

# The Committee of 100

on the Federal City



## **Comp Plan Framework Element Report**

**October, 2019**

### ***Zoning Commission 1, Home Rule 0***

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“It’s a done deal ... They’re going to do what they want to do.” Too often, that was how disheartened D.C. residents responded to new developments that they didn’t like but believed they couldn’t stop. The Zoning Commission typically rendered developer-friendly decisions and the D.C. Court of Appeals affirmed them.

The landscape changed when the court ruled in favor of protesting residents in a pair of cases. Empowered residents across the city appealed a slew of other zoning decisions.

In response, on October 8, the City Council, urged on by Mayor Bowser, acted to smack down this wave of citizen activism with its vote aimed at making zoning decisions appeal-proof. But at what cost? Eager to keep the developers’ cranes in the air, the Council transferred a sizeable portion of its own authority under the Home Rule Act to the Zoning Commission. A proverbial giant sucking sound might have been audible as the vote on the Plan’s Framework Element proceeded and part of our self-government drained away.

Here’s how it happened.

In the successful zoning appeals, the court ruled that the Commission failed to demonstrate that the projects it approved complied with the Comprehensive Plan. Under the Home Rule Act, the elected Council enacts the Plan and the unelected Zoning Commission, two of whose five members are Federal officials, must follow it in writing regulations and deciding cases. In the Plan, the Council divides the District into various “land use categories” such as “Low Density Commercial,” “Medium Density Residential,” “Institutional,” etc. The Council

also describes the building sizes characteristic of each category. Critically, it identifies appropriate zones for each. This is how the Council determines the overall shape of the city and provides guidance to the Zoning Commission.

Or at least it *should* do that. The problem is that ,on October 8, the Council turned over the last vestiges of its authority to designate the zones for each category to the Commission, enabling it to allow a developer to build higher or denser buildings than the land use category calls for. The Commission has only to determine that its selection of a zone has no “unacceptable” impacts on the surrounding neighborhood and meets other criteria deliberately crafted -- at the insistence of the Office of Planning and a sitting member of the Commission -- to be vague enough to forestall a successful appeal.

With its vote, the Council abdicated a fundamental piece of its prerogative to shape the city and gave it to the effectively unfettered discretion of the unelected Zoning Commission. That agency, proceeding case-by-case, can rewrite the ground-rules that are supposed to govern its own conduct. If residents oppose a decision, it will be hard to argue that it doesn’t follow the Plan, because the Plan is now what the Zoning Commission says it is. That’s what the Mayor and Council wanted.

Whatever one’s preferences as to future development in D.C., the Council’s action was wrong for two reasons of basic democratic principle.

First, District citizens are entitled to expect that their elected representatives will zealously guard all of their hard-won Home Rule authority -- if for no other reason than to ensure that, through them, their constituents have a voice in public decision making.

Second, it is elementary that in a well-ordered democratic society, such as the District aspires to be, no individual or public or private entity may be shielded from genuine accountability under the law – even though doing so might serve a passionately desired policy objective, or forestall the inconvenient delays inherent in judicial process. To raise such a shield corrupts the rule of law.

DC must be better than this.

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