEIDER: Depending on whether they're two
25 or three bedrooms.

26 MR. MONTS: It would be three bedrooms. It

1 wouldn't be two. We wouldn't do two. It would be three.

2 COMMISSIONER HOOD: You can come back to me.

3 CHAIRPERSON KRESS: All right. Thank you.

4 Any other questions? No? Commissioner Parsons,
5 did you have any?

6 COMMISSIONER CLARENS: In terms of direction,
7 first, I don't think that -- I think I would like to see
8 parking into the units from Second Street or New Jersey
9 Avenue. I think that that would be -- that there should be no
10 parking -- no overlap parking entering the units and have all
11 the curb cuts that that will create.

12 MR. HOBSTETTER: We agree.

13 COMMISSIONER CLARENS: Coming -- We're talking
14 about creating a garage underneath each unit?

15 MR. MONTS: You don't want to see that?

16 COMMISSIONER CLARENS: Correct.

17 MR. MONTS: Right. I mean, that's right. Okay,
18 yes. Yes, we're understanding things.

19 COMMISSIONER CLARENS: Right. We do not want to
20 see that.

21 MR. MONTS: Right.

22 COMMISSIONER CLARENS: And, otherwise, I think
23 that the idea of putting the row houses along Second Street
24 does complete the urban block and creates a very nice edge.
25 And establishes a scale that is thoroughly missing in the
26 area. And I think that it is definitely a positive addition

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1 to the proposal.

2 CHAIRPERSON KRESS: I agree. I think it was a
3 terrific idea of yours.

4 Any other questions?

5 COMMISSIONER PARSONS: I wanted to talk about
6 the last sheet in this package that you have on this --

7 MR. HOBSTETTER: The tower?

8 COMMISSIONER PARSONS: Tower.

9 CHAIRPERSON KRESS: Are you going to present on
10 that?

11 MR. HOBSTETTER: Sure. If there are any other
12 questions on the housing first?

13 CHAIRPERSON KRESS: We might come back to it but
14 why don't you go on ahead and give us your presentation on the
15 next page.

16 MR. HOBSTETTER: The proposal is to turn the
17 ventilation tower to sort of a clock tower with the clock
18 facing out towards the park. We are proposing a sort of a
19 trump l'oeil with paint to create some architectural detail in
20 the tower. So, it--

21 CHAIRPERSON KRESS: With paint?

22 MR. HOBSTETTER: With paint. With a highly
23 durable coating that would be applied that would create some
24 architectural detail in the tower form so it's not just on a
25 mass of poured in place concrete.

26 COMMISSIONER PARSONS: With a real clock?

1 MR. HOBSTETTER: With a real clock.

2 CHAIRPERSON KRESS: Yes, I was --

3 MR. MONTS: We tried to get away with a painted
4 clock. We're now talking about a real clock. Yes.

5 CHAIRPERSON KRESS: I am sorry, Commissioner
6 Parsons, you wanted to ask --

7 COMMISSIONER PARSONS: Well, this is exactly
8 what I was hoping would be the response. I don't mean exact
9 detail but I think trump l'oeil is a good solution. And
10 giving it a function as a clock element in the landscape would
11 be good.

12 MR. MONTS: We've still got to -- we still have
13 to sort of figure out who actually owns that.

14 COMMISSIONER PARSONS: Yes, I understand that.

15 MR. MONTS: And we haven't done that yet. I
16 mean, it was four days last week trying to figure that out.
17 But once we do that, we think that's the right use.

18 CHAIRPERSON KRESS: Any other questions?

19 COMMISSIONER PARSONS: I did want to ask about
20 the end of the apartment building. Is that a different
21 architectural embellishment there, on this sketch again with
22 the tower? Or, is that stairwell? Or what is that?

23 MR. HOBSTETTER: Right here?

24 COMMISSIONER PARSONS: No, this is still on
25 sheet back here.

26 CHAIRPERSON KRESS: Is that architectural

1 license in rendering? Or is that a --

2 MR. HOBSTETTER: I would not read much into
3 that. It's just a massing concept at the end of the housing.
4 It wouldn't be a stairwell, definitely, at least with the
5 plans we have now.

6 COMMISSIONER PARSONS: All right.

7 CHAIRPERSON KRESS: I would just hope that when
8 you returned, we could really see that and what that is. I
9 mean, rather than just something drawn in.

10 MR. HOBSTETTER: The housing?

11 CHAIRPERSON KRESS: How the housing ends and how
12 it relates to that vent.

13 Is that in the -- I've got the old one here.
14 It's been a while since -- You might have it in the old one.
15 I mean, perhaps you can show it --

16 MR. HOBSTETTER: We have it here. It's the
17 elevation and really what you're looking at --

18 CHAIRPERSON KRESS: What page is it in our old
19 book?

20 MR. HOBSTETTER: This is page 50.

21 CHAIRPERSON KRESS: Fifty.

22 MR. HOBSTETTER: It's this one right here.

23 CHAIRPERSON KRESS: Oh, so this --

24 MR. HOBSTETTER: It's definitely not stairwell.
25 It's the housing unit.

26 CHAIRPERSON KRESS: So, your design is the part

1 that is behind the tree that's very light right now, the
2 existing tower?

3 MR. HOBSTETTER: That's right. Yes.

4 COMMISSIONER PARSONS: I think Mr. Franklin
5 joked about those units on the east end being those with a
6 Capitol view, remember?

7 CHAIRPERSON KRESS: Right.

8 MR. MONTS: Right.

9 CHAIRPERSON KRESS: But my concern is that this
10 -- the proposal doesn't really at all represent what the
11 elevation looks like.

12 COMMISSIONER CLARENS: There's a building much
13 higher.

14 CHAIRPERSON KRESS: The building is much higher
15 -- I mean much shorter, and the building -- I mean, the tower
16 --

17 COMMISSIONER CLARENS: The building is higher
18 than the tower.

19 CHAIRPERSON KRESS: Yes. And how they relate
20 and how that negative space between them is solved, is not
21 solved. It looks more solved in your nice sketch than it is
22 when you look at it in reality. So, we need a little better
23 drawing --

24 MR. HOBSTETTER: Perhaps -- I'm sorry. Excuse
25 me.

26 COMMISSIONER CLARENS: It's a bigger gap between

1 the two.

2 MR. HOBSTETTER: Right. Right. I think that
3 perhaps what we should do is render the clock tower into this
4 drawing so actually see the gap.

5 CHAIRPERSON KRESS: I think so, too.

6 MR. HOBSTETTER: That's a simple thing to do.
7 Also, perhaps, in this elevation.

8 MR. MONTS: On sheet 45, we're showing it as the
9 --

10 CHAIRPERSON KRESS: Sheet 45 you say?

11 MR. MONTS: Sheet 45, yes.

12 MR. HOBSTETTER: Shows the landscape actually.

13 MR. MONTS: Yes.

14 CHAIRPERSON KRESS: That is still not helping to
15 much. It just shows two trees and a wall, and some steps, and
16 plans. I mean, it's not resolved.

17 MR. MONTS: He needs some more trees. He needs
18 to fill that in.

19 CHAIRPERSON KRESS: Yes, we need this plan and
20 elevation a little more definitive.

21 COMMISSIONER PARSONS: I think in the model it's
22 a lot more clear.

23 MR. HOBSTETTER: I think if the clock tower is
24 desirable, we can then proceed to provide some additional
25 landscaping to finish it.

26 CHAIRPERSON KRESS: I forgot the model was down

1 there. We can't see it.

2 COMMISSIONER CLARENS: I see. So, in a section
3 from Second Street on to the garage, to the parking garage,
4 there is a, what's been described as a trench but in fact it
5 is kind of a slope that goes from the sidewalk on Second
6 Street towards the garage. And at the bottom of that trench,
7 there are pipes that run into the exhaust tower?

8 MR. MONTS: That run from the exhaust tower all
9 the way up to K Street. It's running both ways.

10 COMMISSIONER CLARENS: Yes, all the way to the
11 tower.

12 MR. MONTS: Yes.

13 COMMISSIONER CLARENS: I see. And --

14 MR. MONTS: There's a retaining wall off of the
15 deck. And then, from there, there's a trench. And there are
16 pipes running in that trench.

17 COMMISSIONER CLARENS: And then the trench goes
18 up to the sidewalk level?

19 MR. MONTS: Or goes down. Goes down. It goes
20 down on the --

21 MR. HOBSTETTER: It goes -- Yes, the trench goes
22 down along the --

23 MR. MONTS: Yes, it starts at grade here and by
24 the time you get here, there's a -- it's 22 feet deep.

25 CHAIRPERSON KRESS: It's going against --

26 MR. MONTS: It starts grade here and then it

1 starts -- and then it starts going down. And then when you
2 get across this curb cut, there's a deck there now which they
3 -- where they took the trench and they built a deck over it.
4 But the pipes are --

5 COMMISSIONER CLARENS: And the deck is at street
6 level?

7 MR. HOBSTETTER: More or less, yes. More or
8 less.

9 MR. MONTS: There's maybe a foot and a half
10 difference, yes.

11 COMMISSIONER CLARENS: So, what you are
12 proposing is to complete that deck on the south side of that?

13 MR. MONTS: That's correct, yes.

14 MR. HOBSTETTER: That's correct.

15 COMMISSIONER CLARENS: And then build the
16 housing --

17 MR. HOBSTETTER: And build the housing on both
18 pieces, correct.

19 COMMISSIONER CLARENS: And then the recreation
20 that serves the other housing, such as a lap pool or whatever,
21 would perhaps also serve the townhouses?

22 MR. MONTS: Yes. That's correct.

23 COMMISSIONER CLARENS: It would part of the
24 entire --

25 CHAIRPERSON KRESS: Residential.

26 MR. MONTS: Yes, yes.

1 CHAIRPERSON KRESS: Any other questions of the
2 architect before we move on? I don't know whether we should
3 perhaps stop and allow cross examination of just the -- this
4 new architecture before? Because I still want to ask for -- I
5 haven't had time to read this new package and I would
6 personally like to know what has changed in this agreement
7 with -- in the parking -- revised parking agreement and other
8 issues like that.

9 It's -- We haven't really done that before but
10 perhaps we should just stop and deal with the new
11 architectural that's been presented in cross examination.

12 Ms. Dwyer, would you like to ask any questions
13 relating to this?

14 MS. DWYER: Thank you. I think most of my
15 questions will wait until we see the drawing as filed. The
16 only question I have is whether this plan is the same lot area
17 dimensions as the original PUD site or application filing?
18 Have you made changes to the dimensions of this property or
19 are you working solely within what's already been before the
20 commission?

21 MS. SCHNEIDER: Yes. Absolutely.

22 MS. DWYER: And that's something that we still
23 will get clarified.

24 Thank you.

25 CHAIRPERSON KRESS: Do any of the other parties
26 care to ask any questions about the architecture?

1 REVEREND TERRELL: Madam Chair, I don't really
2 have a question.

3 CHAIRPERSON KRESS: You need to identify
4 yourself on the microphone.

5 REVEREND TERRELL: My name is James Terrell.
6 I'm the pastor for the Second Baptist Church.

7 COMMISSIONER CLARENS: You have to talk into the
8 microphone, sir, please.

9 REVEREND TERRELL: Certainly. Yes.

10 CHAIRPERSON KRESS: And this is really the time
11 for cross examination, not testimony.

12 REVEREND TERRELL: That's why I asked. I'm not
13 sure whether or not I'm in order. I just wanted the
14 commission to know that this is the first time I've seen this.
15 And I'm not --

16 CHAIRPERSON KRESS: Oh, I'm sorry. Then go
17 ahead and -- go ahead and then make your statement, then. I
18 wasn't sure what your statement was going to concern. Yes,
19 please do, Reverend Terrell.

20 REVEREND TERRELL: All right. Thank you so
21 much.

22 Just to the members of the commission, this is
23 the first time that I have seen this and as you know, we're
24 represented by Arnold & Porter. They are not here this
25 evening. And what I wanted to ask you is that if it's in
26 order for us to have a chance to look at this, and react to

1 this, these changes, and then present our testimony at another
2 point?

3 CHAIRPERSON KRESS: Absolutely.

4 REVEREND TERRELL: And that's -- Okay. I just
5 wanted to be clear on that. Thank you very much.

6 CHAIRPERSON KRESS: Thank you.

7 I'd also like to see if Mr. Nesbitt's here
8 representing the Joshua Group? I know that Ms. Thornhill
9 didn't make it this evening. She had mentioned she wouldn't.

10 The -- I wanted to ask if anyone was here from
11 ANC 2C who would like to cross examination relating to the
12 architecture?

13 Anyone here from ANC 6A who would like to cross
14 examine relating to --

15 MR. PERNELL: We will reserve our comments for
16 our statement.

17 CHAIRPERSON KRESS: All right. Perfect. Thank
18 you.

19 With that, then, we'll ask the applicant to go
20 ahead and deal with the other 11 issues that you were
21 responding to that perhaps you haven't yet.

22 MS. SCHNEIDER: I'm not certain that there were
23 exactly 11 issues but we'll respond to those that we are aware
24 of.

25 Before I do that, I'd like to also submit for
26 the record just a letter that we've had indicating some

1 preliminary interest in financing the two multi-family units
2 that we had proposed. It does not cover the new townhouse
3 development but it does cover the multi-family units.

4 CHAIRPERSON KRESS: And if you would, for my
5 request, point out what's revised in the parking agreement
6 since we haven't had time to read it.

7 MS. SCHNEIDER: Let us go through. Last time we
8 were here, there was some question or concern about the number
9 of parking spaces that were required, the number that the
10 developer had agreed to make available at certain times to
11 Mount Carmel. What the revised agreement does is two things.
12 It, one, makes clear that the parking that's being made
13 available to Mount Carmel is subject to availability. And
14 two, it also makes it clear that the -- this is all contingent
15 on approval by the commission.

16 I would note Mr. Parsons was concerned about the
17 fact that we didn't have a signed agreement. We did have a
18 signed agreement before. The commission did raise some
19 concerns. We went back and revised the agreement to try to
20 address those concerns. And unfortunately we weren't able to
21 get it fully executed but we did have discussions. We revised
22 it to reflect what we thought was the understanding between
23 the parties and we just don't have the signed agreement back.
24 We expected to -- that we might have one this evening but we
25 don't have it fully executed yet.

26 CHAIRPERSON KRESS: You haven't specifically,

1 and I haven't read it, but you still haven't addressed the
2 issues. You know what our concerns were. Can you tell us how
3 it was revised?

4 MS. SCHNEIDER: Yes, if you look at on page --
5 on the first page at the bottom, at the very bottom, where we
6 add the language that it's subject to availability. And we
7 tried to make it absolutely clear when these, the parking,
8 would be available. There was some confusion that the
9 language wasn't clear enough. And so, we made it clear. I
10 think -- I hope that we made it clear this time, that the
11 parking would be available to church members at no charge on
12 Sundays and after normal business hours on other days of the
13 week subject to availability.

14 And on the -- Excuse me. And there would be 130
15 spaces on the surface parking and 400 interior spaces in the
16 deck parking under the Center Lake Freeway.

17 The second provision is that you would make
18 discounted parking available during normal business hours on
19 the surface parking and in the interior spaces but both
20 subject to availability.

21 And the calculation was based on the fact that
22 if you look at the number of parking spaces that would be
23 required for the number of multi-family units, we were not
24 making, first, any units available that would have taken us
25 out of the compliance and, secondly, we're still only making
26 available subject to availability.

1 COMMISSIONER CLARENS: Can you clarify the
2 availability so availability -- how are you determining that?
3 Who has priority? The residents? How is that going to work?

4 MS. SCHNEIDER: Well, the assumption is that you
5 would not have assigned parking unless a resident, for
6 instance, if there was a decision to lease spaces to a
7 resident so that they would always have a particular space
8 available to them, you could do that. And that space would
9 never be available to anyone else.

10 COMMISSIONER HOOD: Ms. Schneider, with respect
11 to the parking issue, I basically see chaos.

12 MS. SCHNEIDER: Excuse me?

13 COMMISSIONER HOOD: I see a lot of chaos with
14 this parking issue. I've been listening and I listened the
15 last time. I'm listening again this time. And some of the
16 things that you are proposing with the parking is just a bunch
17 of chaos.

18 For example, page 2 of the submittal, parking
19 agreement, it says, "Any day of the week but Sunday during
20 normal business hours, surface deck spaces north of
21 Massachusetts Avenue subject to availability." And we're
22 doing a lot of assuming, but what happens when people work at
23 night and they're home all day? Saturday, Sunday, whatever
24 day of the week. And you're already telling them that you're
25 going to give the church members a 25 percent discount during
26 the week.

1 MS. SCHNEIDER: But that's in the south parking
2 structure, under the ground. That's the structured parking
3 that's below the office building. It's not where the
4 apartments are.

5 MR. AGUGLIA: I would add, Mr. Hood, that it's
6 anticipated that there would be a lease agreement with a
7 parking company that would control both the commercial section
8 as well as the residential section. So, the commercial
9 section, the thought is that by day the commercial section
10 would serve as the tenants of the building and by -- and
11 probably would not be needed by the church facilities. But
12 after hours would be a more opportune time for the church to
13 use those facilities and they would probably be available.

14 To the extent that they wanted to use them during the
15 normal business day would be subject to availability and it
16 would be controlled by the parking attendant. The same goes
17 for the residential. I would assume, and Mr. Monts may want
18 to add to this, I would assume that for the townhouses, there
19 would be one designated spot for each townhouse owner. And
20 that would be their guaranteed spot.

21 The same may be true of the condominiums. I'm
22 not sure if we totally researched that. But at least for the
23 condominiums and the apartments, it would be one for four.
24 Those spots would be guaranteed by the parking attendant to
25 meet the zoning requirements and any excess amount would be
26 subject to availability basis to the church.

1 Mr. Monts.

2 So, they would be -- it would absolutely be
3 controlled and all the requirements of the zoning regulations
4 as they effect parking would be met.

5 COMMISSIONER HOOD: So, if the church is having
6 a program during regular business -- during the week, during
7 regular business hours, it would be upon availability.
8 Twenty-five percent discount wouldn't matter --

9 MR. MONTS: It's availability. That's correct.

10 COMMISSIONER HOOD: Maybe I'm not understanding
11 but I still see chaos. But I'll wait at for some more
12 testimony.

13 CHAIRPERSON KRESS: Any other questions from us?

14 Should we go ahead and continue now with cross
15 examination of the parties of the rest of the information?

16 Well, they finished their presentation of what
17 they've brought to us. Do we cross examine what we have?

18 COMMISSIONER PARSONS: Have you finished your
19 presentation?

20 CHAIRPERSON KRESS: Have you finished your
21 presentation?

22 MS. SCHNEIDER: We have our parking consultants
23 here and he will respond to the questions that the commission
24 raised last time about the relationship between his parking
25 analysis and the proposal to allow portion of the parking to
26 be available to the church.

1 COMMISSIONER PARSONS: She's just wasting our
2 time.

3 CHAIRPERSON KRESS: You don't think we should be
4 hearing this? That's why I asked. Should we continue or not?

5 No, John, I would really like you to be on -- I
6 mean, if you feel we should stop now --

7 He's answering the questions we asked last time
8 about --

9 COMMISSIONER PARSONS: He's going to tell you
10 about an agreement with the church. Go ahead. Let him tell
11 us.

12 COMMISSIONER CLARENS: Well, let's clarify that
13 issue. This is an agreement that is an unsigned agreement and
14 there is a concern by Commissioner Parsons that we are
15 discussing something that in fact we have no idea that it is
16 in fact an agreement at all. It's a draft of an agreement
17 that's not been executed. Is that correct?

18 MS. SCHNEIDER: The agreement has not been
19 executed. Have we had discussions with the church? Yes.
20 Have we had -- do we have an agreement in principle? We
21 believe we do.

22 COMMISSIONER CLARENS: Do we have
23 representatives of the church that can testify to that fact?

24 CHAIRPERSON KRESS: Let's go ahead. Please
25 identify yourself for the record.

26 MR. BROWN: My name is Bernard Brown. I'm a

1 deacon at Mount Carmel Baptist Church.

2 We did come prepared to testify tonight but
3 after talking to Mr. Resbrooks, he wants to have a meeting
4 with the pastor and the joint board because there's language
5 in the fax letter he had faxed to the pastor last week that
6 said upon availability. And what he agreed to in July that
7 those 130 spaces was guaranteed.

8 CHAIRPERSON KRESS: So you have a problem with
9 the agreement or it's not resolved with you yet?

10 MR. BROWN: That is correct.

11 CHAIRPERSON KRESS: All right. Commissioner
12 Parsons' point has been well taken and we will not hear
13 testimony on that agreement tonight, then, until you have
14 finished it.

15 Thank you.

16 Again, I put it back to the commissioners and
17 colleagues, what is your pleasure? Where should we go now or
18 should we --

19 COMMISSIONER CLARENS: Now I am troubled.
20 Because obviously the -- this has not been a well
21 choreographed show. And I think that this is a problem. I
22 see trouble continuing because we are presenting something and
23 when we dig a little bit we find that that is not the case.
24 And I think that Commissioner Parsons hasn't been sitting on
25 this commission for as long as he has hasn't learned anything.
26 I think that you have and I'll tip my hat to you, and I would

1 recommend that we at this point stop the proceedings and
2 postpone this case until the applicant can come before us with
3 a fully developed presentation that satisfy all the elements
4 of the application, that has resolved all the issues that we
5 are -- that we have questions.

6 I'm glad that we've gone as far as we have, if
7 only because we've addressed the issue if there's going to be
8 housing, then I think that the direction that we're moving is
9 correct. But what we have is a schematic with a caveat that
10 it might or might not happen because some of the issues that
11 might prevent that from happening. And I don't think that we
12 can proceed on the basis of that.

13 I think that we must have some firm that in fact
14 this can happen. It's viable physically and economically,
15 makes sense. It make sense from an urban point of view, from
16 a land use point of view. I don't know if it makes sense from
17 a developer's point of view. So, we need to complete the
18 application and I would move to adjourn until --

19 CHAIRPERSON KRESS: And to continue the hearing.

20 COMMISSIONER CLARENS: And to continue.

21 COMMISSIONER HOOD: I will second the motion.

22 CHAIRPERSON KRESS: Any further discussion?

23 And Commissioner Parsons?

24 COMMISSIONER PARSONS: Postpone for a date
25 certain is part of the motion?

26 CHAIRPERSON KRESS: For a date certain. And we

1 need to --

2 COMMISSIONER CLARENS: A date certain.

3 CHAIRPERSON KRESS: -- pick a date on our
4 calendar. And --

5 COMMISSIONER CLARENS: Beyond 60 days.

6 CHAIRPERSON KRESS: -- it needs to be beyond 60
7 days.

8 Alberto.

9 MR. BASTIDA: Yes, Madam Chairperson. You might
10 want also for clarification --

11 CHAIRPERSON KRESS: Well, let's go ahead and
12 pass this motion before we -- because we haven't-- that we
13 will continue the case and then I will take Commissioner
14 Parsons' suggestion and ask anyone in the audience if they are
15 terribly inconvenienced, if they would like to make a quick
16 statement. But let's go ahead and decide on when will this be
17 continued to?

18 MR. BASTIDA: Madam Chairperson, just for order
19 and clarification, you might want to specifically detail what
20 you want to see completed because the word completed
21 presentation is very generic and can be interpreted by many
22 people many different ways.

23 CHAIRPERSON KRESS: May we have a date, then we
24 will after we finish this motion?

25 MR. BASTIDA: Oh, certainly. Yes.

26 CHAIRPERSON KRESS: And then we will come back

1 to clean up a few things.

2 MR. BASTIDA: Yes. Commissioner Parsons
3 expressed that we should have 60 days plus. The 60 days is
4 May 15th which is a Sunday. If you are going to hear this
5 case in May, it would be rather difficult because the 27th is
6 the Thursday before the big holiday. And you already have a
7 hearing on the 20th and then you already have set up another
8 hearing on the 6th. So, the only date open is the 13th which
9 does not really give you the 60 days.

10 Accordingly, I will go for June and we have a
11 hearing set up for June the 3rd. So we have either the 10th,
12 or the 17th, or the 24th open.

13 CHAIRPERSON KRESS: When is our regular meeting?

14 MR. BASTIDA: Your regular meeting will be on
15 the 14th of June.

16 CHAIRPERSON KRESS: So, you're suggesting either
17 the 3rd or the 10th?

18 MR. BASTIDA: No, I'm suggesting -- Not the 3rd.
19 You have a hearing already that date. I am suggesting either
20 the 10th, the 17th, or the 24th.

21 CHAIRPERSON KRESS: The 10th? All right, the
22 proposal is June 10th.

23 I would ask the applicants and the parties if
24 the June 10th is agreeable? Yes?

25 All right, June 10th it is. With that, that's a
26 part of the motion. With that, I would then like to call for

1 the vote.

2 All those in favor of continuing this hearing
3 until June 10th, and we will after this motion still talk
4 specifically about what will be happening on the 10th, signify
5 by saying aye.

6 (Whereupon, a chorus of ayes.)

7 CHAIRPERSON KRESS: Opposed?

8 (No response.)

9 CHAIRPERSON KRESS: Would you record the vote,
10 Mr. Bastida?

11 MR. BASTIDA: Yes, I've recorded the vote 4 to 0
12 but I am sorry, I was really paying attention to the --

13 COMMISSIONER CLARENS: I moved. Commissioner
14 Hood seconded, and --

15 MR. BASTIDA: So you -- Commissioner Clarens
16 moved it. Commissioner Hood seconded it. And the vote has
17 been four to zero, Mr. Franklin not being here, not voting.

18 CHAIRPERSON KRESS: Good.

19 Two things I want to do before we leave this
20 evening. One is Commissioner Parsons' recommendation that
21 since especially community people have come here several
22 evenings in a row and not been able to speak, if you would
23 like to say something brief to us tonight you think we should
24 know before we continue with this hearing, we would like to
25 ask anyone who would like to say something to come forward.

26 All right, seeing no one, we'll look forward,

1 hopefully, seeing you all again and hearing your testimony.

2 Are we -- we should be clear about the things
3 that we're still looking for. The 11 points, or however many
4 there were, that were asked for at our last hearing, all of
5 those are still open. Even the ones that are resolved, we
6 still have some clarifications on, both the architectural
7 design of the townhouses need to be verified because there are
8 some issues, as well as the clock tower because it's not
9 really quite in scale. So, I'm just going to leave those 11
10 issues, or however many they were, open to be clarified.

11 I believe --

12 COMMISSIONER PARSONS: It would seem to me that
13 if we did not have DHCD sitting here as a co-applicant at that
14 time, that we should further postpone it. Certainly by that
15 time this matter over what the comprehensive plan says, and
16 whether or not they have control over site 51 as to what the
17 Control Board has said. But if those two things are still
18 pending, that is the potential for termination of this whole
19 agreement is not resolved, and the Control Board's action on
20 site 51, I don't think we should proceed. It's not a matter
21 of --

22 CHAIRPERSON KRESS: I may disagree with you.
23 The first --

24 COMMISSIONER PARSONS: -- more detail on the
25 tower and what size is the clock, and how many spaces are
26 going to be available or guaranteed. I mean, I must presume

1 that we're over that threshold or we're not here in 60 days.
2 That the applicant calls and says I'm sorry, it's over with.
3 I wanted to say that for fear that we'll be sitting here with
4 that still pending and continuing to frustrate the process.

5 CHAIRPERSON KRESS: The two --

6 COMMISSIONER PARSONS: So, I'd like to require
7 that.

8 CHAIRPERSON KRESS: Require and say these again.

9 COMMISSIONER PARSONS: The Control Board has
10 concurred with this extended lease across Massachusetts
11 Avenue. And, secondly, this matter of the comprehensive plan
12 directing the termination of this apparently has been
13 resolved.

14 CHAIRPERSON KRESS: I don't know that the
15 comprehensive plan --

16 COMMISSIONER PARSONS: Maybe I've misstated it.
17 But you know, that issue.

18 CHAIRPERSON KRESS: Yes.

19 MR. BASTIDA: Madam Chair --

20 COMMISSIONER PARSONS: Correction,
21 investigation, or something like that.

22 MR. BASTIDA: I think that the language it says
23 to explore the possibility. So --

24 CHAIRPERSON KRESS: But that was not given to us
25 and it was not given to the applicant. This is something the
26 council has to do with the government that I think is

1 separate, distinct from us and from the applicant. I believe
2 the applicant --

3 COMMISSIONER PARSONS: The applicant is DHCD.

4 CHAIRPERSON KRESS: The applicant --

5 COMMISSIONER PARSONS: They've been asked to
6 investigate.

7 MR. BASTIDA: To explore.

8 COMMISSIONER PARSONS: Explore. Let's hope the
9 exploration is complete by the time we sit down here again.
10 Say that's behind us.

11 MR. BASTIDA: I think that you can request that
12 from the Department of Housing and Community Development. You
13 cannot tell the Control Board to complete its business prior
14 to the hearing because the Control Board is --

15 COMMISSIONER PARSONS: I'm not telling them.
16 I'm saying that if it isn't, we shouldn't.

17 MR. BASTIDA: Oh, okay.

18 COMMISSIONER PARSONS: That's all I'm saying.

19 CHAIRPERSON KRESS: That we would hope that the
20 applicant would call up and request a further--

21 COMMISSIONER PARSONS: Yes.

22 CHAIRPERSON KRESS: -- continuance so that we
23 don't all waste our time until we know at least where the
24 Control Board -- that the Control Board has authorized this
25 other parcel.

26 MR. BASTIDA: Thank you for the clarification.

1 COMMISSIONER PARSONS: It's a shame. This is a
2 good project. It's really -- I don't know what's wrong here
3 but it's something we've approved. I don't mean this new
4 application, but it's always been a good project. Filling
5 this ridiculous hole in the landscape. But we're just
6 frustrating each other sitting here waiting for other factors
7 to come upon us to make this happen. It's too bad.

8 MR. BASTIDA: So, if I may add a little bit to
9 that. What we want is the hierarchy issuing of issues that
10 establish the grounds under which then you can proceed. And
11 then once you establish that those grounds are firm, then we
12 can move on to the details of the plan and how it is that it's
13 implemented.

14 CHAIRPERSON KRESS: And I definitely think that
15 information needs to be given to us, I don't know how many
16 days. At least a week ahead, a week and a half, so that all
17 the parties can have --

18 MR. BASTIDA: Madam Chairperson, I was going to
19 suggest that on May 31st, or actually June 1st because May
20 31st is a holiday, the material would be submitted to this
21 office and a copy should be served to all the parties involved
22 in the case.

23 CHAIRPERSON KRESS: I agree.

24 COMMISSIONER HOOD: Also, Madam Chair, if we can
25 just clarify whether it was 11 points, six points, or five
26 points. We just don't want to come back 60 days and we're

1 still belaboring and arguing over whether it was 11 points or
2 seven points. I think if we can clear --

3 CHAIRPERSON KRESS: I believe that Ms. Dwyer
4 repeated them and as she said them, there were 11 and those
5 were my recollection. Perhaps we should have her repeat them
6 if there's some --

7 COMMISSIONER CLARENS: I would stay away from
8 the numbering of points. I think it is the responsibility of
9 the applicant to present to us a complete and perfected
10 application. And whether Ms. Dwyer has counted 11 or 12, or
11 however many that she had counted, I think it the
12 responsibility of the applicant to bring us a perfected
13 application that we can examine and that all the Ts have been
14 crossed and the Is have been dotted before we proceed.

15 COMMISSIONER HOOD: I agree, Mr. Clarens, but
16 it's just a point of coming back 60 days later and we leave
17 something out. Whether it's 11 or however, we need to just
18 get them all together, whatever it is. And also, if we can --
19 if I can add to that, if we can have some definite answers
20 because a lot of architectural questions that were asked,
21 well, I don't know. We need something more definite, I would
22 think, and I'm not an architect.

23 COMMISSIONER CLARENS: I agree with you.

24 MR. BASTIDA: Madam Chairperson.

25 CHAIRPERSON KRESS: Yes?

26 MR. BASTIDA: The transcript of the previous

1 hearing would be available in a few days and this one will be
2 available in two weeks. I think that the applicant can look
3 at that transcript and figure out all the questions that the
4 commission have proffered in the last two evenings and address
5 them fully. So, we will not have any unfinished business when
6 we have the next hearing.

7 CHAIRPERSON KRESS: I agree.

8 COMMISSIONER CLARENS: I agree. But I still see
9 it is there responsibility to bring us a complete application
10 that has no holes. And that I --

11 CHAIRPERSON KRESS: And if there's something we
12 forgot --

13 MS. SCHNEIDER: Even if you haven't asked the
14 question.

15 CHAIRPERSON KRESS: Yes.

16 COMMISSIONER CLARENS: If something we have
17 forgotten, you have to find it. It's not for us to find it.

18 CHAIRPERSON KRESS: This is their business,
19 hopefully, and they are the experts of knowing how to put
20 together a fully, fully perfected application. And we would
21 look forward to that at our next meeting.

22 MS. DWYER: I have one point of clarification.
23 I had also suggested that the record include --

24 CHAIRPERSON KRESS: Go ahead, I'm sorry.

25 MS. DWYER: I had also suggested that the record
26 include input from Department of Public Works and Federal

1 Highways Administration. Is that part of the request?

2 CHAIRPERSON KRESS: Yes, I believe at the time
3 that you said that, I said that no matter what happens, we
4 would be looking for that information. THANK you.

5 MS. DWYER: Thank you.

6 MR. BASTIDA: Madam Chairperson, Department of
7 Public Works I am sure would be able to provide you the
8 information. With the Federal Highways Administration, I
9 don't know what leverage we have with them but we'll endeavor
10 to do that. But I cannot promise that in fact they will be
11 here.

12 CHAIRPERSON KRESS: Well, if you will try and we
13 will also ask the applicant to try. Hopefully we will have
14 information.

15 MR. BASTIDA: Thank you.

16 CHAIRPERSON KRESS: Any other comments or
17 business before we adjourn?

18 Seeing none, we'll hereby end this meeting and
19 have a continuance until June 10th.

20 Thank you.

21 (Whereupon, at 8:59 p.m., the commission hearing
22 in the above-entitled matter was adjourned.)

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