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ANC Commissioner 3/4G02

October 23, 2013

National Capital Planning Commission
c/o William Herbig
401 9th St. N.W., North Lobby, Suite 500
Washington, D.C. 20004

D.C. Office of Planning
c/o Tanya Stern
1100 4th Street, SW, Suite E650
Washington, DC 20024

**Re: Written Testimony on the Height Act Study
for the Special NCPC Meeting of October 30, 2013**

**The District's Height Master Plan draft recommendations for
modifications to the federal Height Act**

Dear Commission Members:

Thank you for holding a Special Commission Meeting on this topic to gather public comment. I apologize I cannot appear in person to testify Oct. 30, due to an out of town proceeding. I respectfully submit these comments on the Height Act study.

I have studied carefully the September 12, 2013 NCPC Executive Director's Recommendation ("EDR") and the September 20, 2013 D.C. Office of Planning Evaluation and Draft Recommendations ("DCR"). I am familiar with the matters raised in these reports by (a) my many years as a D.C. Advisory Neighborhood Commissioner (four as Chair of the Chevy Chase ANC); (b) my review and comment on the pending D.C. zoning regulations; (c) an officer in the Alliance to Preserve the Civil War Defenses of Washington; and (d) as one of the attorneys who brought suit (pro bono) to challenge the congressional prohibition on D.C. taxing non-resident income earned within D.C., creating the structural funding imbalance that is addressed so well in the DCR. I respectfully make the following comments:

1. Whatever the reasons for its historic origins, the federal height limitations in D.C. have worked to create a beautiful and successful city. I do not think the height limitations should be raised, whether within the "L'Enfant City" or otherwise. I largely agree with the EDR in this regard and disagree with the DCR. I feel confident in saying that the majority of D.C. residents favor the views in the EDR. The DCR suggests that within the L'Enfant City, building heights be increased based on a ratio of height to street width, and outside the L'Enfant City, with no federal height limit. DCR's idea, if

accepted, would mean that within the L'Enfant City, heights could increase up to 200 feet and be non-uniform depending on the width of various adjacent streets. There would soon be a race up, with new controversies about proper application of the height limit, especially where new buildings abut residential areas.

2. DCR's idea of height-to-street width ratio also addresses only a single factor: pedestrian perspective from street level (*i.e.*, the wider the street, the higher the building can be). But that is not the only factor to consider. The EDR properly discusses the many other important factors that weigh on the matter – “viewscape,” relation to federal spaces, buildings blocking each other out, etc.

3. The status quo has forced D.C. and developers to spread out beneficial development, and to also create mixed-use areas where residential, retail, and commercial uses mutually benefit each other. There is still much room in the City for development of buildings up to 12 floors. If greater heights were allowed, then the focus would revert back to the traditional downtown areas (K St. N.W., Penn. Ave. corridor, etc.), slowing beneficial development elsewhere. D.C. is unique in diffusing its development across the city, instead of concentrating everything in a small area of high-rise buildings.

4. Removing height limits outside the L'Enfant City could lead to contentious developments, possibly creating Roslyn like mini-high rise blocks in what are now residential areas like Anacostia, Friendship Heights, Takoma Park, Chevy Chase, etc. The economic pressures to develop these areas could eliminate all but the wealthiest pockets of these residential areas – adjacent lower and middle income residents could be displaced. Plus this could siphon away or depress development in downtown areas.

5. This is an anecdotal point, but I happen to be an avid runner (around 25-50 miles a week) and a constant business traveler. I spend substantial amounts of time in the downtown areas of dozens of U.S. cities (in 2012, over 100 business days in 18 different cities). Being a runner, I run through and beyond these downtown areas. On average, the cities that have the downtown high-rise cluster effect are failures. There is little to nothing in the downtown areas other than office buildings, there is massive congestion at rush hour, the downtown area clears out after the workday, and the areas that immediately ring the downtown areas are abandoned or severely underdeveloped. Houston and Baltimore are examples of this failed model, and many more reveal this failure to some degree or another. In places like New Orleans, Cincinnati, Chicago, Dallas, and Charlotte, you can run on a city block that contains a nice marble-surfaced high-rise building, but as you leave the downtown cluster, a mere one-block later you run past strings of old boarded-up buildings.

6. In contrast, D.C. is a model of success, especially the last two decades of positive economic development. For example, not long ago, the whole area north of Penn. Ave., from 15th St. N.W. to the Capitol was a half-abandoned part of town. If in 1970 a high-rise area had sprung up in, say, Foggy Bottom, that whole Penn. Ave. area likely would still be half-abandoned today (to say nothing of No-Ma, H St. N.E., South

Capitol St., etc.). If you can build up, why build elsewhere? Let history be your best evidence of what happens when maximum heights are kept in place.

7. The DCR rationale for greater building height is admittedly driven by an artificial constraint – the federal government’s severe constriction of D.C.’s ability to generate tax revenue. DCR’s core argument is that we must build up so D.C. can increase its tax base. First, it is worth pausing to note that DCR is absolutely correct about this egregious injustice in D.C. D.C. cannot tax the majority of land/property in D.C. (by value) because it is federal or otherwise exempt. The most glaring injustice is the exception made by Congress in the Home Rule Act to the universal rule that income is taxed where it is earned. In D.C., this universal rule of taxation is suspended, such that D.C. cannot tax about two-thirds of the income earned within D.C. because it is “non-resident” income. Instead, mostly Maryland and Virginia are permitted to steal this D.C. tax revenue from D.C. Why? Because they can – because they have representation in Congress and D.C. does not. This is the harsh financial outcome of taxation without representation. Many years ago, I helped put together and bring a federal lawsuit to challenge this Congressionally-imposed tax revenue shift, alas without success on constitutional grounds. But this unfair constraint on D.C.’s tax revenue is not, however, a reason to increase building heights. *The two issues are distinct.* The answer is to (a) keep heights as they are, and (b) remedy the injustice of the “structural imbalance” through other means (repeal the prohibition, statehood, etc.).

8. I am also a founding member and Treasurer of the Alliance to Preserve the Civil War Defenses of Washington, dedicated to helping preserve the ring of forts that stretches around the “Topographic Bowl.” As the EDR notes, “there is an abiding federal interest in protecting the views to and from them,” another compelling reason not to alter the current height limits. There is also an abiding local interest in this regard as well.

9. For these reasons, I agree with the EDR’s ultimate conclusion that changes to the Height Act would have a “significant adverse impact on federal interests,” and local interests as well – both within and outside of the L’Enfant City.

10. I also agree with EDR’s caveat that the City might permit a broader range of uses in building penthouses, “if properly implemented and with certain restrictions” (set-backs and other restrictions specified by the EDR). For example, set-back penthouses might be used as conference room centers with bathrooms and facilities.

Sincerely,



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--Treasurer, Alliance to Preserve the Civil War
Defenses of Washington
--Resident, 2840 Northampton St. N.W.