

The Committee of 100 on the Federal City



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Council of the District of Columbia
Wilson Building
1350 Pennsylvania Ave., N.W.
Washington, DC 20004

Re: Nomination of David Franco to the D.C. Zoning Commission

Dear Councilmember,

The Committee of 100 on the Federal City opposes the nomination of David Franco, principal of Level 2 Development, to the D.C. Zoning Commission. His participation as decision maker on the 5-member commission could create a perception of bias or create awkwardness on the commission as a result of his colleague's decisions on future Level 2 zoning cases. In addition, Mr. Franco's company's approach to affordable housing requirements mandated by the Zoning Commission raises serious questions about his commitment to the intent of the Inclusionary Zoning program.

The Committee of 100 examined the planned unit development cases filed by Level 2 Development and interviewed Mr. Franco. Five of the eight D.C. multi-family residential projects in Level 2's portfolio were planned unit developments. Several involved map amendments that allowed high density development, but all were granted more height and density than by right zoning regulations authorized and additional waivers from zoning regulations. Unless Level 2 suspends investing in new developments, it is highly likely that the company will file in the future for planned unit developments, zoning waivers, and possibly map amendments to make spot zoning changes. Mr. Franco would be required to recuse himself from these cases, but the difficulty for the other commissioners ruling on a case involving the livelihood of a colleague is predictable, as is the effect on relationships resulting from votes on Level 2 cases. It is unwise, in our opinion, to create a situation where dysfunction may result and where it may appear that a commissioner is benefiting professionally and financially from decisions of the commission.

The Zoning Commission is an independent legislative body that writes D.C. zoning law. At the same time it serves as a regulatory body that grants exemptions

from regulations and incentives in excess of zoning permissions based on applications from developers. Commissioners must follow the D.C. Comprehensive Plan, which details how land use should further the District's public policies, but they are free to interpret the city plan policies; and, there is no accountability for their decisions until their three year term expires, and then they are accountable only to the mayor.

The Zoning Commission has the largest role in shaping the physical character of the District and in determining how and where residents can live in the city. Its members can choose to benefit the poor or the wealthy, the powerful or the disenfranchised, and the courts will almost always uphold their decisions as supported by the multiplicity of Comprehensive Plan policies. It is critical that the three appointed District members on the Zoning Commission understand and support the city plan and strive to represent the rights and interests of all District residents.

One of the Zoning Commission's most important initiatives furthering the District's public policies is the Inclusionary Zoning program. The intent of the program is to address the rapidly shrinking inventory of affordable housing units with the creation of permanent new housing that is affordable to District residents who cannot afford luxury housing prices. The program awards developers bonus height and densities that can be added to planned unit development bonuses in exchange for a set aside of some of that extra bonus square footage for affordable housing. An additional program purpose is to mix different income residents in the same buildings in order to create communities, blocks, and residential buildings that are diverse economically.

Level 2 develops high density luxury housing that is subject to the lower of the Inclusionary Zoning set aside tier. In exchange for approximately 20% bonus height and density above the planned unit development bonus, the company is required to set aside 8% of residential square footage or 50% of the Inclusionary Zoning bonus for housing for District residents earning up to 80% of the area median income, which for a family of four is the equivalent of 130% of the actual District median income. The amount of rent that can be charged for these units is controlled and is based on what is a fair and reasonable rent at this income level.

Four of Level 2's portfolio developments have requested waivers from the Zoning Commission to either move a portion of the required affordable housing to an off-site location, to another building in the development or away from the top floors of a development – none of which is allowed without a demonstration of economic hardship and compliance with a litany of conditions intended to avoid this result. In its effort to persuade the Zoning Commission to reduce the on-site affordable housing requirement, Level 2 has offered money to other groups to provide the affordable housing elsewhere or offered a deeper affordability level for some relocated units. The consistent aspect of the requests seems to be to avoid locating the full amount of affordable housing in Level 2's luxury developments.

Last spring, Mr. Franco testified before the Committee of the Whole on the Sense of the Council Resolution calling for unspecified revisions to the Inclusionary Zoning program. The committee report summarized his testimony in part as stating that his company would need a tremendous amount of bonus density to offset the economic effect if the law were changed to require high density developments, like

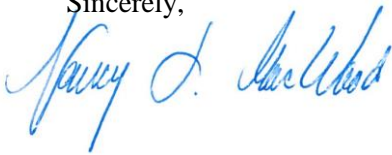
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his company's, to set aside some housing for District residents earning 50% of the area median income, which is actually the equivalent of about 80% of the District's median income for a family of four. He further suggested that non-profits, like Habitat for Humanity and Manna, should be providing housing for District residents at the 50% income level rather than developers who benefit from planned unit developments or Inclusionary Zoning bonus height and density increases.

The Committee of 100 feels that it would be very difficult for Mr. Franco to vigorously implement Inclusionary Zoning regulations that his company has sought to avoid; and, that his position regarding his company's role in providing some new housing for District residents whose incomes are 50% of the area median or 80% of the District median income displays a disconnect between reasonable development profit and the economic reality and housing needs of many District residents.

We urge the Council to reject Mr. Franco's nomination.

Sincerely,



Nancy J. MacWood, Chair