

**COMMITTEE OF 100 ON THE FEDERAL CITY**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**Monday, October 4, 2010**

**CASE NO. 08-06-12 (Comprehensive Zoning Regulations Review:  
Planned Unit Development)**

Testimony of Alma Hardy Gates for the Committee of 100

Good Evening Members of the Commission. I am Alma Gates representing the Committee of 100, a group that has advocated on behalf of intelligent and smart planning and land use in Washington, DC since our founding in 1923. The Committee of 100's testimony was drafted by Laura Richards and me. Both of us are members of the Zoning Review Task Force and participated in the work groups on Planned Unit Developments (PUDS).

On April 9, 2009, the Commission was asked to provide guidance on the proposed changes for Low-to-Moderate density residential zones. At that hearing, concern was expressed regarding changes that would permit matter of right development, density and use, and height and lot occupancy beyond what is currently allowed.

Tonight the Commission is asked to provide guidance for conceptual changes regarding PUDs. The timing of this particular chapter seems out of sequence and would be more logically considered by the Commission after high density residential and commercial chapters have been reviewed because the Commission has already endorsed major changes in residential area requirements that will allow additional density, making it difficult to conceive of a need for further zoning relief or bonus densities that wouldn't inappropriately alter the character of neighborhoods.

**Bonus Density and IZ**

At a minimum, PUD bonus density should be calculated without consideration of the bonus IZ bonus density. Calculating PUD density on top of IZ density

unnecessarily multiplies the effect of the IZ bonus. The Working Group meeting notes contain this proposal from a participant, who expressed a view joined a number of participants:

IZ is already giving bonus density in exchange for benefits – should we be adding on top of these levels? Additional density should be on top of base zones, not on top of IZ. What about 20% or IZ amount, whichever is higher?

The Committee of 100 believes this suggestion has merit and urges the Commission to adopt it.

### **Minimum Lot Size and the R-5-B Problem**

The minimum lot size for Type 2 and Type 3 PUDs should be increased and the flexible lot size for Type 1 PUDs outside of low-moderate residential zones should be scrapped.

The 2007 OP Final PUD Study that provided the framework for the PUD Working Group’s deliberations states that:

In other jurisdictions, PUDs are often large tracts of land which are to be developed as a cohesive neighborhood. In DC, PUDs can be these large-scale developments, but they also include smaller-scale, mixed-use development projects, occasionally even consisting of a single building.

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Most other jurisdictions only designate large tracts of land as PUDs (such as 40 acres in Alexandria, VA), while DC allows projects as small as 15,000 square feet to be designated as PUDs, with Zoning Commission flexibility to allow even smaller projects to go through the process.

2007 Report at 6-7. “From 2003-2009, approximately 90 PUD requests were reviewed by the Office of Planning, varying in size, scope, and impact. These projects ranged in size from 8,800 square feet to 159 acres.” OP Public Hearing

Report at 3. “Of the PUD requests made during this period, 95 % exceeded minimum lot size requirements, three-quarters were located on lots over 30,000 square feet in size, and over half (54%) were on lots at least 100,000 square feet in size.” *Id.* at 10.

OP acknowledges that it considered and rejected a larger minimum lot size, which was advocated by a number of Working Group participants as well as by being suggested by the practices of other jurisdictions surveyed by OP. The Committee of 100 believes that the minimum lot size should be increased. A rough arithmetic average (the method used by OP in setting bonus density) of actual PUD applications would result in a minimum lot size of about 70,000 square feet, which would accommodate well more than half the requests that OP has received. This would apply to Type 2 and Type 3 PUDs. By no means should a minimum lot size for PUDs be less than 50,000 square feet (approximately 1 acre). The 2-acre minimum for Type 1 PUDs in low-moderate zones is acceptable; the absence of a Type 1 limit in other zones is not. OP states that lot size should depend on design review, but this rationale creates uncertainty and opacity – the very flaws in the PUD process that OP sought to cure.

The Committee of 100 notes that the Working Group discussed without resolution whether a fourth PUD tier was needed to deal with very large sites such as St. Elizabeth’s, the McMillan site and Poplar Point. These sites allow the development of traditional “cohesive neighborhood” PUDs rather than the significantly smaller PUDs that prevail in the District. The Committee of 100 asks the Zoning Commission to consider whether proposed Type 3 PUDs are sufficient for very large sites.

OP proposes to retain the existing provision for lot size waiver, which allows a PUD as small as 7500 square feet. Waivers would be available for a wide range of uses, including development consistent with an approved Small Area Plan, infill development and government projects. The broad availability of waivers creates the very uncertainty that the recommendations are supposed to address. Waivers should be rejected.

***The R-5-B Problem.*** Currently PUDs in R-5-B residential districts are limited to one acre or 43,560 sq. ft. Under the proposed PUD regulations the R-5-B district would have the same standards as applied to the higher density zones – 15K sq. ft or about one third of what was previously required for development depending on the amount and types of public benefits provided. OP notes that, “the R-5-B zone offers significant development potential, even beyond what is now permitted as a matter of right for residential development under current inclusionary zoning allowance.” Setting a new matter of right density allowance under the PUD regulation might well encourage more PUDs in the R-5-B district as a developer could realize significantly more profit while the community is faced with considerably more density.

### **Public Participation**

At the first work group meeting, a list of PUD issues was identified (enclosed). Probably the most consistent theme across the six meetings was the need for greater public participation throughout the PUD review process. Considerable discussion took place on returning to a previous practice which allowed input to the Zoning Commission prior to the setdown hearings. It was felt this would provide ANC's and with greater involvement in the PUD process. More and consistent design review was also cited as important by the work group, and was an area cited by the Task Force as needing more consideration and discussion. A review of the issues list may encourage the Commission to postpone any decision on this chapter until more comprehensive consideration is given to all aspects of PUDS.

### **Public Benefits**

Public Benefits have proven a prickly issue in PUDs negotiations. The preliminary list drawn up by the Office of Planning (attached), is based on a point system and appears to be a means of acquiring expanded public services through the zoning process. This is a slippery slope and one the Zoning Commission should consider carefully, being mindful not to set in place benefits that encourage District

agencies to support development projects that would result in budget savings to that agency. Required improvements associated with a particular development that are the responsibility of the applicant should not segue into the benefits column. Also, giving developers “points” for best practices seems to encourage less than best practices for non-PUD developments. As a starting point, the District should be requiring best practices for every development project. The manner in which the benefits list is presented appears to remove “choice” from the community and place it in the hands of the developer.<sup>1</sup>

In any event, points should be awarded only for benefits to the general public or the immediately surrounding neighborhood and no points should be awarded by amenities that affect only the project. That apparently is the intent of the recommendations, but clarification is needed.

Proposed PUDs Types 2 and 3 allow bonus density in exchange for “public benefits and amenities.” The Public Meeting Notice and OP Report use the terms public benefits and amenities interchangeably – sometimes referring to “public benefits,” sometimes to “public benefits and amenities.” During Working Group meetings, a sharp distinction was drawn between “public benefits” – which run to the good of the general public or the neighborhood surrounding the project – versus “amenities,” which enhance the proposed PUD development and only incidentally affect the general public or the neighborhood. The Meeting Notice draws this distinction only once, when it refers to “public benefits and project amenities.” Public Meeting Notice at 12. Working Group meeting notes state more explicitly that points are reserved for public benefits. This clarity did not carry over to the recommendations.

The Committee of 100 finds merit in OP’s recommendations that benefits must be (i) measurable and specific, (ii) cannot include monetary contributions except to District housing funds) and (iii) should last for the life of the project unless

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<sup>1</sup> The Working Group generally agreed that the existing public benefits process is deeply flawed. The level of benefits associated with projects depends in large part on the negotiating skills of affected communities, which vary greatly throughout the city. The current process also encourages neighborhood conflicts and leads to real or perceived conflicts of interest.

otherwise specified. These recommendations enjoyed nearly unanimous support from Working Group participants. We also support the provision for a temporary Certificate of Occupancy until proffered benefits or equivalent substitutes are delivered.

OP's draft list of suggested public benefits needs expansion, and indeed, OP anticipates suggestions from the public hearing process.

A number of the listed proposals are "giveaways," granting points for very little in return, *e.g.*:

- 1 point for 10 square feet of garden space for 1,000 square feet of building space, meaning that in a PUD where that maxed out bonus residential density, 20,000 bonus square feet could be had for garden space equal to two small bedrooms.
- 2 points for Silver LEED certification, which is a non-rigorous standard already widely in use on a voluntary basis for business purposes or to comply with standards or regulations imposed outside the zoning regulations.
- Points can be awarded for streetscaping the block frontage of the proposed development, although streetscaping ordinarily is provided on a voluntary basis to enhance a project's marketability.

The Committee of 100 urges that the Zoning Commission provide drafting guidance to OP that no points can be awarded for project features that are inherent to the project or that an owner/developer is required to provide by standards or regulations imposed outside the zoning regulations. This is another instance in which Working Group meeting notes state that OP intends to give points only for environmental features that significantly exceed current requirements, but the intent is not expressly reflected in the recommendations.

The Committee of 100 urges in addition that any regulations adopted require an owner/developer to demonstrate with specificity the ratio of the monetary value of proffered public benefits to the added value of the bonus density, and that the regulations require benefits of not less than 10 percent of the added value. (We note that 1 point is proposed to be awarded for public art that costs 1% of total construction costs.)

In addition, we recommend:

- Points should be allowed for a daycare center only if (i) the center is available to the general public, not only project residents and tenants, and (ii) the center accepts parents who receive daycare tuition assistance from the District government.
- No listed benefits are keyed specifically to senior citizens. The list should include senior wellness or activity centers or similar senior-specific benefits.
- The Committee of 100 agrees with the significant number of Working Group participants who opposed donating ANC office space as a potential benefit because of the inherent conflict of interest this poses, given ANCs mandatory party status and the “great weight” accorded to its views.
- The 3 points proposed for a Transit Store and the 1 point for a bike rack are facially excessive.
- The membership fee in a car-sharing program is a private amenity, not a public benefit, and is especially inappropriate in light of the close relationship between OP and DDOT and the DDOT director’s interest in the District’s principal car-sharing program.<sup>2</sup>

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<sup>2</sup> Working Group meeting notes state one participant’s comment that membership in a car sharing program “could be done as a way to sell units – not a public benefit.” OP responded that a membership is a “direct benefit to tenants but [an] indirect benefit to [the] city overall because it contributes to our overall improvement in mode share.”

## **Type 1 PUDs should be subject to Special Exception Adverse Impact Analysis**

Proposed Type 1 PUDs do not involve bonus density or map amendments but provide dimensional flexibility as to height, yards and lot occupancy. OP states that, “For this type of project, the benefit offered to the city is design review by the Commission; since no bonus density is available, no additional public benefits are needed.” Public Meeting Notice at 3.

The Notice errs in characterizing Commission design review as a public benefit “offered” to the city – review is a condition imposed by the city to allow a property owner/developer to enjoy the benefit of building flexibility. The owner/developer does not own or control design review and thus cannot “offer” it to the city. The administrative process is not a part of an economic exchange.

The Public Meeting Notice describes Type I PUDs as “more similar to a Special Exception than a traditional PUD.” Notice at 3. Given the absence of any reciprocity between the city and the owner/developer – the absence of any benefits or amenities flowing from the owner – Type I is a de facto Special Exception, minus the requirement to avoid adverse impacts. *See* Regulation 3104.1 (authorizing special exception relief if the exception is “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and *will not tend to affect adversely, the use of neighboring property* ... subject in each case to the special conditions specified in this title ....” The adverse impact standard should be incorporated into the design review process.

The recommendations provide that Type I PUDs will not be subject to the public participation process, viewing it as unnecessary because no bonus density or map change is involved. As stated above, however, Type I PUDs potentially may adversely impact neighboring properties. While the elaborated public participation process for Type 2 and Type 3 PUDs may not be necessary, Type 1 PUDs should be subject to the Special Exception public notice and comment process.

## **PUDs and TOD areas**

The zoning recommendations make no provision for case by case review. The proposed recommendations do not address how the PUD process applies in potential TOD areas. The 2006 Comprehensive Plan identifies the area surrounding each Metro station is potentially – but only potentially – suitable for TOD development. The Comp Plan provides that each station should be addressed case by case. The case by case language was proposed and urged by numerous residents who wanted to retain a mix of neighborhood styles and densities. The 2006 Plan recognized that the capacity for density does not mean in each case the desirability of it.

Working Group notes state that a participant asked: “Where is case by case determination made for TOD areas under this process?” and that OP responded: “We aren’t making that distinction now.” *The Committee of 100* : “*If not now, when?*” To assure Comp Plan compliance, the Zoning Commission’s guidance to OP should require standards and a methodology for determining whether a potential TOD site is in fact, appropriate for a PUD.

## **Design Review**

The extensive reliance on design review requires the development of published standards or benchmarks. Again, OP sought to create predictability but “design review” without articulated standards risks decisions premised on principle of “I don’t know much about art, but I know what I like.”

Thank you for the opportunity to comment. I am happy to answer any questions.