

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

JUNE 14, 1999

+ + + + +

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 ACTION50	
STATUS REPORT - OFFICE OF PLANNING	55
OTHER BUSINESS	
BZA 16426	57
90-3C Extension	77
ELECTION OF OFFICERS	84

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1
2
3 CHAIRPERSON KRESS: I call to order our
4 regular meeting for Monday, June 14th. I'm Jerrily
5 Kress, Chairperson. Joining me this afternoon are
6 Commissioners Franklin, Clarens, Hood, and Parsons.

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

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

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

18 I do have a question, by the way, on the
19 8th Street overlay. It particularly has me not
20 voting -- not having participated -- which I did. I
21 just wanted to check with Franklin.

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

24 CHAIRPERSON KRESS: You did not, okay.
25 Are there any other votes that are incorrect? I
26 have notes on all of the other issues but I just

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1 wanted to double-check on the voting and make sure
2 that the voting was correct in the minutes as you
3 all reviewed them.

4 COMMISSIONER CLARENS: I thought there
5 was an incorrect vote recorded -- let me see if I
6 can find it -- on the minutes. Now, are we talking
7 about all the minutes or are you talking about May
8 10th only?

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

15 COMMISSIONER CLARENS: None other than
16 spelling and typos.

17 CHAIRPERSON KRESS: Okay. Anyone else?

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

20 CHAIRPERSON KRESS: Okay.

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

25 COMMISSIONER CLARENS: That's correct.
26 That's --

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1 COMMISSIONER HOOD: -- as opposed.

2 COMMISSIONER CLARENS: There is a 4 to 1
3 vote.

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

7 COMMISSIONER CLARENS: There is also
8 another issue on the June 3rd and May 20th meeting
9 that both meetings show the same times and I cannot
10 imagine that we would have been so coincidental to
11 have started the meeting at the same time and end it
12 at exactly at the same times. So it seems to me
13 that there's something that is not quite right
14 there. Could be, but I think it needs to be
15 checked. It shows 8:50, the time that we started --

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

19 COMMISSIONER CLARENS: Okay.

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

24 Any other votes incorrect in the
25 minutes? Otherwise with your permission I will
26 bring these back at our next meeting revised for

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1 your approval.

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

4 MR. BASTIDA: Madam Chairperson?

5 CHAIRPERSON KRESS: Yes?

6 MR. BASTIDA: For the record, my name is
7 Alberto Bastida with the D.C. Office of Planning.
8 With me this afternoon is Vanessa Atkins, the Acting
9 Director of the Office of Planning.

10 In conversation with the applicant, all
11 the facts and requests that you have were not met.
12 So I'm requesting that you postpone that decision
13 until the July meeting. With the consent of the
14 applicant.

15 CHAIRPERSON KRESS: You have spoken to
16 the applicant about this?

17 MR. BASTIDA: I spoke to the legal
18 representative of the applicant as late as this
19 morning at 10 o'clock.

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

23 The units with decks, we did receive
24 that clarification. We did not receive the light
25 fixture clarification according to my old notes, and
26 we did not get any findings of fact -- although

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1 that's only a request.

2 MR. BASTIDA: Right.

3 CHAIRPERSON KRESS: We did not get
4 findings of fact, conclusions of law, and the
5 decision, and we did not get executed covenants.

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

10 CHAIRPERSON KRESS: All right.

11 MR. BASTIDA: Because remember, you
12 requested that also.

13 CHAIRPERSON KRESS: Yes. Well, that's
14 the one thing that I --

15 UNIDENTIFIED: -- clarification. I
16 thought we had gotten that.

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

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

23 CHAIRPERSON KRESS: Fellow
24 Commissioners, was there anything else that you
25 required?

26 COMMISSIONER PARSONS: The landscape

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1 plan that we had spoken about --

2 MR. BASTIDA: I thought the landscape
3 plan was submitted for the revised area, but I would
4 make sure that in fact, that's the case. It was
5 submitted to me and I thought it had been submitted
6 for the record.

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

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

13 COMMISSIONER PARSONS: All right.

14 MR. BASTIDA: Thank you.

15 CHAIRPERSON KRESS: Commissioner Hood,
16 does that take care of your concern?

17 COMMISSIONER HOOD: Right. The parking
18 agreement wasn't as specific but I don't think I
19 want to as tedious. I think what will happen is
20 when they do the Homeowner's Association piece the
21 parking issue hopefully will be taken care of.

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

26 COMMISSIONER HOOD: Right. Well, that's

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1 not why I'm going to prolong that and keep asking
2 about it because I believe once that's established
3 the homeowner's association will deal with it
4 accordingly. It's in the covenant.

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

8 COMMISSIONER HOOD: Okay.

9 CHAIRPERSON KRESS: Any other comments
10 regarding the Walter Washington Estates?

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

15 MR. BASTIDA: There has been a couple of
16 issues. There has been sickness, vacation time, and
17 also that in fact, the second phase hasn't begun and
18 this is the third phase. So it's on such a critical
19 path, accordingly there has been a slippage here and
20 there. And it cannot be pinpointed to one given
21 individual organization.

22 COMMISSIONER FRANKLIN: Thank you.

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

26 MR. BASTIDA: Madam Chairperson, the

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1 applicant submitted the four items that you've
2 requested to be added for the record, which were the
3 issue about the wisterias, the --

4 CHAIRPERSON KRESS: I'm sorry, the --
5 and I think that's -- could we bring that forward or
6 have someone put it on the stand for us and bring it
7 closer for discussion purposes?

8 MR. BASTIDA: The second point that I
9 was going to make is the palette that has been
10 resubmitted, and that way you can make a decision
11 one way or another regarding the palette.

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

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

24 CHAIRPERSON KRESS: I believe so, too.
25 As I checked my notes and records, I believe we do
26 have all information we requested. So with that

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1 I'll open it up to discussion by the Commissioners.

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

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

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

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

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

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

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

12 CHAIRPERSON KRESS: Thank you.

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

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

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1 CHAIRPERSON KRESS: Commissioner
2 Franklin.

3 COMMISSIONER FRANKLIN: I concur with
4 the previous statements and I just wanted to find
5 out from Mr. Clarens whether he feels that the
6 alternative coloration samples are to his
7 satisfaction since he requested them. They look
8 quite handsome to me.

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

13 COMMISSIONER CLARENS: I am very happy
14 you do. When I saw the pictures over the weekend I
15 said, aagh, what a mistake. But now that I see the
16 real materials I could concur. I think that this
17 direction and if the architect is happy, I think
18 that that's fine.

19 COMMISSIONER PARSONS: I think our Order
20 should reflect the continuing discussions with the
21 Park Service because we really don't have an
22 approved plan at this juncture. I think it
23 represents a monetary commitment that is sufficient
24 to qualify as an amenity.

25 CHAIRPERSON KRESS: I agree. Did you
26 have any comments, Commissioner Hood?

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1 COMMISSIONER HOOD: No, I said them
2 earlier, I think. I concur with the reset of my
3 colleagues.

4 CHAIRPERSON KRESS: I would like to then
5 go to the finding of facts and conclusions of law
6 and the decision. I agree. I don't think the Park
7 Service has been appropriately addressed but I have
8 a concern on page 17 about the minor adjustments to
9 the facade, window and cornice detailing. That's
10 pretty major and that is of some concern to me. I
11 don't know if it's of concern to anyone else.

12 COMMISSIONER FRANKLIN: I saw that
13 language, Madam Chair, and I think we need to tinker
14 with it.

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

23 So with those two notes before an
24 agreement we need to tighten up what we will allow
25 as a minor adjustment and tighten up regarding the
26 Park Service; otherwise, basically I find the

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1 findings of fact, conclusions of law, and decision
2 to be pretty adequate.

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

6 CHAIRPERSON KRESS: No, I'm not prepared
7 to -- I just heard that from Commissioner Parsons
8 and --

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

11 CHAIRPERSON KRESS: That's where I am.

12 COMMISSIONER PARSONS: I think it should
13 say in general accordance, so that they are not
14 facing the Zoning Administrator with two plans. And
15 we should reference the May 14th letter from the
16 Acting Superintendent, Cynthia Cox. Somewhere -- I
17 can't put it in the sentence, but if we can just
18 reference that, because it technically is an
19 amendment to the plan that's referenced.

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

24 COMMISSIONER FRANKLIN: I have this
25 question, Mr. Parsons, just hypothetical for the
26 moment. Suppose they were to give the Park Service

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1 a certain amount of money and just told the Park
2 Service to re-landscape it in accordance with their
3 own desires? Would that be satisfactory?

4 COMMISSIONER PARSONS: That has proven
5 to be problematic in the past. I won't go into the
6 details, but it has. The developer usually is
7 anxious to enhance the park and we sometimes don't
8 move fast enough for them. That is, they're
9 concerned about marketing their amenity and -- was
10 that behind --

11 COMMISSIONER FRANKLIN: When I saw the
12 letter from the Park Service I thought there was
13 going to be a lot of to and fro before this thing
14 ever --

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

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

22 COMMISSIONER PARSONS: The exhibit of
23 the plan and the Park Service comments, and then --

24 MR. BASTIDA: But they are in compliance
25 with that, so --

26 COMMISSIONER PARSONS: And I use the

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1 word "general" so that the Zoning Administrator has
2 some guidance when it comes times for permit.

3 MR. BASTIDA: And that way they can
4 negotiate with NPS to make sure that they do
5 everything that NPS -- or, try to accommodate NPS.
6 Thank you.

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

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

17 COMMISSIONER CLARENS: But the
18 appearance of retail frontage --

19 CHAIRPERSON KRESS: I have a problem
20 with that.

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

23 CHAIRPERSON KRESS: I mean, I --

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

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1 CHAIRPERSON KRESS: A minor
2 modification.

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

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

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

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

22 COMMISSIONER CLARENS: Yes. And C is
23 also.

24 CHAIRPERSON KRESS: Well, I don't know
25 what your preference is.

26 COMMISSIONER CLARENS: It's the number

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1 of units; it's not the square footage of residential
2 space.

3 CHAIRPERSON KRESS: Exactly. And I
4 could, personally, if a certain kind of unit was
5 marketing better than another type of unit I could
6 see that a different layout might be appropriate as
7 long as it didn't affect the exterior.

8 COMMISSIONER CLARENS: That's right.

9 CHAIRPERSON KRESS: Depending on what --

10 COMMISSIONER CLARENS: I don't have a
11 problem with that.

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

23 Is there such a motion?

24 COMMISSIONER FRANKLIN: So moved, Madam
25 Chair.

26 COMMISSIONER HOOD: Second.

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1 CHAIRPERSON KRESS: All those in favor
2 signify by saying aye.

3 (Chorus of ayes.)

4 Opposed?

5 (No response.)

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

9 CHAIRPERSON KRESS: Thank you. With
10 that, we'll move to 9808, the Text Amendment Update
11 of the Child Development Center regulations.

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

17 CHAIRPERSON KRESS: No, we already did
18 last meeting.

19 MR. BASTIDA: Yes, right.

20 CHAIRPERSON KRESS: The reason we didn't
21 vote last meeting is we were asking OP to get in
22 touch with the organizations that have expressed
23 concern about this legislation.

24 MR. BASTIDA: Right.

25 CHAIRPERSON KRESS: And it is our
26 understanding that OP was going to do that and get

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1 back to us.

2 MR. BASTIDA: That is correct. How
3 would I put it -- the Office of Planning has tried
4 to establish that communication. Unfortunately, it
5 was not successful in doing so. But we contact them
6 and they were supposed to call us back, and that was
7 not done.

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

10 MR. BASTIDA: David was supposed to then
11 --

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

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

19 CHAIRPERSON KRESS: If we can make it,
20 if David could possibly -- and I know we've had a
21 lot going on this month -- but if David could
22 possibly make this a priority so that one way or
23 another we have had communication and they have said
24 they don't have time, aren't interested, or
25 whatever. But that there is definitely
26 communication established.

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

6 CHAIRPERSON KRESS: All right. That
7 would be very helpful. Thank you.

8 MR. BASTIDA: Okay, thank you.

9 CHAIRPERSON KRESS: Colleagues, is that
10 in agreement with everyone?

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

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

17 COMMISSIONER HOOD: No.

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

22 COMMISSIONER HOOD: Okay.

23 CHAIRPERSON KRESS: Since we do have
24 quite a bit today.

25 The Corrections Corporation of America.

26 COMMISSIONER PARSONS: Madam Chair, let

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1 the record reflect that I'm leaving the room as part
2 of my recusal in this case.

3 CHAIRPERSON KRESS: I hope we see you
4 this afternoon. Thank you.

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

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

10 Commissioner Clarens, would you like to
11 begin?

12 COMMISSIONER CLARENS: Madam
13 Chairperson, I have reviewed with great care all of
14 the material and the testimony that was presented to
15 us in this case.

16 I also have gone to the regulation for
17 guidance in making this decision. And I would
18 propose to the Commission that we need to look at
19 this application on the basis of sound planning
20 principles and that I have looked at two items in
21 the regulations in the plan review procedures,
22 Chapter 24, dealing with plan unit development and
23 both item 2400.3 and 2400.4 gives the basis under
24 which we can begin to deal with this issue.

25 Under 2400.3, the regulations talk about
26 the Commission undertaking a public review in order

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1 to evaluate the public benefit offered in proportion
2 to the flexibility or incentive requested and in
3 order to establish a basis for long term public
4 control over the specific use and development of the
5 property.

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

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

25 So on the basis of that I have great
26 difficulty with this application because it

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

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

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

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

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

22 The Applicant in its post-hearing
23 submissions has all but asserted that we should
24 ignore any planning considerations in reaching our
25 decision. While it is true that legislation has
26 been enacted to remove the role of the National

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1 Capital Planning Commission from decisions by the
2 Federal Bureau of Prisons in this matter, that
3 legislation in my view has not preempted the
4 jurisdiction of this Commission, nor has it granted
5 the Bureau of Prisons the right to preempt, override
6 the authority of the District Government or this
7 Commission in the location of the site for a
8 correctional institution.

9 Now in evaluating how to locate and size
10 a facility of such community importance, a planning
11 process might have taken place which would have
12 accessed the need to find the appropriate site
13 criteria, inventoried the possible sites and
14 assuming a particular site could be identified,
15 develop a concerted means of site acquisition and
16 development.

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

20 In my view, the public and this
21 Commission has been severely handicapped by not only
22 the absence of any semblance of such a process, but
23 by lack of knowledge of alternatives that may be
24 under consideration by the Bureau of Prisons.

25 If proximity to loved ones is of vital
26 importance to those who are incarcerated and there's

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1 no doubt that it is, we have no way of knowing
2 whether another location, perhaps one not as
3 proximate as Oxon Cove, but still accessible, is a
4 realistic alternative. We've been presented with an
5 all or nothing choice and in this regard the
6 Applicant states that the legislative elimination of
7 review by NCPC indicates an intent that the facility
8 must be located within NCPC's jurisdiction.

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

12 So instead of a process that might have
13 taken place that I have described, I have had to
14 search for a planning predicate for this decision
15 through other means. For me, that planning basis
16 starts with the comprehensive plan which defines the
17 site as open space for recreational purposes owned
18 by the Federal Government.

19 We have been told, in addition, by the
20 Mayor's Office that this particular development
21 would chill economic development in the vicinity of
22 the Oxon Cove site and I've had occasion to review
23 the Federal Clean Water Action Plan announced by
24 President Clinton in February 1998 and reaffirmed by
25 EPA in November of last year, to assure that the
26 National Capital Region's water quality is

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1 maintained.

2 That policy limits developments of new
3 federal facilities on federal lands to already
4 developed areas instead of open space land. So I
5 have to conclude that if the Bureau of Prisons had
6 proposed this site itself, it would be in violation
7 of the President's Clean Water Plan. And of course,
8 the Office of Planning has opposed the site.

9 So in brief, there isn't a scintilla of
10 planning indicia as the premise for the change of
11 this from open space to M, as requested. The
12 National Park Service, I might add, probably hasn't
13 been the greatest steward that it might have been,
14 but whatever deficiencies there have been and the
15 stewardship can be remedied over time, and that
16 would not be possible if we converted this to M
17 zone.

18 So my feeling is that I cannot even
19 cross that immediate threshold to consider the other
20 aspects of the matters presented to us. I don't
21 think that an economic development plan or a
22 planning process of any sort that I can contemplate
23 would have designated this particular site for this
24 use.

25 CHAIRPERSON KRESS: Thank you.
26 Commissioner Hood?

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1 COMMISSIONER HOOD: Madam Chair, our
2 charge as Commissioners is not to be inconsistent
3 with the comp. plan. The comp. plan is developed
4 with the help of community groups such as the ANC,
5 civic groups. I believe the opposition is great and
6 I will admit that I've toiled with the opposition.
7 I went back and forth and it was a rather decision
8 when we weigh the pros and cons with the visitation
9 piece, what not. But I believe the ANCs and the
10 civic groups have made their positions well known
11 and that we give them the great weight that they are
12 accorded by law.

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

18 CHAIRPERSON KRESS: All right, thank
19 you. Is there a motion regarding 98-16?

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

23 CHAIRPERSON KRESS: Is there a second?

24 COMMISSIONER CLARENS: I will second
25 that motion.

26 CHAIRPERSON KRESS: Any further

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1 discussion? All those voting to deny 98-16 signify
2 by saying aye?

3 (AYES.)

4 Opposed? Would you record the vote,
5 please?

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

8 Motion made by Mr. Hood and seconded by
9 Mr. Clarens.

10 CHAIRPERSON KRESS: Thank you.

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

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

25 And basically what I wanted to ask is if
26 anyone cares to re-open the case to re-discuss or

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1 wished -- think more simply, does anyone wish to
2 change their vote with the new information that has
3 come to us?

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

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

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

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

22 COMMISSIONER CLARENS: Well, it's to
23 perfect the record. I mean, we've made a decision
24 based on incomplete material that should have been
25 properly before us. So the question then becomes,
26 now that we have been presented with the material

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1 that we should have had at the time that our
2 decision was made, does this new material -- new to
3 us but should have been presented -- makes any
4 difference?

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

11 Okay, is he there? Yes, I would very
12 much like to talk to Alan. Procedurally, I spoke to
13 him regarding this issue and I would like him to
14 advise us.

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

23 I don't want to put words in your mouth.
24 Would you mind speaking to the issue? I take back
25 everything I said. You advised us on what we should
26 do. We had a couple of letters that were duly --

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1 and I double-checked -- were stamped in within the
2 April 28th timeframe but because of a staff error,
3 was not included in the package that we reviewed
4 over the weekend.

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

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

9 MR. BERGSTEIN: That is correct.

10 CHAIRPERSON KRESS: And we don't want to
11 reopen the record. We have everything in the record
12 we need.

13 MR. BERGSTEIN: I agree. They're in the
14 record. The fact that they may not have been in our
15 packet but you have them now, doesn't relate to
16 what's in the record. What's in the record, it was
17 timely filed with this office for the time period
18 provided, and that becomes the record. The rest is
19 a matter of delivery to you. You know have it
20 delivered, it's going to be part of your
21 deliberation, so you're going to be deciding it on
22 the record. So everything is appropriate.

23 COMMISSIONER CLARENS: No, but Alan, the
24 issue is that we already made a decision. This is
25 an item that has already been voted on. So we've
26 already voted and the vote has been recorded and a

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1 decision has been made. But now we realize that
2 that decision was based on incomplete material. So
3 now the question is, to perfect the record, the vote
4 by --

5 CHAIRPERSON KRESS: Do we need to take
6 another vote?

7 COMMISSIONER FRANKLIN: It seems to me,
8 if I can suggest it, that the prevailing side could
9 move to reconsider on the grounds that their vote
10 would be different. Otherwise, I don't see how
11 procedurally you can reopen the matter.

12 MR. BERGSTEIN: I would prefer to
13 discuss this privately, but if you want me to
14 discuss it with you publicly (inaudible). Your
15 choice.

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

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

24 MR. BERGSTEIN: Well, if you want to
25 make the motion to reconsider because you wish to
26 argue to the other Commissioners that what you have

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1 read changes the merits of the case, then what you
2 need to do is to request the Commissioners to
3 reconsider the matter based upon the new material,
4 and argue why you think the new materials merits
5 their consideration. Then the Commission will have
6 to vote on the question of whether or not to
7 reconsider the vote based upon the materials that
8 were reviewed. And then if they vote to reconsider
9 then you'll have a second vote.

10 COMMISSIONER FRANKLIN: But if we knew
11 though at the outset that no member of the majority
12 wishes to reconsider, that the vote is not going to
13 change even though the --

14 MR. BERGSTEIN: But what I'm suggesting
15 is that at least a member who now has these
16 materials before him in the record that was not
17 before you, can at least request the opportunity to
18 argue to you that it would be appropriate for you to
19 reconsider the matter by making a motion to
20 reconsider.

21 Then you could take a vote as to whether
22 or not that's appropriate. You won't be actually
23 discussing the merits based upon -- it's a question
24 of whether or not to reopen the matter based upon
25 the receipt of new material. And then if the
26 majority felt it doesn't change your mind, then you

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1 would deny the motion to reconsider. You won't even
2 actually debate the merits of it as affected by the
3 materials that's been provided.

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

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

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

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

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

26 COMMISSIONER PARSONS: I'm not sure

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1 we're able to do that. That is, the prevailing side
2 is the only one that can make a motion for
3 reconsideration.

4 CHAIRPERSON KRESS: That's what I was
5 saying --

6 COMMISSIONER FRANKLIN: Under Roberts'
7 Rules --

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

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

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

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

8 MR. BERGSTEIN: Has there been a written
9 order?

10 CHAIRPERSON KRESS: A written order has
11 not been --

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

15 CHAIRPERSON KRESS: Yes.

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

21 COMMISSIONER CLARENS: That is correct.
22 And that is why -- I mean, that's exactly what we're
23 talking about. but because of the argument that Mr.
24 Parsons has made, that this is from an ANC to which
25 this Commission is obligated to give great weight,
26 which means that it must consider the arguments made

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1 by the ANC in making our decision.

2 Independence was always -- in my
3 experience, I don't know is always -- but we have
4 discussed in public, the argument made by the ANC,
5 whether in favor or against a case. So what Mr.
6 Parsons is arguing, and Mr. Hood is willing to make
7 a motion as one of the members who voted --

8 CHAIRPERSON KRESS: No, he voted not --

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

16 CHAIRPERSON KRESS: Well, let me just
17 make a point. First of all, these issues, no matter
18 how we feel about them, both of these issues -- I
19 mean to me, in all of the information that has come
20 forward, these are the same issues that we have
21 discussed in that throughout the whole process.

22 COMMISSIONER CLARENS: Correct.

23 CHAIRPERSON KRESS: I don't see --
24 personally, I don't see any information that we have
25 not discussed or evaluated as a part of the process.
26 So I have a question as to how helpful, other than

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1 to reopen it and redo the discussion, I don't see
2 that this is new information.

3 COMMISSIONER FRANKLIN: It is not new
4 information and we have addressed these issues, and
5 I presume that the order will also address these
6 issues as persuasively as we can, and we will give
7 great weight to each of them. So I feel if there
8 was something new here that we weren't aware of
9 before, new issues, I might feel differently.

10 COMMISSIONER HOOD: I think we do have
11 some new issues. I think that there were five
12 unresolved issues and they settled on three, and I
13 think you have two that are still outstanding.

14 COMMISSIONER FRANKLIN: And we knew
15 that.

16 CHAIRPERSON KRESS: We knew that.

17 COMMISSIONER HOOD: Right, so there was
18 some headway. I mean, you know, in all fairness,
19 this was submitted on time. I just think we need to
20 reconsider and reopen it.

21 COMMISSIONER PARSONS: I'm trying not to
22 stray into the argument, okay, but the amount of
23 time we spent to arrive at a 3-2 discussion,
24 seemingly it was a debate between myself and the
25 rest of you on how we could rezone this property to
26 protect SP. And I think the Chair was back and

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1 forth on that.

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

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

11 COMMISSIONER FRANKLIN: We did have a
12 discussion, Madam Chair, about the extent to which
13 the PUD, a full approval would actually change the
14 underlying zoning. And I think in connection with
15 other cases we've had some illumination of that
16 issue by examining the regulations which are pretty
17 plain as I recall.

18 That if this PUD never goes any further,
19 this approval, or if for one reason or another the
20 building is destroyed, which we all grant is remote
21 likelihood, the underlying zoning applies. And I do
22 recall that that was a major concern that you had,
23 Mr. Parsons.

24 CHAIRPERSON KRESS: And a major concern
25 I had.

26 COMMISSIONER FRANKLIN: That's right;

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1 that the Chair had. And I believe that that concern
2 can be allayed by just looking at the regulations.

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

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

12 -

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

16 MS. PRUITT-WILLIAMS: The applicant has
17 the burden of proof.

18 COMMISSIONER HOOD: I really think the
19 way the project was going and the way the vote is, I
20 think it would be reopened then.

21 COMMISSIONER FRANKLIN: Well, neither
22 party here is at fault.

23 COMMISSIONER HOOD: Right. I'm saying
24 either party. But what I'm just saying, if the
25 roles were reversed and it was to happen, then we
26 would probably reopen it. So I want to make sure

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1 that we're clear about it.

2 CHAIRPERSON KRESS: I disagree.

3 COMMISSIONER CLARENS: Well Madam
4 Chairperson, I think that -- I'm listening to
5 corporation counsel and I hear what they have to
6 say, and I also hear from Mr. Franklin. These are
7 issues that were dealt with at the time we made our
8 decision. If you want to move for reaffirmation of
9 our decision, you know -- which I think is
10 unnecessary.

11 I mean, either we move to reconsider,
12 and I don't see any basis for that, or because we've
13 discussed these issues. We've made our decision
14 with full knowledge of the 20 feet rather than the
15 45 feet and with the curb cut at 16th Street rather
16 than an entrance from an alley, after having
17 reviewed the material in the record and after having
18 weighed the positives against the negatives of this
19 application.

20 And there's nothing here that is new or
21 different for the facts that we had before us. And
22 the order will deal with the opinion of the ANC and
23 give it the great weight that they're entitled to.
24 So on the basis of that I would say that this item
25 is moot. The decision has been made and should
26 remain so.

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1 CHAIRPERSON KRESS: And we should move
2 on?

3 COMMISSIONER CLARENS: And we should
4 move on.

5 COMMISSIONER FRANKLIN: I agree.

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

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

10 COMMISSIONER CLARENS: Not even that.

11 CHAIRPERSON KRESS: That was the
12 clarification I had when I put it on the agenda. I
13 said that and I believe our corporation counsel has
14 said that we do not need to do a reaffirmation,
15 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
20 the ANC requirements which is how great weight is
21 considered.

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

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1 hearing actions pertaining to the DD that was put
2 forward.

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

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

15 The other piece I had handed out, this
16 was that I would like to continue to go ahead, and
17 that is the Notice of Public Hearing for September
18 9th with the issues as they relate to the Woodies
19 Building and only the Woodies Building. And that we
20 go ahead and do this Notice of Public Hearing.

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

24 COMMISSIONER PARSONS: I missed the May
25 20 meeting. I was here for June 3rd. There's two
26 things before us on the table and I don't understand

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

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

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

MS. PRUITT-WILLIAMS: On May 20th.

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

COMMISSIONER PARSONS: I will not

1 participate in that, but go ahead.

2 CHAIRPERSON KRESS: Okay. And then the
3 meeting that we had where we set down -- where the
4 Mayor had asked us to set down the points of
5 interest relating to the Woodies Building on July
6 26th, we voted September 9th. And so I also suggest
7 this go ahead to announce the meeting for September
8 9th.

9 COMMISSIONER PARSONS: I would only
10 recommend that this draft dated June 3rd, probably
11 shouldn't have the June 3rd date on it. That's what
12 confused me. It should say May 20th, I guess.

13 CHAIRPERSON KRESS: Or May 20th
14 somewhere, yes, I agree.

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

17 COMMISSIONER CLARENS: Okay, so then May
18 what?

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

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

24 CHAIRPERSON KRESS: Right.

25 COMMISSIONER CLARENS: -- of these text
26 amendments?

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1 CHAIRPERSON KRESS: Right.

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

7 CHAIRPERSON KRESS: Right.

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

11 CHAIRPERSON KRESS: Right.

12 COMMISSIONER CLARENS: And that's all?

13 CHAIRPERSON KRESS: That's what I'm
14 proposing.

15 MR. BASTIDA: Madam Chairperson, my
16 understanding is that in fact, at that meeting on
17 May 20th you set down additional facts. So what you
18 want is then an enumeration of those facts as
19 reflected on the transcripts, and then if there is
20 any discrepancy between all the memos sorted out,
21 that in fact, nothing is left out of the laundry
22 list --

23 CHAIRPERSON KRESS: Not only left out
24 but also analyzed, because after we set that down
25 Office of Planning suggested rewriting some things,
26 we got other comments in on that perhaps we should

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1 have rewritten them in a different format, a
2 different style.

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

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

14 And so if you can pull out for us and
15 hone what those issues are and then do an Office of
16 Planning report on those other items we're talking
17 about setting down, then we can either reaffirm to
18 set them down or change the manner in which they're
19 set down, to more appropriately reflect the language
20 that may be proposed.

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

24 CHAIRPERSON KRESS: All right. Thank
25 you. Is that all right to all of my fellow
26 Commissioners?

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1 COMMISSIONER CLARENS: Sounds good.

2 CHAIRPERSON KRESS: Okay, the next item

3 on the agenda we're moving into Final Action.

4 COMMISSIONER PARSONS: No, wait. Now

5 I'm really confused. What are we going to do with

6 this?

7 CHAIRPERSON KRESS: That is going to be

8 mailed out. I mean, that will be put in The

9 Register.

10 MS. PRUITT-WILLIAMS: That's just an

11 advertisement for the hearing; the public hearing

12 notice.

13 CHAIRPERSON KRESS: That's going to

14 happen September --

15 COMMISSIONER PARSONS: We took a

16 decision in May that affected more than Square 346.

17 CHAIRPERSON KRESS: Yes.

18 COMMISSIONER PARSONS: Why is that not

19 included in this Notice?

20 CHAIRPERSON KRESS: Because that one

21 already has a bench decision. This one has no

22 decision on it. That's why I'm stopping all these

23 other ones and pulling them together.

24 COMMISSIONER PARSONS: You mean on May

25 20th you made the decision on --

26 CHAIRPERSON KRESS: On those three

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1 items. A bench decision, yes.

2 COMMISSIONER FRANKLIN: A set of --

3 CHAIRPERSON KRESS: No, no, these are
4 bench decisions.

5 COMMISSIONER PARSONS: Without a
6 hearing? What did you do?

7 CHAIRPERSON KRESS: Yes, we had a
8 hearing. We had a hearing and we had a bench
9 decision on these three items.

10 MR. ERONDU: Included in your package
11 for you to know what you decided and that package
12 shows exactly what I have sent into the Planning
13 Commission and --

14 CHAIRPERSON KRESS: To The Register.

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

18 COMMISSIONER PARSONS: Thank you.

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

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

24 CHAIRPERSON KRESS: You're absolutely
25 right.

26 COMMISSIONER PARSONS: I think we have.

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

4 COMMISSIONER PARSONS: Good idea.

5 CHAIRPERSON KRESS: Under Final Action,
6 basically the rules of the Zoning Commission and BZA
7 are not here because we're not dealing with them
8 because corporation counsel has not had a chance to
9 --

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

12 CHAIRPERSON KRESS: The final OP report?

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

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

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

24 MR. CORCORAN: And corporation counsel
25 also walked it down -- they accepted our report.
26 They walked it down even before I did on the --

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1 MS. PRUITT-WILLIAMS: But no,
2 corporation counsel is going to go through it
3 themselves to make sure that there was some issues
4 that Mrs. Kress had and they have not had the
5 opportunity to deal with those.

6 MR. CORCORAN: Okay.

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

13 MR. BASTIDA: Madam Chair, just for
14 clarification. That means you are putting it on the
15 July agenda, correct?

16 CHAIRPERSON KRESS: Absolutely.

17 MR. BASTIDA: Thank you.

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

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

25 MS. PRUITT-WILLIAMS: Correct.

26 CHAIRPERSON KRESS: Yes.

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1 COMMISSIONER PARSONS: So moved.

2 COMMISSIONER CLARENS: Second.

3 COMMISSIONER FRANKLIN: Madam Chair, I
4 did not participate in B.

5 CHAIRPERSON KRESS: In B? All right. I
6 would only say, I have several amendments; nothing
7 of substance, mostly typos. So I would just like
8 the motion to reflect as amended. I don't really
9 have anything of major substance.

10 COMMISSIONER CLARENS: All right.

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

14 So 97-6, all those in favor signify by
15 saying aye.

16 (Chorus of ayes.)

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

22 CHAIRPERSON KRESS: And now I would call
23 for the vote, I would assume the same motioner and
24 seconder for 97-6(I) for purposes of Commissioner
25 Franklin.

26 COMMISSIONER PARSONS: Yes.

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1 COMMISSIONER CLARENS: Yes.

2 CHAIRPERSON KRESS: All those in favor
3 signify by saying aye.

4 (Chorus of ayes.)

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

9 CHAIRPERSON KRESS: Perfect. Thank you.
10 With that we'll move forward. I just wanted to
11 double-check and make sure I'm correct. The other
12 one that was being carried over was the millennium
13 case, and Mr. Bastida you seem to think that has to
14 do with the status?

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

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

23 Usually the transcript stands on its own
24 in reference to motions, but as a courtesy we can
25 write Mrs. Kahlo and state that the Commission has
26 reconsidered and still has chosen to deny the

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1 party's status. So that she'll have some
2 correspondence.

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

5 MR. BASTIDA: Hopefully.

6 CHAIRPERSON KRESS: With that, we'll
7 move on to the status reports of the Office of
8 Planning.

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

13 On page 2 I think three -- it's the one
14 that has been highlighted for your review. Ms.
15 Atkins would like to add to it.

16 MS. ATKINS: And the Zoning Commission
17 will soon be receiving our final report on page 97-
18 7(I), the completion of the SP Zoning case in the
19 Logan and Thomas Circle (inaudible).

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

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

26 CHAIRPERSON KRESS: I'm sorry, thank

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1 you, yes. That was an initially going to be on the
2 agenda for today but we had such a full agenda. And
3 I understand conversations transpired that there was
4 an agreement that this could go to July.

5 MS. ATKINS: Yes.

6 CHAIRPERSON KRESS: So that will be set
7 down in July.

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

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

13 MR. BASTIDA: Thank you.

14 CHAIRPERSON KRESS: Forgive me. All
15 right. Any questions of Office of Planning? I see
16 the next thing is the report of the Director. Did
17 you have any other reports before we move to the
18 Report of the Director, Ms. Pruitt-Williams?

19 MS. PRUITT-WILLIAMS: In your package
20 you have a request for sua sponte review on a BZA
21 Case 16426. You have the order that was just
22 signed. This actually comes as a result of Mr.
23 Clarens sitting on the Board. And because of the
24 summary order the order itself probably gives you
25 new information, which is why we included the
26 transcripts which was the basis for the decision.

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1 CHAIRPERSON KRESS: Did everyone get the
2 transcripts?

3 COMMISSIONER CLARENS: Yes.

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

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

12 MR. BERGSTEIN: Madam Chair, I believe
13 that after you decide to review it, the Board then
14 transmits the order to the Office of Planning --
15 that's 3103.3 -- who then forwards it to the Zoning
16 Commission and to all parties before the Board. And
17 then following that you would conduct a review under
18 3103.4.

19 So it appears to me that what you'd be
20 doing here today is determine whether or not to
21 actually take up the sua sponte review and then you
22 would follow this process. And at the completion of
23 the process you would have a second meeting to
24 actually decide --

25 CHAIRPERSON KRESS: The trouble is, we
26 only have ten days.

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

4 MR. BERGSTEIN: Well, actually you have
5 ten days to request sua sponte.

6 MS. PRUITT-WILLIAMS: And that has been
7 done timely. The order was --

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

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

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

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

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

25 MS. PRUITT-WILLIAMS: There's no real
26 procedures for a sua sponte review. That's part of

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1 the concern.

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

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

23 CHAIRPERSON KRESS: Yes.

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

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

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

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

12 MR. BASTIDA: Thank you.

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

15 CHAIRPERSON KRESS: I'm glad you asked.

16 MR. BASTIDA: You know me by now.

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

21 MR. BERGSTEIN: Yes, and this may be of
22 some guidance to you. I'm reading from 3103.8.
23 "The Zoning Commission shall look to the following
24 guidelines when determining whether to invoke its
25 sua sponte review authority. The Commission shall
26 exercise its discretion for sua sponte review as

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1 follows: a) in a particular instance where it
2 appears to the Commission that the Board of Zoning
3 Adjustment has exceeded its prerogatives and has
4 thus in effect, changed the zoning; b) where it
5 appears that a basic policy of the Zoning Commission
6 as expressed in the Zoning Regulations has been
7 violated as a result of the Board of Zoning
8 Adjustment action; or c) an unusual instance as
9 determined by the Zoning Commission."

10 COMMISSIONER PARSONS: I think this
11 qualifies under all three.

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

18 That is my opinion that the Board has
19 exceeded its prerogative and has thus changed the
20 zoning and that furthermore the policy of the
21 Commission as expressed in the Zoning Regulation has
22 been violated by this action.

23 And that is why I'm recommending sua
24 sponte -- or requesting sua sponte.

25 CHAIRPERSON KRESS: In fact, before when
26 we did the sua sponte I don't know that we did get

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1 memorandum. So I'm not sure we have handled it --

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

5 CHAIRPERSON KRESS: I can only recall
6 one as well, but we didn't get -- do you remember
7 getting memorandum from the --

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

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

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

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

20 COMMISSIONER CLARENS: There is only one
21 party in this case and that is the applicant.
22 There's no other party.

23 CHAIRPERSON KRESS: Correct.

24 COMMISSIONER FRANKLIN: There was no
25 opposition?

26 COMMISSIONER CLARENS: There's a letter

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1 in opposition --

2 CHAIRPERSON KRESS: Yes, there is --

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

5 CHAIRPERSON KRESS: So practically we're
6 asking the applicant, which has received approval
7 from BZA, to say it agrees with BZA giving it
8 approval?

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

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

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

19 COMMISSIONER CLARENS: If you read the
20 regulations, the regulations say -- Mr. Bergstein,
21 if you have the regulations you can correct me if
22 I'm wrong -- but what it basically says is that
23 before acting to reverse or remand a case, the Board
24 should do that after affording the parties an
25 opportunity to write a memorandum.

26 So this Commission can proceed to

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1 discuss and act on the sua sponte review that only
2 after we act, after we review the case, and if we're
3 going to act in reverse, then we afford the
4 applicant -- we inform the applicant that we're
5 going to act in reverse. Is there anything you want
6 to tell us?

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

9 CHAIRPERSON KRESS: All right.

10 MR. BERGSTEIN: But that's after you get
11 to step 2. You're still in step 1 which is, whether
12 or not going to invoke sua sponte review in the
13 first place. Then after you've determined to invoke
14 it you then you get to stage 2 where you would
15 afford the applicant an opportunity to argue its
16 position.

17 MR. BASTIDA: Madam Chairperson, on the
18 previous -- I'm not arguing Mr. Bergstein's case.
19 In the previous case that was 11-and-a-half years
20 ago, the Commission afforded the applicant to
21 provide that memo before the discussion. But that
22 was what the Commission did. That was all.

23 CHAIRPERSON KRESS: So there was a memo
24 before the discussion?

25 MR. BASTIDA: Yes. But that is not
26 necessarily the rules for the game. So you can do

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1 it however you so wish.

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

7 COMMISSIONER PARSONS: So moved.

8 COMMISSIONER HOOD: Second.

9 CHAIRPERSON KRESS: Any further
10 discussion? All in favor signify by saying aye.

11 (Chorus of ayes.)

12 Opposed?

13 (No response.)

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

18 CHAIRPERSON KRESS: Should we now -- are
19 you comfortable to go ahead and just discuss this
20 and perhaps reach the point of making a decision
21 that we can then ask the -- assuming it goes
22 negatively -- to ask them for the memorandum from
23 the applicant? Is that -- yes, we have the record
24 and we have read it.

25 MR. BERGSTEIN: It sounds to me that it
26 almost presumes that you would get to a stage of I

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1 suppose, consensus that you were going -- or it is
2 likely that you would reverse or modify it. And
3 then at that time you would afford the applicant an
4 opportunity to present materials to you.

5 So if that's what you care to do you
6 could go forward today with what you have and get to
7 that point. But where you can't cross the point is
8 actually to reverse or modify.

9 COMMISSIONER CLARENS: So you're saying
10 that a letter -- if it goes as far as getting the
11 Commission to get close to making a decision on the
12 reversal, that then we notify by letter both the
13 Board and the applicant that the Commission is
14 intending to reverse and they can address the
15 Commission. Is that what you're saying?

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

18 COMMISSIONER CLARENS: No, no, no, I'm
19 sorry --

20 MR. BERGSTEIN: Just the parties.

21 COMMISSIONER CLARENS: Just the parties.

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

23 COMMISSIONER CLARENS: And it's not
24 address; it's address by memo?

25 MR. BERGSTEIN: That's correct, although
26 the rules do afford you as among your options, an

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1 opportunity to also hear argument. But that's
2 strictly a prerogative that you have.

3 But yes, since you do already have the
4 record and if you view it as being efficient, you
5 can at least get to the point where you know you've
6 got to ask the party to -- the party applicant to
7 provide you something in support of the Board's
8 position, if the party cares to. And then make your
9 final decision after that.

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

12 COMMISSIONER FRANKLIN: Madam Chair,
13 could I --

14 CHAIRPERSON KRESS: -- go ahead and
15 proceed. Yes?

16 COMMISSIONER FRANKLIN: I'm sorry.

17 CHAIRPERSON KRESS: Go ahead.

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

21 COMMISSIONER PARSONS: I don't think so.
22 Madam Chair, when are we going to talk about the
23 issue here?

24 CHAIRPERSON KRESS: That's what I'm
25 trying to get to.

26 COMMISSIONER PARSONS: Screw procedure,

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

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

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

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

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

25 COMMISSIONER CLARENS: I would not have
26 taken this action, frankly. Except for the fact

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

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

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

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1 So that's why I was -- and it took me a
2 little bit by surprise, and I think in reading the
3 record maybe you noticed that it is at the end that
4 I become a little bit concerned because all of a
5 sudden it surprises me that the Board is going to go
6 in the direction of approving this application where
7 no case has been made whatsoever.

8 So that's why I'm asking you to reverse
9 this decision because I think, as I said in my
10 letter, that the Board erred on making findings
11 necessary. The applicant did not meet any burden of
12 proof and the Board did not make findings that would
13 justify its decision.

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

17 COMMISSIONER FRANKLIN: Otherwise it's
18 okay.

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

23 CHAIRPERSON KRESS: But if ANC did --

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

26 CHAIRPERSON KRESS: No, that they did.

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1 COMMISSIONER HOOD: Oh, they did. Okay,
2 I'm sorry.

3 CHAIRPERSON KRESS: And they are
4 automatic parties, so I would think that as we go
5 ahead and that it appears that there's at least four
6 of us that look like there's a good chance of
7 reversal, I would think that we would notify the
8 applicant and also the ANC to make their comments in
9 writing, because they are automatically a party to
10 every case anyway.

11 COMMISSIONER HOOD: Well, can I just
12 interject, Madam Chair?

13 CHAIRPERSON KRESS: Sure.

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

18 CHAIRPERSON KRESS: It's the word of the
19 day.

20 COMMISSIONER HOOD: While I was reading
21 the transcript I believe Mr. Clarens asked the
22 question, "What prevents you from developing this
23 property for any of the uses that are allowed under
24 C.3.C? Mr. Hong: The only way I could benefit for
25 owning this property without building an automotive
26 repair shop would be to wait around for somebody to

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1 buy it to a higher market".

2 To me, that was not justifiable and I do
3 concur with Commissioner Clarens.

4 CHAIRPERSON KRESS: Well, I guess we're
5 not supposed to bring it to a vote. We're supposed
6 to have a consensus. And do we have a consensus
7 that this should be reversed and then at this point
8 --

9 MR. BERGSTEIN: Perhaps a motion would
10 be in order to advise the parties of the Board's
11 intent to reverse -- on the site -- intent to
12 reverse. And that might be an appropriate procedure
13 vehicle.

14 CHAIRPERSON KRESS: All right.

15 COMMISSIONER PARSONS: But that doesn't
16 go to the Board?

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

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

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

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

26 MR. BASTIDA: The regulations say that

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1 you can afford the parties to have an input. It
2 doesn't mean that you must have it.

3 MR. BERGSTEIN: That is correct. This
4 is a matter of due process here. It's not a
5 mandatory -- you can't go forward if you don't
6 receive one. It's merely giving the opportunity to
7 be heard to the parties. And if you give them the
8 opportunity and they don't avail themselves of the
9 opportunity that means you can go forward and make
10 your decision.

11 MR. BASTIDA: I would suggest, Madam
12 Chairperson, that when you afford them the
13 opportunity to answer to you, that you give them a
14 time limit.

15 CHAIRPERSON KRESS: That's a good idea.

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

18 CHAIRPERSON KRESS: That's an excellent
19 suggestion.

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

23 COMMISSIONER PARSONS: I guess what I
24 meant was -- and I'm violating our regulations --
25 but it seems to me that the Board should have an
26 opportunity, at least through their Chair, to

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1 address us on this matter in written form or in
2 person.

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

5 MR. BERGSTEIN: I don't think it would
6 violate your regulations if you allow greater notice
7 than less. So if you feel it's appropriate to
8 advise the Board of your actions today and invite
9 them to respond, I don't think that would be in
10 violation of your regulations.

11 CHAIRPERSON KRESS: I think that's an
12 excellent --

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

15 CHAIRPERSON KRESS: Oh, yes.

16 MR. BERGSTEIN: Yes.

17 COMMISSIONER FRANKLIN: But there has to
18 be some -- the zoning Administer has to know that.
19 Or somebody has to know that right away.

20 COMMISSIONER CLARENS: Or we hold the
21 order. The order has no --

22 MS. PRUITT-WILLIAMS: It has not been
23 sent.

24 CHAIRPERSON KRESS: Or signed. It has
25 to go -- it has not been --

26 COMMISSIONER CLARENS: Then we can form

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1 that a motion be made to stay the order until the
2 issue is resolved.

3 CHAIRPERSON KRESS: All right. So I'm
4 going to ask for a motion to stay the order to
5 submit a letter to the applicant, to the ANC --
6 affected ANC -- and to the Board of Zoning
7 Adjustments telling them of our intention to reverse
8 their action and set -- what kind of a date? How
9 much time shall we give them? A month?

10 COMMISSIONER CLARENS: Ten days.
11 Eleven-and-a-half years.

12 MR. BASTIDA: Well, 60 days because
13 you're not going to make (unintelligible) in any
14 event. So you're going to give it 60 days so you
15 can have it in your September meeting.

16 CHAIRPERSON KRESS: Okay.

17 COMMISSIONER HOOD: So moved, Madam
18 Chair.

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

21 COMMISSIONER FRANKLIN: Second.

22 CHAIRPERSON KRESS: Commissioner
23 Franklin seconds. All in favor signify by saying
24 aye.

25 (Chorus of ayes.)

26 Opposed?

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1 (No response.)

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

8 CHAIRPERSON KRESS: Terrific.

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

12 CHAIRPERSON KRESS: Okay, with that,
13 let's --

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

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

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

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

26 COMMISSIONER FRANKLIN: I said I have

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

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

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

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

23 Now, if I don't persuade you with that
24 then I would like to urge that we actually have a
25 hearing so we can ask some questions about what
26 people are actually doing to move this forward. And

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1 I would be very surprised to learn that they have
2 done anything that a professional would regard as
3 diligent activities to get this kind of development
4 going.

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

13 So I'm not in favor of going past
14 December '99. If the rest of the Commission is in
15 favor of going past December '99 I too will
16 associate myself with the comments of Mr. Franklin.

17 COMMISSIONER FRANKLIN: What letter are
18 you referring to?

19 CHAIRPERSON KRESS: It was the last
20 thing in the package.

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

25 COMMISSIONER CLARENS: Well, because
26 Madam Chairperson, I -- I agree. I think that

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1 because we are now taking away permission for PUD
2 that had been previously approved, and even though I
3 think that we could deny the request for extension
4 which I think is a problem, it seems to me that we
5 should give one last opportunity, brief as it may be
6 -- of six months or December of '99 -- to the person
7 that holds the application, holds the PUD, for
8 making something happen.

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

13 COMMISSIONER FRANKLIN: That is
14 acceptable to me, Madam Chair.

15 CHAIRPERSON KRESS: The only other
16 option is to hold a hearing.

17 COMMISSIONER FRANKLIN: I think a
18 hearing would be helpful.

19 CHAIRPERSON KRESS: And I do think this
20 is major to take -- and again, I think the
21 compromise on the table is December '99 -- but I do
22 think that we haven't really withdrawn these except
23 for very good cause. And I would think it would be
24 helpful to have an interaction rather than just
25 pieces of paper. I don't know where the ANC stands,
26 reading these.

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

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

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

20 CHAIRPERSON KRESS: Okay. Sounds like
21 there's some unanimity. Would someone like to make
22 a motion?

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

26 COMMISSIONER HOOD: I second the motion.

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

3 (Chorus of ayes.)

4 COMMISSIONER FRANKLIN: I'll abstain,
5 Madam Chair. Because I know what's going to happen
6 on December 1999. You guys are going to extend it
7 again. We're going to have a whole bunch of these
8 coming up now that have been here before, and we've
9 got to send a signal out -- I don't want to belabor
10 the point -- that we've gone through a period of
11 unparalleled prosperity and there are still some
12 PUDs sticking around.

13 This has not produced any amenity. I
14 have been in favor of extending PUDs when the
15 amenity package has been provided or substantially
16 provided, which shows you the good faith and ability
17 of people to move. But when they just hang around
18 like this we've just got to start getting some
19 discipline into the process.

20 COMMISSIONER HOOD: Madam Chair, if I
21 may add. If we start doing what we just did I think
22 -- we add another six months as opposed to two years
23 -- I think we will bring that process to some closer
24 and people will see that we're serious about it and
25 they will stop asking for these 2-year extensions,
26 and they'll know to be ready to get these projects

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1 moving. So I think --

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

4 COMMISSIONER HOOD: Well, three years.

5 CHAIRPERSON KRESS: But yes. Okay.

6 COMMISSIONER CLARENS: It's really -- I
7 mention although it's not a motion -- and I don't
8 know if it's too late to amend the motion -- but it
9 is a notice of intent for the Commission not to
10 extend the PUD any more unless very clear evidence -
11 -

12 COMMISSIONER FRANKLIN: Unless the
13 regulations are complied with, and this does not
14 comply with our regulations.

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

19 COMMISSIONER FRANKLIN: Yes, I mean,
20 this has been noticed throughout --

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

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1 Is there any other business before we go
2 to the election? Yes?

3 MS. PRUITT-WILLIAMS: We need to record
4 the vote.

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

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

12 CHAIRPERSON KRESS: Did you have any
13 other business before we move to election of
14 officers?

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

16 CHAIRPERSON KRESS: All right, with that
17 I vote to move to the election of officers, and I
18 would like to make the motion that Commissioner
19 Clarens be elected Chairperson and Commissioner Hood
20 be elected Vice Chairperson. Is there a second?

21 COMMISSIONER FRANKLIN: I'll second
22 that.

23 CHAIRPERSON KRESS: Any discussion? All
24 in favor signify by saying aye.

25 (Chorus of ayes.)

26 Opposed?

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(No response.)

Motion carries.

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

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

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

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