

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

JUNE 14, 1999

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The Commission met in Hearing Room 220 South at
441 4th Street, N.W., Washington, D.C., at 1:30 p.m., Jerrily
Kress, Chairperson, presiding.

COMMISSIONERS PRESENT:

JERRILY R. KRESS	Chairperson
ANGEL F. CLARENS	Commissioner
HERBERT M. FRANKLIN	Commissioner
ANTHONY J. HOOD	Commissioner
JOHN F. PARSONS	Commissioner

STAFF PRESENT:

SHERI PRUITT-WILLIAMS	Interim Director
STEFANIE BROWN	Office of Zoning
VINCENT ERONDU	Office of Zoning
KENNETH KARKEET	Office of Zoning
VANESSA ATKINS	Office of Zoning
ALBERTO BASTIDA	Office of Zoning
STEVE CORCORAN	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN
MARY NAGUEL HOUT

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C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS	3
ACTION ON MINUTES	3
PROPOSED ACTION	
98-20 Walter Washington Estates	6
98-21 PUD (Hoffman)	9
98-16 Corrections Corporation of America	23
REAFFIRMATION OF PROPOSED ACTION	
98-14 PUD and Map Amendment	30
RECONSIDERATION	
99-3Z Comp Plan	45
FINAL ACTION	50
STATUS REPORT - OFFICE OF PLANNING	55
OTHER BUSINESS	
BZA 16426	57
90-3C Extension	77
ELECTION OF OFFICERS	84

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CHAIRPERSON KRESS: I call to order our regular meeting for Monday, June 14th. I'm Jerrily Kress, Chairperson. Joining me this afternoon are Commissioners Franklin, Clarens, Hood, and Parsons.

First I'll begin with preliminary matters. Ms. Pruitt-William, do we have any preliminary matters?

MS. PRUITT-WILLIAMS: Staff has no preliminary matters, Madam Chair.

CHAIRPERSON KRESS: Thank you. Next I have Action on Minutes. I have quite a few changes to the minutes. I was going to suggest we postpone the minutes for approval until our next meeting and that I have enough time to redo them. Is that all right with my fellow Commissioners?

I do have a question, by the way, on the 8th Street overlay. It particularly has me not voting -- not having participated -- which I did. I just wanted to check with Franklin.

COMMISSIONER FRANKLIN: That's correct. I did not participate.

CHAIRPERSON KRESS: You did not, okay. Are there any other votes that are incorrect? I have notes on all of the other issues but I just wanted to double-check on the voting and make sure that the voting was correct in the minutes as you all reviewed them.

1 COMMISSIONER CLARENS: I thought there was an
2 incorrect vote recorded -- let me see if I can find it -- on
3 the minutes. Now, are we talking about all the minutes or are
4 you talking about May 10th only?

5 CHAIRPERSON KRESS: Well, I was talking about
6 them all but let's take them one at a time. Any comments on
7 the May 10th minutes? I mean, that -- regarding the votes, I
8 have major rewriting for this thing that I would like to hold
9 off till next month.

10 COMMISSIONER CLARENS: None other than spelling
11 and typos.

12 CHAIRPERSON KRESS: Okay. Anyone else?

13 COMMISSIONER HOOD: Madam Chair, I have a
14 question on the June 3rd special meeting.

15 CHAIRPERSON KRESS: Okay.

16 COMMISSIONER HOOD: The June 3rd special
17 meeting, number 5. It has in here a vote of 5 to zero. If
18 I'm correct I think I voted against this piece. I should have
19 been voted --

20 COMMISSIONER CLARENS: That's correct. That's

21 --

22 COMMISSIONER HOOD: -- as opposed.

23 COMMISSIONER CLARENS: There is a 4 to 1 vote.

24 CHAIRPERSON KRESS: Well, it's interesting. It
25 says 5 to zero and it doesn't mention Mr. Hood's name.

26 COMMISSIONER CLARENS: There is also another

1 issue on the June 3rd and May 20th meeting that both meetings
2 show the same times and I cannot imagine that we would have
3 been so coincidental to have started the meeting at the same
4 time and end it at exactly at the same times. So it seems to
5 me that there's something that is not quite right there.
6 Could be, but I think it needs to be checked. It shows 8:50,
7 the time that we started --

8 CHAIRPERSON KRESS: The one was before our
9 meeting which was at about 7, and then the other was at 8:50
10 after.

11 COMMISSIONER CLARENS: Okay.

12 CHAIRPERSON KRESS: I will check. That's what
13 I said. I have major problems with these and so I was
14 definitely going to rewrite these before I bring them back to
15 you all for approval.

16 Any other votes incorrect in the minutes?
17 Otherwise with your permission I will bring these back at our
18 next meeting revised for your approval.

19 With that, we'll move on to Proposed Action.
20 The first is Walter Washington Estates.

21 MR. BASTIDA: Madam Chairperson?

22 CHAIRPERSON KRESS: Yes?

23 MR. BASTIDA: For the record, my name is
24 Alberto Bastida with the D.C. Office of Planning. With me
25 this afternoon is Vanessa Atkins, the Acting Director of the
26 Office of Planning.

1 In conversation with the applicant, all the
2 facts and requests that you have were not met. So I'm
3 requesting that you postpone that decision until the July
4 meeting. With the consent of the applicant.

5 CHAIRPERSON KRESS: You have spoken to the
6 applicant about this?

7 MR. BASTIDA: I spoke to the legal
8 representative of the applicant as late as this morning at 10
9 o'clock.

10 CHAIRPERSON KRESS: All right. Well, let's go
11 over with what we were expecting and what we did receive.

12 The units with decks, we did receive that
13 clarification. We did not receive the light fixture
14 clarification according to my old notes, and we did not get
15 any findings of fact -- although that's only a request.

16 MR. BASTIDA: Right.

17 CHAIRPERSON KRESS: We did not get findings of
18 fact, conclusions of law, and the decision, and we did not get
19 executed covenants.

20 MR. BASTIDA: That is correct. And also I
21 would like the applicant to resubmit the plan in which the
22 houses that decks could be added shaded more clearly because
23 the print is not clear enough.

24 CHAIRPERSON KRESS: All right.

25 MR. BASTIDA: Because remember, you requested
26 that also.

1 CHAIRPERSON KRESS: Yes. Well, that's the one
2 thing that I --

3 UNIDENTIFIED: -- clarification. I thought we
4 had gotten that.

5 CHAIRPERSON KRESS: We did. That's --

6 MR. BASTIDA: We did, but if you look at the
7 print it's not really totally clear how that is. I would like
8 that it would be darker so there is no doubt about the ones
9 that are intended to have the possibility of a deck.

10 CHAIRPERSON KRESS: Fellow Commissioners, was
11 there anything else that you required?

12 COMMISSIONER PARSONS: The landscape plan that
13 we had spoken about --

14 MR. BASTIDA: I thought the landscape plan was
15 submitted for the revised area, but I would make sure that in
16 fact, that's the case. It was submitted to me and I thought
17 it had been submitted for the record.

18 COMMISSIONER PARSONS: It may have been but it
19 didn't seem to make it into our packages for the weekend. So
20 if we could just make sure for next month?

21 MR. BASTIDA: Yes. We will make sure that in
22 fact, all that is in the record.

23 COMMISSIONER PARSONS: All right.

24 MR. BASTIDA: Thank you.

25 CHAIRPERSON KRESS: Commissioner Hood, does
26 that take care of your concern?

1 COMMISSIONER HOOD: Right. The parking
2 agreement wasn't as specific but I don't think I want to as
3 tedious. I think what will happen is when they do the
4 Homeowner's Association piece the parking issue hopefully will
5 be taken care of.

6 MR. BASTIDA: Yes, but you have -- it has to be
7 put in such terms that in fact that would be the case for the
8 detail of it, not for institutionalizing it.

9 COMMISSIONER HOOD: Right. Well, that's not
10 why I'm going to prolong that and keep asking about it because
11 I believe once that's established the homeowner's association
12 will deal with it accordingly. It's in the covenant.

13 MR. BASTIDA: That is correct, yes. But the
14 details are left to them to see how -- will this function.

15 COMMISSIONER HOOD: Okay.

16 CHAIRPERSON KRESS: Any other comments
17 regarding the Walter Washington Estates?

18 COMMISSIONER FRANKLIN: Madam Chair, I'm just
19 curious as to why it has taken so long to have them respond to
20 it. I thought it was a pretty clear request. Maybe Mr.
21 Bastida can --

22 MR. BASTIDA: There has been a couple of
23 issues. There has been sickness, vacation time, and also that
24 in fact, the second phase hasn't begun and this is the third
25 phase. So it's on such a critical path, accordingly there has
26 been a slippage here and there. And it cannot be pinpointed

1 to one given individual organization.

2 COMMISSIONER FRANKLIN: Thank you.

3 CHAIRPERSON KRESS: Thank you. Hearing nothing
4 more I'll move on to 98-21, which is the PUD and Map Amendment
5 for the Hoffman Project.

6 MR. BASTIDA: Madam Chairperson, the applicant
7 submitted the four items that you've requested to be added for
8 the record, which were the issue about the wisterias, the --

9 CHAIRPERSON KRESS: I'm sorry, the -- and I
10 think that's -- could we bring that forward or have someone
11 put it on the stand for us and bring it closer for discussion
12 purposes?

13 MR. BASTIDA: The second point that I was going
14 to make is the palette that has been resubmitted, and that way
15 you can make a decision one way or another regarding the
16 palette.

17 Thirdly is the outline of the view from the
18 park for the National Park Service, and another is a letter of
19 the Nation Park Service; in fact, stating that they are
20 working with the applicant and they have reviewed some working
21 drawings and basically have a basic agreement.

22 Subsequent to that, the applicant has had other
23 meetings with NPS and is revising the working drawings to
24 accommodate NPS in their request. So I believe that all the
25 items that the Commission requested have been submitted for
26 the record.

1 CHAIRPERSON KRESS: I believe so, too. As I
2 checked my notes and records, I believe we do have all
3 information we requested. So with that I'll open it up to
4 discussion by the Commissioners.

5 COMMISSIONER FRANKLIN: For the record, Madam
6 Chair, I have read the transcript of the one hearing that I
7 missed so I'm prepared to participate.

8 CHAIRPERSON KRESS: Terrific. Thank you for
9 putting that on the record. Discussion, questions and
10 discussion on the case?

11 COMMISSIONER HOOD: I just wanted to put on the
12 record, I believe the ANC is going to support this project.
13 They think it's a good project and they're ready to move
14 forward and I just wanted to put that on the record.

15 COMMISSIONER CLARENS: Well, Madam Chairperson,
16 to initiate a discussion, I find a lot of merit with this
17 application. I think that it is a project that will enhance
18 that portion of Wisconsin Avenue. The relief or the
19 additional items that are requested by the applicant seem to
20 have been justified on the basis of what the building would
21 contribute to the city as a whole and to that particular area
22 in particular.

23 Each is related to views which I'm sure will be
24 raised. I think that in my mind, are mitigated by the fact
25 that an urban park is an urban park and that Fort Reno is such
26 a park, and that there is evidence all surrounding while you

1 walk Fort Reno, all the presence of the city around you, and
2 that whatever additional impact this building will bring to
3 Fort Reno are counteracted by what the building will bring to
4 Wisconsin Avenue at that point.

5 So it seems to me that it is a case of
6 balancing which is exactly what we're supposed to do, and in
7 this particular case I find that what is positive outweighs
8 any negatives that the building might have.

9 CHAIRPERSON KRESS: Thank you.

10 COMMISSIONER PARSONS: I find the new exhibits
11 that we just got, very helpful. That is, it shows that the
12 existing trees, most of which -- excuse me, all of which are
13 on park service property -- that is, there are two parks here.
14 There's the Fort Reno Park and then the Triangular Park. And
15 they will all be preserved in the restoration of that park and
16 Triangular Park.

17 That is building will not be visible from Fort
18 Reno in the summer. It will be in the winter but on balance I
19 think I would agree with my colleague, Mr. Clarens, on the
20 benefit to the community, and therefore would support this
21 application.

22 CHAIRPERSON KRESS: Commissioner Franklin.

23 COMMISSIONER FRANKLIN: I concur with the
24 previous statements and I just wanted to find out from Mr.
25 Clarens whether he feels that the alternative coloration
26 samples are to his satisfaction since he requested them. They

1 look quite handsome to me.

2 CHAIRPERSON KRESS: Well actually, as I read, I
3 think the applicant even stated they liked the new design
4 better, and I personally do. What is your sense?

5 COMMISSIONER CLARENS: I am very happy you do.
6 When I saw the pictures over the weekend I said, aagh, what a
7 mistake. But now that I see the real materials I could
8 concur. I think that this direction and if the architect is
9 happy, I think that that's fine.

10 COMMISSIONER PARSONS: I think our Order should
11 reflect the continuing discussions with the Park Service
12 because we really don't have an approved plan at this
13 juncture. I think it represents a monetary commitment that is
14 sufficient to qualify as an amenity.

15 CHAIRPERSON KRESS: I agree. Did you have any
16 comments, Commissioner Hood?

17 COMMISSIONER HOOD: No, I said them earlier, I
18 think. I concur with the reset of my colleagues.

19 CHAIRPERSON KRESS: I would like to then go to
20 the finding of facts and conclusions of law and the decision.
21 I agree. I don't think the Park Service has been
22 appropriately addressed but I have a concern on page 17 about
23 the minor adjustments to the facade, window and cornice
24 detailing. That's pretty major and that is of some concern to
25 me. I don't know if it's of concern to anyone else.

26 COMMISSIONER FRANKLIN: I saw that language,

1 Madam Chair, and I think we need to tinker with it.

2 CHAIRPERSON KRESS: And I'm not saying we have
3 to do it today, but otherwise in that, I think we have two
4 issues that are not dealt with completely and that's number 7
5 -- that's number 8B and then number 7 deals with the Park
6 Service and I think we need a little additional information
7 regarding what will be done with the finalization of the Park
8 Service agreement.

9 So with those two notes before an agreement we
10 need to tighten up what we will allow as a minor adjustment
11 and tighten up regarding the Park Service; otherwise,
12 basically I find the findings of fact, conclusions of law, and
13 decision to be pretty adequate.

14 MS. PRUITT-WILLIAMS: Excuse me, Madam Chair.
15 In reference to the Park Service, do you have direct language
16 that you'd like to see?

17 CHAIRPERSON KRESS: No, I'm not prepared to --
18 I just heard that from Commissioner Parsons and --

19 COMMISSIONER PARSONS: Let's go then, to number
20 7 on page 17.

21 CHAIRPERSON KRESS: That's where I am.

22 COMMISSIONER PARSONS: I think it should say in
23 general accordance, so that they are not facing the Zoning
24 Administrator with two plans. And we should reference the May
25 14th letter from the Acting Superintendent, Cynthia Cox.
26 Somewhere -- I can't put it in the sentence, but if we can

1 just reference that, because it technically is an amendment to
2 the plan that's referenced.

3 CHAIRPERSON KRESS: I'm sorry, we'll try to
4 speak as loud as we can. Unfortunately, our microphone system
5 is not working. We will try to keep our voices up.

6 COMMISSIONER FRANKLIN: I have this question,
7 Mr. Parsons, just hypothetical for the moment. Suppose they
8 were to give the Park Service a certain amount of money and
9 just told the Park Service to re-landscape it in accordance
10 with their own desires? Would that be satisfactory?

11 COMMISSIONER PARSONS: That has proven to be
12 problematic in the past. I won't go into the details, but it
13 has. The developer usually is anxious to enhance the park and
14 we sometimes don't move fast enough for them. That is,
15 they're concerned about marketing their amenity and -- was
16 that behind --

17 COMMISSIONER FRANKLIN: When I saw the letter
18 from the Park Service I thought there was going to be a lot of
19 to and fro before this thing ever --

20 COMMISSIONER PARSONS: No, I think they're
21 fairly close, as I understand it.

22 MR. BASTIDA: Yes, Mr. Parsons, if I may? They
23 are fairly close but there still is a little tinkering with
24 the details, so you are going to state that it generally meets
25 with the letter dated the 14th. I mean, no --

26 COMMISSIONER PARSONS: The exhibit of the plan

1 and the Park Service comments, and then --

2 MR. BASTIDA: But they are in compliance with
3 that, so --

4 COMMISSIONER PARSONS: And I use the word
5 "general" so that the Zoning Administrator has some guidance
6 when it comes times for permit.

7 MR. BASTIDA: And that way they can negotiate
8 with NPS to make sure that they do everything that NPS -- or,
9 try to accommodate NPS. Thank you.

10 COMMISSIONER CLARENS: So Madam Chairperson,
11 how are we going to deal with this request or these findings
12 or these requests for flexibility on the window and cornice
13 detailing?

14 CHAIRPERSON KRESS: I basically don't feel we
15 should be giving them the flexibility to the window and
16 cornice detailing from our experience in the past. I think
17 the flexibility to shift the location of the doors to the
18 retail uses is a reasonable request.

19 COMMISSIONER CLARENS: But the appearance of
20 retail frontage --

21 CHAIRPERSON KRESS: I have a problem with that.

22 COMMISSIONER CLARENS: You have a problem with
23 that?

24 CHAIRPERSON KRESS: I mean, I --

25 COMMISSIONER CLARENS: I concur. And the
26 process would be then, that they come for modification? Once

1 --

2 CHAIRPERSON KRESS: A minor modification.

3 COMMISSIONER CLARENS: A minor modification,
4 which is relatively routine.

5 CHAIRPERSON KRESS: If they decide they need to
6 do something different. We're going to give them the
7 flexibility to -- it's my advice that we give them the
8 flexibility to shift the location of doors and retail uses,
9 but that if they really want to change the appearance of the
10 retail frontage or the window and cornice detailing, then they
11 need to come back to us for minor modification.

12 COMMISSIONER FRANKLIN: Unless they can suggest
13 language that's a little bit more specific than this. I mean,
14 I don't know what "appearance" means in this context.

15 CHAIRPERSON KRESS: I don't either. And I was
16 all right with the location of all the interior components
17 because it did not in any way deal with the exterior. Item 6A
18 was fine; it was 6B that was left too loose.

19 COMMISSIONER CLARENS: Yes. And C is also.

20 CHAIRPERSON KRESS: Well, I don't know what
21 your preference is.

22 COMMISSIONER CLARENS: It's the number of
23 units; it's not the square footage of residential space.

24 CHAIRPERSON KRESS: Exactly. And I could,
25 personally, if a certain kind of unit was marketing better
26 than another type of unit I could see that a different layout

1 might be appropriate as long as it didn't affect the exterior.

2 COMMISSIONER CLARENS: That's right.

3 CHAIRPERSON KRESS: Depending on what --

4 COMMISSIONER CLARENS: I don't have a problem
5 with that.

6 CHAIRPERSON KRESS: All right. Then I might
7 ask for a motion for approval of 98-21, the Map Amendment 4725
8 - 4727 Wisconsin Avenue, N.W., from C-2-A to C-2-C for Square
9 812 and 817, lots 807, 812, and 817, in accordance with the
10 findings of fact, conclusions of law, and decision in general
11 accordance as it has been submitted to us by the applicant
12 with changes both to what is noted under "Decision" as 16-B
13 and number 7, which we will rewrite and will of course, be
14 returned to the Commission for final action.

15 Is there such a motion?

16 COMMISSIONER FRANKLIN: So moved, Madam Chair.

17 COMMISSIONER HOOD: Second.

18 CHAIRPERSON KRESS: All those in favor signify
19 by saying aye.

20 (Chorus of ayes.)

21 Opposed?

22 (No response.)

23 MS. PRUITT-WILLIAMS: Staff will record the
24 vote as five to zero to approve. Motion made by Mr. Franklin
25 and seconded by Mr. Hood.

26 CHAIRPERSON KRESS: Thank you. With that,

1 we'll move to 9808, the Text Amendment Update of the Child
2 Development Center regulations.

3 MR. BASTIDA: Madam Chairperson, you have
4 received the Office of Planning Hearing Summary on May the
5 3rd. I think it's pretty clear and concise, and if you want
6 me to go over it I'll be glad to do so.

7 CHAIRPERSON KRESS: No, we already did last
8 meeting.

9 MR. BASTIDA: Yes, right.

10 CHAIRPERSON KRESS: The reason we didn't vote
11 last meeting is we were asking OP to get in touch with the
12 organizations that have expressed concern about this
13 legislation.

14 MR. BASTIDA: Right.

15 CHAIRPERSON KRESS: And it is our understanding
16 that OP was going to do that and get back to us.

17 MR. BASTIDA: That is correct. How would I put
18 it -- the Office of Planning has tried to establish that
19 communication. Unfortunately, it was not successful in doing
20 so. But we contact them and they were supposed to call us
21 back, and that was not done.

22 CHAIRPERSON KRESS: Have you spoken, or should
23 we postpone this to another month?

24 MR. BASTIDA: David was supposed to then --

25 CHAIRPERSON KRESS: Yes, David was the one who
26 was supposed to be in contact with them.

1 MR. BASTIDA: Right. And he will have further
2 details of those conversation or lack of it, but there was not
3 any affirmation or opposition to it. But if you'd like to
4 postpone it for another month we'll have no objection to do
5 so.

6 CHAIRPERSON KRESS: If we can make it, if David
7 could possibly -- and I know we've had a lot going on this
8 month -- but if David could possibly make this a priority so
9 that one way or another we have had communication and they
10 have said they don't have time, aren't interested, or
11 whatever. But that there is definitely communication
12 established.

13 MR. BASTIDA: What I would suggest, Madam
14 Chairperson, is we will provide the list of all the calls that
15 were made and the date that they were made. And that way, if
16 there was no answer, you're aware in fact, what took place.

17 CHAIRPERSON KRESS: All right. That would be
18 very helpful. Thank you.

19 MR. BASTIDA: Okay, thank you.

20 CHAIRPERSON KRESS: Colleagues, is that in
21 agreement with everyone?

22 COMMISSIONER HOOD: Madam Chair, I just have a
23 question. Have we discussed the 24-hour limitation question I
24 was reading? Have we resolved the time limitation?

25 CHAIRPERSON KRESS: I thought we had. If you
26 would like to open it up?

1 COMMISSIONER HOOD: No.

2 CHAIRPERSON KRESS: Why don't we wait until
3 next month anyway, when Mr. Colby is back and communication
4 has transpired, and we'll go ahead and discuss it then, if
5 that's all right.

6 COMMISSIONER HOOD: Okay.

7 CHAIRPERSON KRESS: Since we do have quite a
8 bit today.

9 The Corrections Corporation of America.

10 COMMISSIONER PARSONS: Madam Chair, let the
11 record reflect that I'm leaving the room as part of my recusal
12 in this case.

13 CHAIRPERSON KRESS: I hope we see you this
14 afternoon. Thank you.

15 MR. BASTIDA: Madam Chairperson, the Office of
16 Planning doesn't have anything else to proffer at this time.

17 CHAIRPERSON KRESS: Thank you. With that I
18 would move to discussion regarding 98-16.

19 Commissioner Clarens, would you like to begin?

20 COMMISSIONER CLARENS: Madam Chairperson, I
21 have reviewed with great care all of the material and the
22 testimony that was presented to us in this case.

23 I also have gone to the regulation for guidance
24 in making this decision. And I would propose to the
25 Commission that we need to look at this application on the
26 basis of sound planning principles and that I have looked at

1 two items in the regulations in the plan review procedures,
2 Chapter 24, dealing with plan unit development and both item
3 2400.3 and 2400.4 gives the basis under which we can begin to
4 deal with this issue.

5 Under 2400.3, the regulations talk about the
6 Commission undertaking a public review in order to evaluate
7 the public benefit offered in proportion to the flexibility or
8 incentive requested and in order to establish a basis for long
9 term public control over the specific use and development of
10 the property.

11 Under 2400.4, it says that while providing for
12 greater flexibility in planning and design that may be
13 possible under conventional zoning procedures, the plan unit
14 development process shall not be used to circumvent the intent
15 and purposes of the zoning regulations, nor to result in
16 action that is inconsistent with the comprehensive plan.

17 I think that the principal work here is what to
18 do with land that is adjacent to the waterfront and what is
19 the sound planning use for land that is adjacent to the
20 waterfront and this Commission and sound planning principle
21 indicates that waterfront property should be used in a manner
22 that allows for transparency between the community and the
23 waterfront, that a land should be developed on the waterfront
24 property in such a way that the city participates on a major
25 asset of the community which is its waterfront.

26 So on the basis of that I have great difficulty

1 with this application because it introduces a use in
2 waterfront, in a major element of the waterfront of the city
3 that is by its own definition a barrier to the use of this
4 land for public use and for this interaction between the city
5 and the waterfront.

6 And on the basis of that I would recommend
7 denial of this application.

8 CHAIRPERSON KRESS: Thank you. Commissioners?
9 Commissioner Franklin?

10 COMMISSIONER FRANKLIN: Madam Chair, I'd like
11 to expand a bit on what Mr. Clarens has said because I
12 basically concur with the thrust of his comments.

13 Every zoning action has to have a basis in
14 planning, otherwise it's arbitrary and capricious and planning
15 and zoning together seems to me you need to take a long view
16 of what land use is best able to serve the community over a
17 long period of time. Fifty years from now, the decision to
18 permit this to be converted from open space and recreational
19 uses be regarded as the right decision.

20 The Applicant in its post-hearing submissions
21 has all but asserted that we should ignore any planning
22 considerations in reaching our decision. While it is true
23 that legislation has been enacted to remove the role of the
24 National Capital Planning Commission from decisions by the
25 Federal Bureau of Prisons in this matter, that legislation in
26 my view has not preempted the jurisdiction of this Commission,

1 nor has it granted the Bureau of Prisons the right to preempt,
2 override the authority of the District Government or this
3 Commission in the location of the site for a correctional
4 institution.

5 Now in evaluating how to locate and size a
6 facility of such community importance, a planning process might
7 have taken place which would have assessed the need to find
8 the appropriate site criteria, inventoried the possible sites
9 and assuming a particular site could be identified, develop a
10 concerted means of site acquisition and development.

11 It is possible, but not altogether certain that a site within
12 the District of Columbia would be so identified.

13 In my view, the public and this Commission has
14 been severely handicapped by not only the absence of any
15 semblance of such a process, but by lack of knowledge of
16 alternatives that may be under consideration by the Bureau of
17 Prisons.

18 If proximity to loved ones is of vital
19 importance to those who are incarcerated and there's no doubt
20 that it is, we have no way of knowing whether another
21 location, perhaps one not as proximate as Oxon Cove, but still
22 accessible, is a realistic alternative. We've been presented
23 with an all or nothing choice and in this regard the Applicant
24 states that the legislative elimination of review by NCPC
25 indicates an intent that the facility must be located within
26 NCPC's jurisdiction.

1 I think we can interpret that law to simply
2 void NCPC's review authority for a facility that might be
3 located within its jurisdiction.

4 So instead of a process that might have taken
5 place that I have described, I have had to search for a
6 planning predicate for this decision through other means. For
7 me, that planning basis starts with the comprehensive plan
8 which defines the site as open space for recreational purposes
9 owned by the Federal Government.

10 We have been told, in addition, by the Mayor's
11 Office that this particular development would chill economic
12 development in the vicinity of the Oxon Cove site and I've had
13 occasion to review the Federal Clean Water Action Plan
14 announced by President Clinton in February 1998 and reaffirmed
15 by EPA in November of last year, to assure that the National
16 Capital Region's water quality is maintained.

17 That policy limits developments of new federal
18 facilities on federal lands to already developed areas instead
19 of open space land. So I have to conclude that if the Bureau
20 of Prisons had proposed this site itself, it would be in
21 violation of the President's Clean Water Plan. And of course,
22 the Office of Planning has opposed the site.

23 So in brief, there isn't a scintilla of
24 planning indicia as the premise for the change of this from
25 open space to M, as requested. The National Park Service, I
26 might add, probably hasn't been the greatest steward that it

1 might have been, but whatever deficiencies there have been and
2 the stewardship can be remedied over time, and that would not
3 be possible if we converted this to M zone.

4 So my feeling is that I cannot even cross that
5 immediate threshold to consider the other aspects of the
6 matters presented to us. I don't think that an economic
7 development plan or a planning process of any sort that I can
8 contemplate would have designated this particular site for
9 this use.

10 CHAIRPERSON KRESS: Thank you. Commissioner
11 Hood?

12 COMMISSIONER HOOD: Madam Chair, our charge as
13 Commissioners is not to be inconsistent with the comp. plan.
14 The comp. plan is developed with the help of community groups
15 such as the ANC, civic groups. I believe the opposition is
16 great and I will admit that I've toiled with the opposition.
17 I went back and forth and it was a rather decision when we
18 weigh the pros and cons with the visitation piece, what not.
19 But I believe the ANCs and the civic groups have made their
20 positions well known and that we give them the great weight
21 that they are accorded by law.

22 D.C. residents have the right to mold and plan
23 the surrounding neighborhoods in which they live. So I don't
24 believe we should shove anything down the community's throat.
25 I will be voting in opposition of this PUD.

26 CHAIRPERSON KRESS: All right, thank you. Is

1 there a motion regarding 98-16?

2 COMMISSIONER HOOD: I will make a motion that
3 deny 98-16 for all the reasons mentioned previously.

4 CHAIRPERSON KRESS: Is there a second?

5 COMMISSIONER CLARENS: I will second that
6 motion.

7 CHAIRPERSON KRESS: Any further discussion?
8 All those voting to deny 98-16 signify by saying aye?

9 (AYES.)

10 Opposed? Would you record the vote, please?

11 MS. PRUITT-WILLIAMS: Staff will record the
12 vote as 4 to 0 to deny the application of 98-16.

13 Motion made by Mr. Hood and seconded by Mr.
14 Clarens.

15 CHAIRPERSON KRESS: Thank you.

16 Next on our agenda -- and I'm not sure what to
17 call it -- a reaffirmation. It has to do with the Solar
18 Building, 98-14. It came to our attention after the vote at
19 our last meeting, that in fact, several pieces of information
20 had come into the files in accordance with the timeframe of
21 April 28th, if I recall. Yes.

22 And we had not had them in our packet at the
23 time that we made our decision and so we had not reviewed
24 those letters prior to our vote. And then subsequently, Ms.
25 Mitten, and correctly so, noted from our discussion that we
26 were obviously missing some materials. And so we have now

1 given them to you and you have them in your packet.

2 And basically what I wanted to ask is if anyone
3 cares to re-open the case to re-discuss or wished -- think
4 more simply, does anyone wish to change their vote with the
5 new information that has come to us?

6 COMMISSIONER PARSONS: Madam Chairman,
7 procedurally -- I'm anxious to talk about this -- but
8 procedurally, is it a circumstance where somebody on the
9 prevailing side needs to open the record? I mean, we've now
10 allowed these things to come into the record.

11 CHAIRPERSON KRESS: No, we haven't allowed
12 them; they were already there. We made a mistake by -- there
13 was a staff error by not giving it to us -- I actually had
14 seen them. There was a staff error that when the package got
15 put together on the weekend it wasn't in your package.

16 COMMISSIONER FRANKLIN: But Mr. Parsons is
17 correct, that somebody on the prevailing side I think, has to
18 do the reconsideration.

19 COMMISSIONER PARSONS: Even though we all acted
20 without this information, so then why is it before us?

21 COMMISSIONER CLARENS: Well, it's to perfect
22 the record. I mean, we've made a decision based on incomplete
23 material that should have been properly before us. So the
24 question then becomes, now that we have been presented with
25 the material that we should have had at the time that our
26 decision was made, does this new material -- new to us but

1 should have been presented -- makes any difference?

2 CHAIRPERSON KRESS: Alan, our corporate
3 counsel, had advised us and he appears not to be here. I
4 don't know if Mary is prepared to speak. When I brought this
5 to corporation counsel's attention -- would you like to speak
6 to this or should I speak from what Alan told me?

7 Okay, is he there? Yes, I would very much like
8 to talk to Alan. Procedurally, I spoke to him regarding this
9 issue and I would like him to advise us.

10 Alan, this is regarding the issue of the Solar
11 Building and the couple of pieces of information which were
12 filed on time but were not appropriately in our package the
13 weekend that we reviewed the information and that we now all
14 have. In my discussions with you it appeared that, unless
15 someone wanted to reopen the record after reviewing them, we
16 did not need to do anything.

17 I don't want to put words in your mouth. Would
18 you mind speaking to the issue? I take back everything I
19 said. You advised us on what we should do. We had a couple
20 of letters that were duly -- and I double-checked -- were
21 stamped in within the April 28th timeframe but because of a
22 staff error, was not included in the package that we reviewed
23 over the weekend.

24 MR. BERGSTEIN: Then they're in the record?

25 CHAIRPERSON KRESS: They're in the record. We
26 don't need to reopen the record?

1 MR. BERGSTEIN: That is correct.

2 CHAIRPERSON KRESS: And we don't want to reopen
3 the record. We have everything in the record we need.

4 MR. BERGSTEIN: I agree. They're in the
5 record. The fact that they may not have been in our packet
6 but you have them now, doesn't relate to what's in the record.
7 What's in the record, it was timely filed with this office for
8 the time period provided, and that becomes the record. The
9 rest is a matter of delivery to you. You know have it
10 delivered, it's going to be part of your deliberation, so
11 you're going to be deciding it on the record. So everything
12 is appropriate.

13 COMMISSIONER CLARENS: No, but Alan, the issue
14 is that we already made a decision. This is an item that has
15 already been voted on. So we've already voted and the vote
16 has been recorded and a decision has been made. But now we
17 realize that that decision was based on incomplete material.
18 So now the question is, to perfect the record, the vote by --

19 CHAIRPERSON KRESS: Do we need to take another
20 vote?

21 COMMISSIONER FRANKLIN: It seems to me, if I
22 can suggest it, that the prevailing side could move to
23 reconsider on the grounds that their vote would be different.
24 Otherwise, I don't see how procedurally you can reopen the
25 matter.

26 MR. BERGSTEIN: I would prefer to discuss this

1 privately, but if you want me to discuss it with you publicly
2 (inaudible). Your choice.

3 I think that if you've all reviewed the
4 material and if one of you believes that it's appropriate to
5 reconsider the matter, that would be a motion you could make.

6 COMMISSIONER PARSONS: But it would have to be
7 on the prevailing side. Otherwise, I'm very anxious to talk
8 about this but I'm on the losing side of the vote.

9 MR. BERGSTEIN: Well, if you want to make the
10 motion to reconsider because you wish to argue to the other
11 Commissioners that what you have read changes the merits of
12 the case, then what you need to do is to request the
13 Commissioners to reconsider the matter based upon the new
14 material, and argue why you think the new materials merits
15 their consideration. Then the Commission will have to vote on
16 the question of whether or not to reconsider the vote based
17 upon the materials that were reviewed. And then if they vote
18 to reconsider then you'll have a second vote.

19 COMMISSIONER FRANKLIN: But if we knew though
20 at the outset that no member of the majority wishes to
21 reconsider, that the vote is not going to change even though
22 the --

23 MR. BERGSTEIN: But what I'm suggesting is that
24 at least a member who now has these materials before him in
25 the record that was not before you, can at least request the
26 opportunity to argue to you that it would be appropriate for

1 you to reconsider the matter by making a motion to reconsider.

2 Then you could take a vote as to whether or not
3 that's appropriate. You won't be actually discussing the
4 merits based upon -- it's a question of whether or not to
5 reopen the matter based upon the receipt of new material. And
6 then if the majority felt it doesn't change your mind, then
7 you would deny the motion to reconsider. You won't even
8 actually debate the merits of it as affected by the materials
9 that's been provided.

10 The only question is whether or not to
11 reconsider the matter. And what I'm suggesting is, I think a
12 member could under these circumstances, at least make the
13 procedural motion to have you reconsider, and then you can
14 decide that upwards and downwards. And if you decide
15 downwards that's the only discussion.

16 If you decide upwards then you do have a second
17 vote, taking into account the new material. That's what I'm
18 suggesting.

19 COMMISSIONER CLARENS: So Madam Chairperson, it
20 seems to me that the thing to do is, in the absence of none of
21 the Commissioners -- I don't know that for a fact, that that's
22 the case -- but in the absence of none of the Commissioners
23 that have voted for this application making a motion to
24 reconsider, then the only thing is for Mr. Parsons who voted
25 against the application, to ask us to reconsider. That's what
26 you're saying?

1 MR. BERGSTEIN: That's what I'm saying.

2 COMMISSIONER HOOD: Mr. Parsons, if you make
3 the motion I'll second it.

4 COMMISSIONER PARSONS: I'm not sure we're able
5 to do that. That is, the prevailing side is the only one that
6 can make a motion for reconsideration.

7 CHAIRPERSON KRESS: That's what I was saying --

8 COMMISSIONER FRANKLIN: Under Roberts' Rules --

9 COMMISSIONER CLARENS: Yes, but what has been
10 said is that Mr. Parsons can make an argument to the
11 Commission for making a motion for reconsideration. You're
12 not making a motion for reconsideration but you might say,
13 this material --

14 CHAIRPERSON KRESS: To convince us to change
15 our minds again, so that --

16 COMMISSIONER PARSONS: Let me just argue this.
17 It is important for this Commission to go on record in
18 response to an ANC. We did not do that because we didn't have
19 it before us. The ANC has brought forth a position, and I'm
20 not here to argue what's in it -- we'll do that in a moment,
21 hopefully -- that we should, in order to develop the findings
22 of fact and conclusions of law and a decision in an
23 appropriate way, this document has to be dealt with. It can't
24 be dealt with by some other method. That's the reason I would
25 urge you to at least have a brief or extensive debate on this
26 matter.

1 COMMISSIONER HOOD: Madam Chair, I would concur
2 with Mr. Parsons that as no fault of the submissions that came
3 in late, as a fault of ours, I would like to see it
4 reconsidered too, so we can have that information before us
5 before we even rule to make a decision -- well, reconsidered,
6 rather. We've already made a decision.

7 MR. BERGSTEIN: Has there been a written order?

8 CHAIRPERSON KRESS: A written order has not
9 been --

10 MR. BERGSTEIN: Because as I've indicated,
11 under the ATA -- this is a contested case?

12 CHAIRPERSON KRESS: Yes.

13 MR. BERGSTEIN: Under the ATA the written order
14 is the final order. And this new material will be before you
15 when the written order is signed and can in fact, be discussed
16 as part of the written order.

17 COMMISSIONER CLARENS: That is correct. And
18 that is why -- I mean, that's exactly what we're talking
19 about. but because of the argument that Mr. Parsons has made,
20 that this is from an ANC to which this Commission is obligated
21 to give great weight, which means that it must consider the
22 arguments made by the ANC in making our decision.

23 Independence was always -- in my experience, I
24 don't know is always -- but we have discussed in public, the
25 argument made by the ANC, whether in favor or against a case.
26 So what Mr. Parsons is arguing, and Mr. Hood is willing to

1 make a motion as one of the members who voted --

2 CHAIRPERSON KRESS: No, he voted not --

3 COMMISSIONER CLARENS: Oh, he's on the same
4 vote? Oh, I see, I see. So he cannot make the motion. I
5 see, I see. He cannot make the motion. Okay well, but in any
6 case, the argument that Mr. Parsons has made is that we should
7 publicly discuss the issues raised by the ANC in order to
8 complete the record. But you might disagree, I don't know.

9 CHAIRPERSON KRESS: Well, let me just make a
10 point. First of all, these issues, no matter how we feel
11 about them, both of these issues -- I mean to me, in all of
12 the information that has come forward, these are the same
13 issues that we have discussed in that throughout the whole
14 process.

15 COMMISSIONER CLARENS: Correct.

16 CHAIRPERSON KRESS: I don't see -- personally,
17 I don't see any information that we have not discussed or
18 evaluated as a part of the process. So I have a question as
19 to how helpful, other than to reopen it and redo the
20 discussion, I don't see that this is new information.

21 COMMISSIONER FRANKLIN: It is not new
22 information and we have addressed these issues, and I presume
23 that the order will also address these issues as persuasively
24 as we can, and we will give great weight to each of them. So
25 I feel if there was something new here that we weren't aware
26 of before, new issues, I might feel differently.

1 COMMISSIONER HOOD: I think we do have some new
2 issues. I think that there were five unresolved issues and
3 they settled on three, and I think you have two that are still
4 outstanding.

5 COMMISSIONER FRANKLIN: And we knew that.

6 CHAIRPERSON KRESS: We knew that.

7 COMMISSIONER HOOD: Right, so there was some
8 headway. I mean, you know, in all fairness, this was
9 submitted on time. I just think we need to reconsider and
10 reopen it.

11 COMMISSIONER PARSONS: I'm trying not to stray
12 into the argument, okay, but the amount of time we spent to
13 arrive at a 3-2 discussion, seemingly it was a debate between
14 myself and the rest of you on how we could rezone this
15 property to protect SP. And I think the Chair was back and
16 forth on that.

17 And I think I was handicapped in that
18 discussion by not having the support of the ANC to share with
19 you. Because the very discussion we were having was 20 feet
20 versus 45 feet. And I think my argument would have been
21 strengthened if I'd known this was in the record. And I'll
22 leave it at that.

23 If there's nothing in here that's going to
24 persuade you otherwise, we'll move on. But I feel troubled by
25 that.

26 COMMISSIONER FRANKLIN: We did have a

1 discussion, Madam Chair, about the extent to which the PUD, a
2 full approval would actually change the underlying zoning.
3 And I think in connection with other cases we've had some
4 illumination of that issue by examining the regulations which
5 are pretty plain as I recall.

6 That if this PUD never goes any further, this
7 approval, or if for one reason or another the building is
8 destroyed, which we all grant is remote likelihood, the
9 underlying zoning applies. And I do recall that that was a
10 major concern that you had, Mr. Parsons.

11 CHAIRPERSON KRESS: And a major concern I had.

12 COMMISSIONER FRANKLIN: That's right; that the
13 Chair had. And I believe that that concern can be allayed by
14 just looking at the regulations.

15 COMMISSIONER HOOD: Let me just say something.
16 This may not make sense and if it doesn't, nobody has to
17 respond. But what if it was on the other -- if the roles were
18 reversed? The ANC and the community, Presidential piece, they
19 got their submission in on time, and the applicant didn't?

20 MS. PRUITT-WILLIAMS: Everything was in timely.
21 This was a staff error, not getting it in --

22 COMMISSIONER HOOD: But I'm saying was if the
23 error was on the other foot as opposed to where it is now?
24 Would we reopen it?

25 MS. PRUITT-WILLIAMS: The applicant has the
26 burden of proof.

1 COMMISSIONER HOOD: I really think the way the
2 project was going and the way the vote is, I think it would be
3 reopened then.

4 COMMISSIONER FRANKLIN: Well, neither party
5 here is at fault.

6 COMMISSIONER HOOD: Right. I'm saying either
7 party. But what I'm just saying, if the roles were reversed
8 and it was to happen, then we would probably reopen it. So I
9 want to make sure that we're clear about it.

10 CHAIRPERSON KRESS: I disagree.

11 COMMISSIONER CLARENS: Well Madam Chairperson,
12 I think that -- I'm listening to corporation counsel and I
13 hear what they have to say, and I also hear from Mr. Franklin.
14 These are issues that were dealt with at the time we made our
15 decision. If you want to move for reaffirmation of our
16 decision, you know -- which I think is unnecessary.

17 I mean, either we move to reconsider, and I
18 don't see any basis for that, or because we've discussed these
19 issues. We've made our decision with full knowledge of the 20
20 feet rather than the 45 feet and with the curb cut at 16th
21 Street rather than an entrance from an alley, after having
22 reviewed the material in the record and after having weighed
23 the positives against the negatives of this application.

24 And there's nothing here that is new or
25 different for the facts that we had before us. And the order
26 will deal with the opinion of the ANC and give it the great

1 weight that they're entitled to. So on the basis of that I
2 would say that this item is moot. The decision has been made
3 and should remain so.

4 CHAIRPERSON KRESS: And we should move on?

5 COMMISSIONER CLARENS: And we should move on.

6 COMMISSIONER FRANKLIN: I agree.

7 COMMISSIONER CLARENS: There is no motion
8 before us. It's just a matter of a reaffirmation of a
9 proposed action --

10 CHAIRPERSON KRESS: No, I don't think --

11 COMMISSIONER CLARENS: Not even that.

12 CHAIRPERSON KRESS: That was the clarification
13 I had when I put it on the agenda. I said that and I believe
14 our corporation counsel has said that we do not need to do a
15 reaffirmation, correct? We can just move on.

16 MR. BERGSTEIN: As long as your written
17 decision reflects the grounds for your decision.

18 CHAIRPERSON KRESS: Okay.

19 MR. BERGSTEIN: Respond specifically to the ANC
20 requirements which is how great weight is considered.

21 CHAIRPERSON KRESS: All right. With that then,
22 we will move on. We have no hearing action, and again, this
23 one is mislabeled. The next thing says Reconsideration of
24 Hearing Action, and I didn't really mean for it to say that.
25 I mean, all hearing actions pertaining to the DD that was put
26 forward.

1 What I was proposing that was difficult is, is
2 that we had certain information put forward to us on which we
3 made a bench decision, and I believe you had that in your
4 package written in a form prepared to go out for announcement
5 -- yes.

6 It says "draft". It's the Zoning Commission,
7 Minutes Proposed Rulemaking, Case No. 99-3Z. This we did pass
8 by a bench decision, and it is my intent unless anyone
9 disagrees, to continue with and go ahead and announce. We
10 send to NCPC the issues that we did pass as part of the bench
11 decision.

12 The other piece I had handed out, this was that
13 I would like to continue to go ahead, and that is the Notice
14 of Public Hearing for September 9th with the issues as they
15 relate to the Woodies Building and only the Woodies Building.
16 And that we go ahead and do this Notice of Public Hearing.

17 Maybe we should wait until you all get caught
18 up. I know you've been in on part of this but not all of it.

19 COMMISSIONER PARSONS: I missed the May 20
20 meeting. I was here for June 3rd. There's two things before
21 us on the table and I don't understand --

22 CHAIRPERSON KRESS: Okay, let me go through
23 them once more. Basically, what my proposal is, is to hold in
24 abeyance -- we sent down a bunch of other things which it is
25 not clear to me what we sent down, what we didn't. We really
26 don't have it in any clean way from Office of Planning.

1 So it was my intention that the miscellaneous
2 other considerations which we've received a lot of information
3 on and comment relating to the DD, be tabled and that we deal
4 with them at the July meeting; and we go over with Office of
5 Planning once David Colby has a chance to be back, only the
6 other items relating to the DD.

7 But that we continue ahead with two pretty
8 clean things -- fairly clean. The first one being what is
9 marked "draft", which is the Notice of Proposed Rulemaking on
10 which we made the bench decision --

11 MS. PRUITT-WILLIAMS: On May 20th.

12 CHAIRPERSON KRESS: -- on May 20th. And that
13 basically adds the residential use that does affect the
14 Woodies Building, and then addresses the two other issues.
15 That we made a bench decision on and I suggest that go forward
16 in its normal process.

17 COMMISSIONER PARSONS: I will not participate
18 in that, but go ahead.

19 CHAIRPERSON KRESS: Okay. And then the meeting
20 that we had where we set down -- where the Mayor had asked us
21 to set down the points of interest relating to the Woodies
22 Building on July 26th, we voted September 9th. And so I also
23 suggest this go ahead to announce the meeting for September
24 9th.

25 COMMISSIONER PARSONS: I would only recommend
26 that this draft dated June 3rd, probably shouldn't have the

1 June 3rd date on it. That's what confused me. It should say
2 May 20th, I guess.

3 CHAIRPERSON KRESS: Or May 20th somewhere, yes,
4 I agree.

5 COMMISSIONER PARSONS: Not June 3rd at the top.
6 Now I'm straight.

7 COMMISSIONER CLARENS: Okay, so then May what?

8 CHAIRPERSON KRESS: The actual date of the
9 bench decision was May 20th.

10 COMMISSIONER CLARENS: May 20th. So you're
11 suggesting that we send this to NCPC for review prior to final
12 action --

13 CHAIRPERSON KRESS: Right.

14 COMMISSIONER CLARENS: -- of these text
15 amendments?

16 CHAIRPERSON KRESS: Right.

17 COMMISSIONER CLARENS: That's on one hand.
18 That to postpone any action on the other issues regarding DD
19 until we have an opportunity to meet in July and Mr. Colby is
20 here to represent the Office of Planning?

21 CHAIRPERSON KRESS: Right.

22 COMMISSIONER CLARENS: And there's no action
23 required. We have already decided on a set down for the
24 Woodies Building?

25 CHAIRPERSON KRESS: Right.

26 COMMISSIONER CLARENS: And that's all?

1 CHAIRPERSON KRESS: That's what I'm proposing.

2 MR. BASTIDA: Madam Chairperson, my
3 understanding is that in fact, at that meeting on May 20th you
4 set down additional facts. So what you want is then an
5 enumeration of those facts as reflected on the transcripts,
6 and then if there is any discrepancy between all the memos
7 sorted out, that in fact, nothing is left out of the laundry
8 list --

9 CHAIRPERSON KRESS: Not only left out but also
10 analyzed, because after we set that down Office of Planning
11 suggested rewriting some things, we got other comments in on
12 that perhaps we should have rewritten them in a different
13 format, a different style.

14 I would like Office of Planning to look at --
15 not only pull out of the record for us what all those other
16 items are, but to comment on them and to perhaps tighten up
17 the language or rewrite the language as it may seem
18 appropriate.

19 Because some of these we were just saying, okay
20 we want to use Mr. Doctor's amendment, we want to use
21 something from Mr. Lynch, and then other people later said,
22 well you should have written it X, Y, Z. And I'm just feeling
23 uncomfortable with the way this has gone.

24 And so if you can pull out for us and hone what
25 those issues are and then do an Office of Planning report on
26 those other items we're talking about setting down, then we

1 can either reaffirm to set them down or change the manner in
2 which they're set down, to more appropriately reflect the
3 language that may be proposed.

4 MR. BASTIDA: Madam Chair, that's doable and we
5 will have that for the next meeting -- for the July meeting.

6 CHAIRPERSON KRESS: All right. Thank you. Is
7 that all right to all of my fellow Commissioners?

8 COMMISSIONER CLARENS: Sounds good.

9 CHAIRPERSON KRESS: Okay, the next item on the
10 agenda we're moving into Final Action.

11 COMMISSIONER PARSONS: No, wait. Now I'm
12 really confused. What are we going to do with this?

13 CHAIRPERSON KRESS: That is going to be mailed
14 out. I mean, that will be put in The Register.

15 MS. PRUITT-WILLIAMS: That's just an
16 advertisement for the hearing; the public hearing notice.

17 CHAIRPERSON KRESS: That's going to happen
18 September --

19 COMMISSIONER PARSONS: We took a decision in
20 May that affected more than Square 346.

21 CHAIRPERSON KRESS: Yes.

22 COMMISSIONER PARSONS: Why is that not included
23 in this Notice?

24 CHAIRPERSON KRESS: Because that one already
25 has a bench decision. This one has no decision on it. That's
26 why I'm stopping all these other ones and pulling them

1 together.

2 COMMISSIONER PARSONS: You mean on May 20th you
3 made the decision on --

4 CHAIRPERSON KRESS: On those three items. A
5 bench decision, yes.

6 COMMISSIONER FRANKLIN: A set of --

7 CHAIRPERSON KRESS: No, no, these are bench
8 decisions.

9 COMMISSIONER PARSONS: Without a hearing? What
10 did you do?

11 CHAIRPERSON KRESS: Yes, we had a hearing. We
12 had a hearing and we had a bench decision on these three
13 items.

14 MR. ERONDU: Included in your package for you
15 to know what you decided and that package shows exactly what I
16 have sent into the Planning Commission and --

17 CHAIRPERSON KRESS: To The Register.

18 MR. ERONDU: I just wanted the Commission to
19 know if I made a mistake. That's why it's in the package.

20 COMMISSIONER PARSONS: Thank you.

21 CHAIRPERSON KRESS: I'm sorry. Hopefully we'll
22 get it more cleaned up than that --

23 COMMISSIONER PARSONS: I think I said last
24 time, when this Commission hurries it screws up.

25 CHAIRPERSON KRESS: You're absolutely right.

26 COMMISSIONER PARSONS: I think we have.

1 CHAIRPERSON KRESS: That's why I stopped a
2 bunch of the other pieces so that we can evaluate those next
3 month.

4 COMMISSIONER PARSONS: Good idea.

5 CHAIRPERSON KRESS: Under Final Action,
6 basically the rules of the Zoning Commission and BZA are not
7 here because we're not dealing with them because corporation
8 counsel has not had a chance to --

9 MS. PRUITT-WILLIAMS: Completely go through
10 everything. We do have the OP report.

11 CHAIRPERSON KRESS: The final OP report?

12 MS. PRUITT-WILLIAMS: Yes, we got it. It was
13 delivered to our office Friday evening.

14 MR. CORCORAN: We were gone Thursday in the
15 early afternoon. Friday evening I delivered a report just
16 noting that it wasn't on the agenda, what happened. And
17 corporation counsel had also dropped it off --

18 MS. PRUITT-WILLIAMS: -- so we just got it
19 again. You have that information but you don't have
20 corporation counsel's information so you can take it up --

21 MR. CORCORAN: And corporation counsel also
22 walked it down -- they accepted our report. They walked it
23 down even before I did on the --

24 MS. PRUITT-WILLIAMS: But no, corporation
25 counsel is going to go through it themselves to make sure that
26 there was some issues that Mrs. Kress had and they have not

1 had the opportunity to deal with those.

2 MR. CORCORAN: Okay.

3 CHAIRPERSON KRESS: So we have their final
4 report. We will definitely be ready in July to be done with
5 this because we do have NCPC's comments. So we will do the
6 final vote in July once we have reviewed Office of Planning's
7 report and corporation counsel comments.

8 MR. BASTIDA: Madam Chair, just for
9 clarification. That means you are putting it on the July
10 agenda, correct?

11 CHAIRPERSON KRESS: Absolutely.

12 MR. BASTIDA: Thank you.

13 CHAIRPERSON KRESS: Thank you. I also had --
14 well, basically, the two items that are on the agenda are 97-6
15 and 97-6(I), which has to do with the Chain Bridge
16 Road/University Terrace TSP Overlay.

17 COMMISSIONER CLARENS: The first one approves
18 and the second one denies, is that correct?

19 MS. PRUITT-WILLIAMS: Correct.

20 CHAIRPERSON KRESS: Yes.

21 COMMISSIONER PARSONS: So moved.

22 COMMISSIONER CLARENS: Second.

23 COMMISSIONER FRANKLIN: Madam Chair, I did not
24 participate in B.

25 CHAIRPERSON KRESS: In B? All right. I would
26 only say, I have several amendments; nothing of substance,

1 mostly typos. So I would just like the motion to reflect as
2 amended. I don't really have anything of major substance.

3 COMMISSIONER CLARENS: All right.

4 CHAIRPERSON KRESS: All those in favor -- we'll
5 break it into two parts since Commissioner Franklin did not
6 participate in both.

7 So 97-6, all those in favor signify by saying
8 aye.

9 (Chorus of ayes.)

10 MS. PRUITT-WILLIAMS: Staff records the vote as
11 five to zero to approve 97-6. And I've got the motion made by
12 Mr. Parsons but I'm sorry, I wasn't clear who seconded it.
13 Mr. Clarens, thank you.

14 CHAIRPERSON KRESS: And now I would call for
15 the vote, I would assume the same motioner and seconder for
16 97-6(I) for purposes of Commissioner Franklin.

17 COMMISSIONER PARSONS: Yes.

18 COMMISSIONER CLARENS: Yes.

19 CHAIRPERSON KRESS: All those in favor signify
20 by saying aye.

21 (Chorus of ayes.)

22 MS. PRUITT-WILLIAMS: Staff will record the
23 vote as four to zero to one. Motion made by Mr. Parsons,
24 seconded by Mr. Clarens; Mr. Franklin not present, not voting.

25 CHAIRPERSON KRESS: Perfect. Thank you. With
26 that we'll move forward. I just wanted to double-check and

1 make sure I'm correct. The other one that was being carried
2 over was the millennium case, and Mr. Bastida you seem to
3 think that has to do with the status?

4 MR. BASTIDA: I discussed that with Sheri so I
5 think that she can address it now.

6 MS. PRUITT-WILLIAMS: That was the result of
7 Ms. Kahlo sending a letter in form of a motion requesting her
8 party status be revisited. The Commission dealt with that at
9 a meeting and took a vote and therefore, that really doesn't
10 require an order.

11 Usually the transcript stands on its own in
12 reference to motions, but as a courtesy we can write Mrs.
13 Kahlo and state that the Commission has reconsidered and still
14 has chosen to deny the party's status. So that she'll have
15 some correspondence.

16 CHAIRPERSON KRESS: Okay, so that is completed
17 then? All right. Thank you.

18 MR. BASTIDA: Hopefully.

19 CHAIRPERSON KRESS: With that, we'll move on to
20 the status reports of the Office of Planning.

21 MR. BASTIDA: Madam Chairperson, the Office of
22 Planning submitted the report June the 7th and I'll be glad to
23 go with it. There's not any really major issues or
24 statements.

25 On page 2 I think three -- it's the one that
26 has been highlighted for your review. Ms. Atkins would like

1 to add to it.

2 MS. ATKINS: And the Zoning Commission will
3 soon be receiving our final report on page 97-7(I), the
4 completion of the SP Zoning case in the Logan and Thomas
5 Circle (inaudible).

6 CHAIRPERSON KRESS: I didn't hear that. What
7 did you say at the end?

8 MS. ATKINS: That the Commission will soon be
9 receiving our final report on Case 97-7(I), the completion of
10 SP Zoning case in the Logan and Thomas Circle areas.

11 CHAIRPERSON KRESS: I'm sorry, thank you, yes.
12 That was an initially going to be on the agenda for today but
13 we had such a full agenda. And I understand conversations
14 transpired that there was an agreement that this could go to
15 July.

16 MS. ATKINS: Yes.

17 CHAIRPERSON KRESS: So that will be set down in
18 July.

19 MR. BASTIDA: So you're saying basically, that
20 will be on the July agenda?

21 CHAIRPERSON KRESS: I meant -- not set down.
22 I've got to be careful how I use the words. That will be on
23 the July agenda. Thank you.

24 MR. BASTIDA: Thank you.

25 CHAIRPERSON KRESS: Forgive me. All right.
26 Any questions of Office of Planning? I see the next thing is

1 the report of the Director. Did you have any other reports
2 before we move to the Report of the Director, Ms. Pruitt-
3 Williams?

4 MS. PRUITT-WILLIAMS: In your package you have
5 a request for sua sponte review on a BZA Case 16426. You have
6 the order that was just signed. This actually comes as a
7 result of Mr. Clarens sitting on the Board. And because of
8 the summary order the order itself probably gives you new
9 information, which is why we included the transcripts which
10 was the basis for the decision.

11 CHAIRPERSON KRESS: Did everyone get the
12 transcripts?

13 COMMISSIONER CLARENS: Yes.

14 MS. PRUITT-WILLIAMS: At this juncture you are
15 requested to determine whether or not you will be taking this
16 under sua sponte review or not.

17 CHAIRPERSON KRESS: What we should do is do
18 this in two steps: 1) decide to take a sua sponte review; and
19 then if that motion passes then actually have the discussion
20 of the case and then make a corporate vote.

21 MR. BERGSTEIN: Madam Chair, I believe that
22 after you decide to review it, the Board then transmits the
23 order to the Office of Planning -- that's 3103.3 -- who then
24 forwards it to the Zoning Commission and to all parties before
25 the Board. And then following that you would conduct a review
26 under 3103.4.

1 So it appears to me that what you'd be doing
2 here today is determine whether or not to actually take up the
3 sua sponte review and then you would follow this process. And
4 at the completion of the process you would have a second
5 meeting to actually decide --

6 CHAIRPERSON KRESS: The trouble is, we only
7 have ten days.

8 MS. PRUITT-WILLIAMS: No, you have ten days to
9 make a decision whether or not to take the sua sponte review.

10 MR. BERGSTEIN: Well, actually you have ten
11 days to request sua sponte.

12 MS. PRUITT-WILLIAMS: And that has been done
13 timely. The order was --

14 MR. BERGSTEIN: I'm sorry. You may request a
15 sua sponte -- that's what you're doing here today. You're
16 within your 10-day limit now to request the sua sponte review
17 and then we go through this process. So this is -- what
18 you're doing is actually making a determination to go forward
19 with a sua sponte review. And that's within a 10-day --

20 MS. PRUITT-WILLIAMS: The order was signed on
21 Friday, so you're still within a 10-day period.

22 MR. BERGSTEIN: And there's no time period that
23 I see to actually complete the process on (inaudible).

24 COMMISSIONER FRANKLIN: Mr. Bergstein, is the
25 review de novo or just appellate?

26 MR. BERGSTEIN: What it says is -- let me see -

1 -

2 MS. PRUITT-WILLIAMS: There's no real
3 procedures for a sua sponte review. That's part of the
4 concern.

5 MR. BERGSTEIN: It says that you give -- you
6 have to afford the parties an opportunity to present
7 memorandum to the Board in support of or in opposition of the
8 actions of the Board. It sounds to me appellate. That is,
9 you do not have a new hearing; you merely invite the parties
10 to brief the issue.

11 That's what -- I'm relying on 3103.4. "Upon
12 receipt of the record the Zoning Commission shall review the
13 case and take action as it deems appropriate provided the
14 Zoning Commission shall not reverse or modify the order of the
15 decision of the Board without affording the parties before the
16 Board an opportunity to present memoranda to the Commission in
17 support of or in opposition to, the actions of the Board."

18 COMMISSIONER FRANKLIN: Thank you.

19 MR. BASTIDA: Madam Chairperson?

20 CHAIRPERSON KRESS: Yes.

21 MR. BASTIDA: Did you say something about the
22 Office of Planning?

23 CHAIRPERSON KRESS: Yes.

24 MR. BASTIDA: I couldn't quite understand what
25 you were saying. So if you were to clarify that I would be
26 appreciative.

1 MR. BERGSTEIN: Certainly. I'm reading from
2 3103.3, the Commission's determination to review an order or
3 decision of the Board. Its actual decision to do that shall
4 be transmitted forthwith to the Director of the Office of --
5 I'm sorry, I'm sorry.

6 CHAIRPERSON KRESS: I was going to say --
7 because we never sent anything to -- the sua spontes I've been
8 through before --

9 MR. BERGSTEIN: I apologize to you, Mr.
10 Bastida.

11 MR. BASTIDA: Thank you.

12 COMMISSIONER CLARENS: The Director absolves
13 you. You would then communicate with BZA.

14 CHAIRPERSON KRESS: I'm glad you asked.

15 MR. BASTIDA: You know me by now.

16 CHAIRPERSON KRESS: So basically what we do
17 today is discuss doing the sua sponte review but we cannot
18 discuss the case until we have memoranda from the parties?

19 MR. BERGSTEIN: Yes, and this may be of some
20 guidance to you. I'm reading from 3103.8. "The Zoning
21 Commission shall look to the following guidelines when
22 determining whether to invoke its sua sponte review authority.
23 The Commission shall exercise its discretion for sua sponte
24 review as follows: a) in a particular instance where it
25 appears to the Commission that the Board of Zoning Adjustment
26 has exceeded its prerogatives and has thus in effect, changed

1 the zoning; b) where it appears that a basic policy of the
2 Zoning Commission as expressed in the Zoning Regulations has
3 been violated as a result of the Board of Zoning Adjustment
4 action; or c) an unusual instance as determined by the Zoning
5 Commission."

6 COMMISSIONER PARSONS: I think this qualifies
7 under all three.

8 COMMISSIONER CLARENS: So in my letter to you,
9 Madam Chairperson, I cite two of the three. I think that
10 under Section 3103.8 which establishes the guidelines that Mr.
11 Bergstein has just been talking about, the Commission may
12 initiate a sua sponte review.

13 That is my opinion that the Board has exceeded
14 its prerogative and has thus changed the zoning and that
15 furthermore the policy of the Commission as expressed in the
16 Zoning Regulation has been violated by this action.

17 And that is why I'm recommending sua sponte --
18 or requesting sua sponte.

19 CHAIRPERSON KRESS: In fact, before when we did
20 the sua sponte I don't know that we did get memorandum. So
21 I'm not sure we have handled it --

22 COMMISSIONER PARSONS: Which case are you
23 referring to? Because I can only recall one in the entire
24 time I've been on the Commission.

25 CHAIRPERSON KRESS: I can only recall one as
26 well, but we didn't get -- do you remember getting memorandum

1 from the --

2 COMMISSIONER PARSONS: Well, the case I'm
3 talking about is WTA down at Hecht's -- 15 years ago.

4 CHAIRPERSON KRESS: That was actually --
5 because I've been on the Board for only nine.

6 COMMISSIONER PARSONS: All right, 12. I'll
7 compromise. A long time ago.

8 CHAIRPERSON KRESS: Well, I was just wondering
9 if we could waive our rules to receive -- and go ahead and
10 discuss this, or would we feel more comfortable going ahead
11 and asking for -- following the procedures as Alan has laid
12 them out?

13 COMMISSIONER CLARENS: There is only one party
14 in this case and that is the applicant. There's no other
15 party.

16 CHAIRPERSON KRESS: Correct.

17 COMMISSIONER FRANKLIN: There was no
18 opposition?

19 COMMISSIONER CLARENS: There's a letter in
20 opposition --

21 CHAIRPERSON KRESS: Yes, there is --

22 COMMISSIONER CLARENS: -- but it's not a party.
23 So it doesn't get any --

24 CHAIRPERSON KRESS: So practically we're asking
25 the applicant, which has received approval from BZA, to say it
26 agrees with BZA giving it approval?

1 MR. BASTIDA: No, but they'd have to -- the
2 applicant is supposed to argue the reason why he agreed -- I
3 mean, the applicant agrees with BZA. He has to elaborate on
4 those reasons.

5 COMMISSIONER PARSONS: Well, but that's not
6 fair. I mean, if you've read the transcript that's not going
7 to happen. To me this is an issue between us and the BZA.

8 MR. BASTIDA: But that's how the rules of the
9 Zoning Regulations work. If you --

10 COMMISSIONER CLARENS: If you read the
11 regulations, the regulations say -- Mr. Bergstein, if you have
12 the regulations you can correct me if I'm wrong -- but what it
13 basically says is that before acting to reverse or remand a
14 case, the Board should do that after affording the parties an
15 opportunity to write a memorandum.

16 So this Commission can proceed to discuss and
17 act on the sua sponte review that only after we act, after we
18 review the case, and if we're going to act in reverse, then we
19 afford the applicant -- we inform the applicant that we're
20 going to act in reverse. Is there anything you want to tell
21 us?

22 MR. BERGSTEIN: That is correct. You would
23 afford the applicant opportunity to present --

24 CHAIRPERSON KRESS: All right.

25 MR. BERGSTEIN: But that's after you get to
26 step 2. You're still in step 1 which is, whether or not going

1 to invoke sua sponte review in the first place. Then after
2 you've determined to invoke it you then you get to stage 2
3 where you would afford the applicant an opportunity to argue
4 its position.

5 MR. BASTIDA: Madam Chairperson, on the
6 previous -- I'm not arguing Mr. Bergstein's case. In the
7 previous case that was 11-and-a-half years ago, the Commission
8 afforded the applicant to provide that memo before the
9 discussion. But that was what the Commission did. That was
10 all.

11 CHAIRPERSON KRESS: So there was a memo before
12 the discussion?

13 MR. BASTIDA: Yes. But that is not necessarily
14 the rules for the game. So you can do it however you so wish.

15 CHAIRPERSON KRESS: Well, then I would ask for
16 a motion regarding whether we're going to do a sua sponte
17 review. I guess that's the first step. Would someone make a
18 motion to propose that we do a sua sponte review of BZA Case
19 No. 16426?

20 COMMISSIONER PARSONS: So moved.

21 COMMISSIONER HOOD: Second.

22 CHAIRPERSON KRESS: Any further discussion?

23 All in favor signify by saying aye.

24 (Chorus of ayes.)

25 Opposed?

26 (No response.)

1 MS. PRUITT-WILLIAMS: Staff will record the
2 vote as five to zero to do a sua sponte review. The motion
3 made by Mr. Parsons and seconded by Mr. Hood.

4 CHAIRPERSON KRESS: Should we now -- are you
5 comfortable to go ahead and just discuss this and perhaps
6 reach the point of making a decision that we can then ask the
7 -- assuming it goes negatively -- to ask them for the
8 memorandum from the applicant? Is that -- yes, we have the
9 record and we have read it.

10 MR. BERGSTEIN: It sounds to me that it almost
11 presumes that you would get to a stage of I suppose, consensus
12 that you were going -- or it is likely that you would reverse
13 or modify it. And then at that time you would afford the
14 applicant an opportunity to present materials to you.

15 So if that's what you care to do you could go
16 forward today with what you have and get to that point. But
17 where you can't cross the point is actually to reverse or
18 modify.

19 COMMISSIONER CLARENS: So you're saying that a
20 letter -- if it goes as far as getting the Commission to get
21 close to making a decision on the reversal, that then we
22 notify by letter both the Board and the applicant that the
23 Commission is intending to reverse and they can address the
24 Commission. Is that what you're saying?

25 MR. BERGSTEIN: Yes, but I don't believe the
26 Board gets to address the Commission.

1 COMMISSIONER CLARENS: No, no, no, I'm sorry --

2 MR. BERGSTEIN: Just the parties.

3 COMMISSIONER CLARENS: Just the parties.

4 MR. BERGSTEIN: Yes, that's correct.

5 COMMISSIONER CLARENS: And it's not address;
6 it's address by memo?

7 MR. BERGSTEIN: That's correct, although the
8 rules do afford you as among your options, an opportunity to
9 also hear argument. But that's strictly a prerogative that
10 you have.

11 But yes, since you do already have the record
12 and if you view it as being efficient, you can at least get to
13 the point where you know you've got to ask the party to -- the
14 party applicant to provide you something in support of the
15 Board's position, if the party cares to. And then make your
16 final decision after that.

17 CHAIRPERSON KRESS: All right. With everyone's
18 approval I think we should --

19 COMMISSIONER FRANKLIN: Madam Chair, could I --

20 CHAIRPERSON KRESS: -- go ahead and proceed.

21 Yes?

22 COMMISSIONER FRANKLIN: I'm sorry.

23 CHAIRPERSON KRESS: Go ahead.

24 COMMISSIONER FRANKLIN: Would it not be prudent
25 of us to inform the ANC and invite their comments on this?

26 COMMISSIONER PARSONS: I don't think so.

1 Madam Chair, when are we going to talk about the issue here?

2 CHAIRPERSON KRESS: That's what I'm trying to
3 get to.

4 COMMISSIONER PARSONS: Screw procedure,
5 frankly. The issue here to me, is twofold. One, the
6 neighborhood is in transition and we have implemented zoning
7 regulations to assist that transition. The Board on the other
8 hand, is cognizant of that but has an applicant who's saying
9 that, I can't conform to the Zoning Regulations because the
10 neighborhood is a mess.

11 There is nothing in the record that deals with
12 the test that has to be taken as to hardship on the site. It
13 is the hardship of the community that they based their
14 decision on; that a junkyard belongs in a junkyard, frankly,
15 as I see it. That is, it is premature for him to undertake
16 something that would conform to the regulations because of the
17 neighborhood.

18 And they've gone way beyond the regulations
19 which are affecting the site itself -- which is fine from a
20 zoning standpoint -- and based their variance on the
21 neighborhood. And I've never seen the BZA do that before.

22 Have I got his right? Mr. Clarens, you were
23 there.

24 CHAIRPERSON KRESS: I'm not sure you want him
25 to talk.

26 COMMISSIONER CLARENS: I would not have taken

1 this action, frankly. Except for the fact that there was not
2 a scintilla of anything provided to the Board in order to make
3 this decision. I mean, there was no unique of the site that
4 differentiated from any other site in this vicinity, there's
5 nothing topographical, there was nothing in its shape, there
6 was nothing in its history, there was nothing anywhere to
7 define a distinguishing site from any other site in that area.

8 And there was no connection whatsoever, between
9 this lack of uniqueness and any possible hardship to the owner
10 in complying with the zoning regulations, and that is the
11 first threshold and that was never crossed and that was never
12 met and the applicant never made an argument that made any
13 sense. And the Board didn't even make any kind of argument on
14 that.

15 I think that the argument was exactly as Mr.
16 Parsons had said, on the general characteristics of the site,
17 and it is one of the basic tenets of zoning: that we look
18 through a planning process at the future and we see the land
19 use in a rational, planned way. And of course it's going to
20 take some time and of course at some point in this -- but if
21 we begin to corrode the power of the zone plan then the zone
22 plan ceases to have any meaning and any possible effect.

23 So that's why I was -- and it took me a little
24 bit by surprise, and I think in reading the record maybe you
25 noticed that it is at the end that I become a little bit
26 concerned because all of a sudden it surprises me that the

1 Board is going to go in the direction of approving this
2 application where no case has been made whatsoever.

3 So that's why I'm asking you to reverse this
4 decision because I think, as I said in my letter, that the
5 Board erred on making findings necessary. The applicant did
6 not meet any burden of proof and the Board did not make
7 findings that would justify its decision.

8 And then the third item -- so there's no
9 uniqueness, there's no hardship, and it is contrary to the
10 intention of the Zoning Regulations.

11 COMMISSIONER FRANKLIN: Otherwise it's okay.

12 COMMISSIONER HOOD: Madam Chair, I just wanted
13 to say that I believe the ANC did take a vote on it and they
14 voted six to zero, while not normally -- it's page 115,
15 starts about at line 15.

16 CHAIRPERSON KRESS: But if ANC did --

17 COMMISSIONER HOOD: Right, I think it was
18 mentioned that they didn't.

19 CHAIRPERSON KRESS: No, that they did.

20 COMMISSIONER HOOD: Oh, they did. Okay, I'm
21 sorry.

22 CHAIRPERSON KRESS: And they are automatic
23 parties, so I would think that as we go ahead and that it
24 appears that there's at least four of us that look like
25 there's a good chance of reversal, I would think that we would
26 notify the applicant and also the ANC to make their comments

1 in writing, because they are automatically a party to every
2 case anyway.

3 COMMISSIONER HOOD: Well, can I just interject,
4 Madam Chair?

5 CHAIRPERSON KRESS: Sure.

6 COMMISSIONER HOOD: Normally, I don't usually
7 go in totally the opposite way but this time I think Mr.
8 Clarens is correct. What I read here -- what's the word we're
9 using now, scintilla?

10 CHAIRPERSON KRESS: It's the word of the day.

11 COMMISSIONER HOOD: While I was reading the
12 transcript I believe Mr. Clarens asked the question, "What
13 prevents you from developing this property for any of the uses
14 that are allowed under C.3.C? Mr. Hong: The only way I could
15 benefit for owning this property without building an
16 automotive repair shop would be to wait around for somebody to
17 buy it to a higher market".

18 To me, that was not justifiable and I do concur
19 with Commissioner Clarens.

20 CHAIRPERSON KRESS: Well, I guess we're not
21 supposed to bring it to a vote. We're supposed to have a
22 consensus. And do we have a consensus that this should be
23 reversed and then at this point --

24 MR. BERGSTEIN: Perhaps a motion would be in
25 order to advise the parties of the Board's intent to reverse -
26 - on the site -- intent to reverse. And that might be an

1 appropriate procedure vehicle.

2 CHAIRPERSON KRESS: All right.

3 COMMISSIONER PARSONS: But that doesn't go to
4 the Board?

5 MR. BERGSTEIN: No, that's not how the rules
6 are written. It goes to the parties.

7 COMMISSIONER PARSONS: We are not going to have
8 an adequate record here. We won't get a response. In other
9 words, we'll have nothing --

10 CHAIRPERSON KRESS: If he thinks it's going to
11 -- you don't think --

12 COMMISSIONER CLARENS: Well, I mean, he might
13 then go and find a lawyer and write something.

14 MR. BASTIDA: The regulations say that you can
15 afford the parties to have an input. It doesn't mean that you
16 must have it.

17 MR. BERGSTEIN: That is correct. This is a
18 matter of due process here. It's not a mandatory -- you can't
19 go forward if you don't receive one. It's merely giving the
20 opportunity to be heard to the parties. And if you give them
21 the opportunity and they don't avail themselves of the
22 opportunity that means you can go forward and make your
23 decision.

24 MR. BASTIDA: I would suggest, Madam
25 Chairperson, that when you afford them the opportunity to
26 answer to you, that you give them a time limit.

1 CHAIRPERSON KRESS: That's a good idea.

2 MR. BASTIDA: Or a time certain to have it by
3 that, such and such a date.

4 CHAIRPERSON KRESS: That's an excellent
5 suggestion.

6 COMMISSIONER CLARENS: Mr. Parsons, why do you
7 say that if we don't let the Board know that we won't have a
8 record?

9 COMMISSIONER PARSONS: I guess what I meant was
10 -- and I'm violating our regulations -- but it seems to me
11 that the Board should have an opportunity, at least through
12 their Chair, to address us on this matter in written form or
13 in person.

14 CHAIRPERSON KRESS: I don't see why we
15 couldn't. I mean, we're not --

16 MR. BERGSTEIN: I don't think it would violate
17 your regulations if you allow greater notice than less. So if
18 you feel it's appropriate to advise the Board of your actions
19 today and invite them to respond, I don't think that would be
20 in violation of your regulations.

21 CHAIRPERSON KRESS: I think that's an excellent
22 --

23 COMMISSIONER FRANKLIN: Does it not mean
24 though, that the action of the Board is stayed?

25 CHAIRPERSON KRESS: Oh, yes.

26 MR. BERGSTEIN: Yes.

1 COMMISSIONER FRANKLIN: But there has to be
2 some -- the zoning Administer has to know that. Or somebody
3 has to know that right away.

4 COMMISSIONER CLARENS: Or we hold the order.
5 The order has no --

6 MS. PRUITT-WILLIAMS: It has not been sent.

7 CHAIRPERSON KRESS: Or signed. It has to go --
8 it has not been --

9 COMMISSIONER CLARENS: Then we can form that a
10 motion be made to stay the order until the issue is resolved.

11 CHAIRPERSON KRESS: All right. So I'm going to
12 ask for a motion to stay the order to submit a letter to the
13 applicant, to the ANC -- affected ANC -- and to the Board of
14 Zoning Adjustments telling them of our intention to reverse
15 their action and set -- what kind of a date? How much time
16 shall we give them? A month?

17 COMMISSIONER CLARENS: Ten days. Eleven-and-a-
18 half years.

19 MR. BASTIDA: Well, 60 days because you're not
20 going to make (unintelligible) in any event. So you're going
21 to give it 60 days so you can have it in your September
22 meeting.

23 CHAIRPERSON KRESS: Okay.

24 COMMISSIONER HOOD: So moved, Madam Chair.

25 CHAIRPERSON KRESS: Okay, Commissioner Hood has
26 made the motion. Is there a second?

1 COMMISSIONER FRANKLIN: Second.

2 CHAIRPERSON KRESS: Commissioner Franklin
3 seconds. All in favor signify by saying aye.

4 (Chorus of ayes.)

5 Opposed?

6 (No response.)

7 MS. PRUITT-WILLIAMS: Staff will record the
8 vote as five to zero to advise the parties, the ANC and the
9 Board, of the Commission's decision to reverse the Board's
10 action and a motion to stay the order. Motion made by Mr.
11 Hood and seconded by Mr. Franklin.

12 CHAIRPERSON KRESS: Terrific.

13 COMMISSIONER FRANKLIN: It's almost in the
14 nature of a Show Cause Order why it should not be reversed.

15 CHAIRPERSON KRESS: Okay, with that, let's --

16 MS. PRUITT-WILLIAMS: The next item is to hear
17 the request for an extension.

18 CHAIRPERSON KRESS: We have a request for an
19 extension for 90-3C, a PUD order, Conference Center Associates
20 Limited Partnership requesting a 2-year time extension.
21 What's your pleasure? Have you reviewed it?

22 COMMISSIONER FRANKLIN: Madam Chair, I have
23 reviewed it and I do not believe it meets our standard for an
24 extension.

25 COMMISSIONER PARSONS: Could he repeat that?
26 I'm sorry, I didn't --

1 COMMISSIONER FRANKLIN: I said I have reviewed
2 the materials and I do not believe that it meets our standards
3 for the extension, which should come as no surprise. This
4 thing has been kicking around for years and years and years.
5 We have gone through now six or seven years of extraordinary
6 economic vitality.

7 There is something wrong with this PUD. Either
8 somebody doesn't know how to move from one point to the other
9 or no one is putting enough resources into it. But I think
10 the Commission is made a laughing stock by continual
11 extensions when obviously very little progress is being made.

12 And I think that our regulations called for
13 some kind of good faith, diligent showing that -- you know,
14 this was before us two years ago and essentially the same
15 story was told to us two years ago. So it's just obviously
16 not a viable proposal.

17 And I think that we have to start signalling to
18 the development communities that this Commission is just not a
19 bunch of naives to be taken advantage of by continual
20 extensions when people don't know how to develop anything.

21 Now, if I don't persuade you with that then I
22 would like to urge that we actually have a hearing so we can
23 ask some questions about what people are actually doing to
24 move this forward. And I would be very surprised to learn
25 that they have done anything that a professional would regard
26 as diligent activities to get this kind of development going.

1 COMMISSIONER HOOD: Madam Chair, in looking
2 over this piece myself, I concur with Mr. Franklin, but I had
3 thought maybe if we can extend it to December of 1999 --
4 because I understand from the letter behind the packet that
5 there's someone else who's ready to come in and do a
6 development piece on that particular piece which is being held
7 up with the PUD.

8 So I'm not in favor of going past December '99.
9 If the rest of the Commission is in favor of going past
10 December '99 I too will associate myself with the comments of
11 Mr. Franklin.

12 COMMISSIONER FRANKLIN: What letter are you
13 referring to?

14 CHAIRPERSON KRESS: It was the last thing in
15 the package.

16 COMMISSIONER FRANKLIN: We had similar kinds of
17 representations the last time around, but I'd be willing to go
18 to December '99. But I still don't believe it.

19 COMMISSIONER CLARENS: Well, because Madam
20 Chairperson, I -- I agree. I think that because we are now
21 taking away permission for PUD that had been previously
22 approved, and even though I think that we could deny the
23 request for extension which I think is a problem, it seems to
24 me that we should give one last opportunity, brief as it may
25 be -- of six months or December of '99 -- to the person that
26 holds the application, holds the PUD, for making something

1 happen.

2 And we are putting them on notice that after,
3 that if there's no project ready to proceed at that point,
4 that then any other extension will be denied.

5 COMMISSIONER FRANKLIN: That is acceptable to
6 me, Madam Chair.

7 CHAIRPERSON KRESS: The only other option is to
8 hold a hearing.

9 COMMISSIONER FRANKLIN: I think a hearing would
10 be helpful.

11 CHAIRPERSON KRESS: And I do think this is
12 major to take -- and again, I think the compromise on the
13 table is December '99 -- but I do think that we haven't really
14 withdrawn these except for very good cause. And I would think
15 it would be helpful to have an interaction rather than just
16 pieces of paper. I don't know where the ANC stands, reading
17 these.

18 COMMISSIONER CLARENS: Well, but we have a
19 letter that basically says that there is another party that is
20 ready to move forward. Now, we have no knowledge and this
21 might be another, you know, pie in the sky type of thing. But
22 in any case it seems to me that we can hold a hearing but I'm
23 not sure what we're going to get out of that.

24 And we cannot hold properties hostage simply
25 because we've already approved a PUD over a period of more
26 than ten years -- almost 11.

1 COMMISSIONER PARSONS: Based on Mr. Mariani's
2 letter at Tab 2 it seems to me that the six months is the
3 appropriate thing to do. If we were then to introduce a
4 hearing into the middle of that we'd probably get to it in
5 October. And I think there would be reason in December, if
6 they came forward and said you know, give us another two years
7 to work this out, that that would be the time for a hearing.

8 CHAIRPERSON KRESS: Okay. Sounds like there's
9 some unanimity. Would someone like to make a motion?

10 COMMISSIONER PARSONS: Move that we extend the
11 PUD orders 689, 689-A, 689-B, and 689-C to December of 1999 --
12 December 31st, 1999.

13 COMMISSIONER HOOD: I second the motion.

14 CHAIRPERSON KRESS: Any further discussion?
15 All in favor signify by saying aye.

16 (Chorus of ayes.)

17 COMMISSIONER FRANKLIN: I'll abstain, Madam
18 Chair. Because I know what's going to happen on December
19 1999. You guys are going to extend it again. We're going to
20 have a whole bunch of these coming up now that have been here
21 before, and we've got to send a signal out -- I don't want to
22 belabor the point -- that we've gone through a period of
23 unparalleled prosperity and there are still some PUDs sticking
24 around.

25 This has not produced any amenity. I have been
26 in favor of extending PUDs when the amenity package has been

1 provided or substantially provided, which shows you the good
2 faith and ability of people to move. But when they just hang
3 around like this we've just got to start getting some
4 discipline into the process.

5 COMMISSIONER HOOD: Madam Chair, if I may add.
6 If we start doing what we just did I think -- we add another
7 six months as opposed to two years -- I think we will bring
8 that process to some closer and people will see that we're
9 serious about it and they will stop asking for these 2-year
10 extensions, and they'll know to be ready to get these projects
11 moving. So I think --

12 CHAIRPERSON KRESS: But usually they're 3-year
13 extensions.

14 COMMISSIONER HOOD: Well, three years.

15 CHAIRPERSON KRESS: But yes. Okay.

16 COMMISSIONER CLARENS: It's really -- I mention
17 although it's not a motion -- and I don't know if it's too
18 late to amend the motion -- but it is a notice of intent for
19 the Commission not to extend the PUD any more unless very
20 clear evidence --

21 COMMISSIONER FRANKLIN: Unless the regulations
22 are complied with, and this does not comply with our
23 regulations.

24 CHAIRPERSON KRESS: And I would also say there
25 is something new and that's in the Comprehensive Plan, which
26 is to put a cap of 12 years on these.

1 COMMISSIONER FRANKLIN: Yes, I mean, this has
2 been noticed throughout --

3 CHAIRPERSON KRESS: Not just us; this has come
4 from the community -- I mean, obviously for it to be in the
5 Comp Plan -- but there needs to be some timeframe set. And as
6 you say, when you get there you can decide whether to have
7 hearings and have more information or handle it however you
8 wish.

9 Is there any other business before we go to the
10 election? Yes?

11 MS. PRUITT-WILLIAMS: We need to record the
12 vote.

13 COMMISSIONER FRANKLIN: I'll change my vote to
14 being in favor so I don't sound too --

15 MS. PRUITT-WILLIAMS: Staff will record the
16 vote at five to zero to approve an extension on the time for
17 this -- and just for clarification -- until December 31st,
18 1999. Motion made by Mr. Parsons and seconded by Mr. Hood.

19 CHAIRPERSON KRESS: Did you have any other
20 business before we move to election of officers?

21 MS. PRUITT-WILLIAMS: No, Madam Chair.

22 CHAIRPERSON KRESS: All right, with that I vote
23 to move to the election of officers, and I would like to make
24 the motion that Commissioner Clarens be elected Chairperson
25 and Commissioner Hood be elected Vice Chairperson. Is there a
26 second?

1 COMMISSIONER FRANKLIN: I'll second that.

2 CHAIRPERSON KRESS: Any discussion? All in
3 favor signify by saying aye.

4 (Chorus of ayes.)

5 Opposed?

6 (No response.)

7 Motion carries.

8 MS. PRUITT-WILLIAMS: Staff will record the
9 vote as five to zero. Motion made by Ms. Kress, seconded by
10 Mr. Franklin. The motion was to have Mr. Clarens as
11 Chairperson and Mr. Hood as Vice Chair.

12 COMMISSIONER CLARENS: And as my first action
13 as Chairperson of this honorable Commission I adjourn this
14 meeting.

15 (Whereupon, the meeting was adjourned at 3:37
16 p.m.)

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