

District of Columbia Council Committee of the Whole

Hearing on Bill 18-867, the Comprehensive Plan Amendment Act of 2010

September 28, 2010

Testimony Submitted by Nancy J. MacWood

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I regret that I am unable to testify before the Committee of the Whole today but appreciate the opportunity to submit comments on Bill 18-867, the "Comprehensive Plan Amendment Act of 2010."

First, I must object to the process of including for consideration any amendments, including text amendments, which were not part of the bill introduced in June 2010. The Office of Planning ("OP") should not be suggesting to the Council that it ignore notice requirements because the map and text amendments it wants considered were included in an earlier OP report. The referenced 2009 report does not satisfy notice for legislation. It is astonishing that OP forwarded to the Council the day before the hearing proposed map amendments and that it is including additional text amendments in its testimony today. The OP seems to believe that transparency and public participation, which are ensured through the legal requirements for notice, are flexible as long as at some point in the past they issued a report. Surely the Council will make it clear to OP that the Council will only consider those amendments that were properly noticed.

Regarding the text amendments I urge the Council to oppose the air rights text amendments (LU-1.1.5, 1.1.8, and 1.1.C) recommended by OP. As proposed, these amendments would lead to new zoning rules for establishing the maximum height of buildings constructed over railroad tracks and freeways. OP is recommending that the Council endorse having these sites, such as the Amtrak rail line area north of H Street Bridge, rezoned and then measured not from the ground as is required for every other building in the District, but from some higher point that OP hopes will result in intense development. It may be desirable to build in air rights but if that is a goal it should not be used to end run the Height Act, which is exactly what OP is attempting to do. Using the H Street Bridge as an example, there are existing buildings surrounding that area that provide reasonable measuring points from grade or near grade. Beginning the height measurement from the apex of the bridge which is 56 feet above the tracks is not reasonable and it violates the Height Act. This new measuring device applied after these areas are up-zoned will result in large areas of very tall buildings that will challenge the prominence of the federal monuments and will permanently alter the iconic horizontal skyline. I hope the Council will not be persuaded by the likely argument that developers won't invest in air rights development unless they are allowed to measure height from some advantageous point much higher than grade. I hope you will reject that obvious argument and reassert the Council's commitment to maintaining the height restrictions that have allowed Washington to become the beautiful and admired city that it is. In 2003, the Zoning Commission clarified and reasserted that it would not make rules to allow height measurements from bridges and viaducts and that height measurement from grade should continue to be the rule. In order for OP to convince the Zoning Commission to change its mind the Council must amend the Comprehensive Plan so that the current rules would be inconsistent with the Comprehensive

Plan. Again, I very strongly urge the Council to not play this game with OP and to reject being the Council that undid 100 years of protected skyline.

The proposed new text to be added to Action LU-1.3.B eliminates the existing language that calls for a Transit Oriented Development (“TOD”) overlays. The Council should be aware that the previous action item in the Comprehensive Plan establishes a planning process to ensure that there aren’t any conflicts between TOD and neighborhood conservation goals prior to the creation of TOD overlays. The Comprehensive Plan defines these plans as “detailed surveys of parcel characteristics,...existing land uses, structures, street widths, the potential for buffering, and possible development impacts on surrounding areas.” If OP is now recommending that overlays no longer be the zoning tool for implementing TOD and that the current zoning rewrite include rules for implementing TOD, what is happening to the planning process? Action LU-1.3.A is premised on planning for an overlay. If the overlay concept is eliminated, which is the OP recommendation, does OP believe it is exempt from conducting the detailed planning that is intended to take place in order to make sure that TOD is correctly and sensitively applied? Will OP be making recommendations to the Zoning Commission on TOD without having done the planning that is called for in the Comprehensive Plan? I strongly urge the Council to raise with OP the apparent conflict between the existing action items and the new recommended language so that there is no confusion about the need for participatory and detailed planning prior to the Zoning Commission adopting TOD implementation rules. If there is any chance that OP will skirt the planning process, I urge the Council to reject this text amendment or amend Action LU-1.3.A so that the planning requirement prior to the adopting of zoning rules is preserved.

With regard to the text amendments affecting Hine Junior High School and Crummel School I urge the Council to consider whether these amendments are the result of a community planning process that pre-dated the Master Facilities Plan authorization. It seems odd to have the city plan cite the best use when the Council has established a public process for determining how to assess the best use for vacant public property.

Thank you for the opportunity to comment on Bill 18-867.