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October 4, 2010

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RE: Bill 18-867, "Comprehensive Plan Amendment Act of 2010"

Dear Chairman Gray:

Thank you for providing an opportunity to enter into the record a response to Councilmember Wells. The Councilmember suggested the Committee of 100 clarify its testimony regarding the Height Act of 1910; and, referenced a particular passage cited in the testimony of Harriet Tregoning that he felt was at odds with our testimony.

Mr. Wells read from the following paragraph from Harriet Tregoning's testimony regarding the proposed Comprehensive Plan amendments the Committee of 100 focused on in testimony (LU-1.1.5 and LU-1.1.8) "...With further review and collaboration with the National Capital Planning Commission, we are no longer recommending deleting the existing Comp Plan language in the Capitol Hill Area Element, but instead are recommending changing the existing wording as follow to: 'The allowable height of any building constructed in the air rights should be measured consistent with the Height Act of 1910 and relate positively to the surroundings with special attention to Union Station and other

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historic buildings, the Federal precincts on Capitol Hill, and existing neighborhoods to the east and west. Development must give special attention to the preservation and enhancement of and view to Union Station and its historic surroundings by ensuring the provision of exemplary architecture and encouraging upper story setbacks and minimized penthouses.’ “

Mr. Wells advised that an agreement had been reached on language between the Office of Planning and the National Capital Planning Commission and therefore the Committee of 100’s concerns regarding height had been addressed. This assertion is incorrect.

The Office of Planning is using semantics,” deleting vs. changing,” to accomplish its intention to eliminate specific restrictive language in the Comprehensive Plan regarding the measuring point for H Street and replace it with more general language that no longer includes: “The allowable height of any building constructed in the air rights should be measured from the existing grade of 1st Street or 2nd Street NE, rather than from the overpass.”

In its September 3 letter, the National Capitol Planning Commission informed Council, “While staff supports a public planning process for the project, there are concerns with the proposal to eliminate Policy CH-2.1.7. This existing policy states that the allowable height of any building constructed in the air rights should be measured from the existing grade of 1st Street or 2nd Street, NE, rather than from the overpass. The proposed bill will eliminate this policy, leaving the method of measurement for the Union Station air-rights unclear. In NCPC’s view, the existing policy is consistent with the interpretation of the 1910 Height of Buildings Act and it also provides a clear guideline that will produce a project design that is sensitive to the existing surroundings. NCPC recommends that Council not eliminate or change Policy CH-2.1.7.”

Both the National Capital Planning Commission letter of September 3 and the Committee of 100’s testimony addressed measuring point for air-rights development. Both agree that the measuring point for development in the Union Station area is the existing grade of 1st Street or 2nd Street and not the H Street overpass. Furthermore, this means of measurement for H Street was established in Zoning Commission Order 02-35 dated November 7, 2003. Policy CH-2.1.7 should be maintained in the Comprehensive Plan to support the zoning regulation that established the measuring point for H. Street rather that replacing with the

language suggested in the Office of Planning's testimony.

To further reinforce the measuring point, Section 7 of An Act to Regulate Height in the District of Columbia (The Height Act of 1910) states the following regarding the "Basis for Measurement:" "That for the purpose of this Act the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height."

The ZC also has noted the problem with OP's approach. OP has removed the references to Height Act measuring practices from its proposals in the Zoning rewrite process at the specific request of the ZC because of fear of conflict with federal law. The Council should take the same precaution and not try to do by indirection what Home Rule specifically forbids -- changing the Height Act.

The Committee of 100 would also like to address the comments made by David Tuchmann of Akridge when he stated, "...The amendments we support do allow the Zoning Commission to determine the proper measuring point for this particular project. It would place within the Comprehensive Plan both protections that would constrain the Zoning Commission in creating that measuring point but would also allow the Zoning Commission to look at the unique factors of this project – how it is relating to the rail yard – how H Street is the only street that this project fronts – the current language in the plan incorrectly looks to measure the project from 1st or 2nd Street."

Mr. Tuchmann indicates the proposed amendments to the Comprehensive Plan are the tools necessary to eliminate the authority and ability of the Zoning Commission to set limits on the height of buildings in the air rights development areas of the city. Approval of the proposed amendments would constrain the Zoning Commission from using the measuring point relied on since 2003 in ZC 02-35.

In closing, the Committee of 100 appreciates the invitation extended by Councilmember Wells to restate its position, "The proposed Land Use amendments represent the Office of Planning's attempt at an end run around the Height Act and the established measuring point for building height for buildings fronting a bridge or viaduct that has been relied upon since 2003 (ZC 02-38). Council should be

cognizant that with one vote they have the ability to abandon 100 years of building within a height standard because the Office of Planning proposes a different vision for the skyline of the city...”

The Committee of 100’s testimony is unchanged and as presented.

Sincerely,

--S--

Alma H. Gates

cc: Councilmember Tommy Wells
Anthony Hood
Marcel Acosta
Harriet Tregoning
George R. Clark, Esq.