

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION  
AND  
BOARD OF ZONING ADJUSTMENT

+ + + + +

JOINT MEETING

+ + + + +

MONDAY

FEBRUARY 14, 2000

+ + + + +

The Joint Meeting of the District of Columbia  
Zoning Commission and the Board of Zoning Adjustment convened at  
2:47 p.m. in the Office of Zoning Hearing Room at 441 4th Street,  
N.W., Washington, D.C., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairman
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN PARSONS	Commissioner

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
RODNEY L. MOULDEN	NCPC Representative
ROBERT N. SOCKWELL	Member
ANNE M. RENSHAW	Member

OFFICE OF ZONING STAFF PRESENT:

Jerrily Kress	Director
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Alberto Bastida                      Secretary, ZC  
Shari Pruitt                              Secretary BZA

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.  
Marie Sansone, Esq.

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P-R-O-C-E-E-D-I-N-G-S

2:47 p.m.

1  
2  
3 CHAIRMAN HOOD: What I am going to do first is to  
4 go around and ask everyone, starting from my far left, to  
5 introduce yourself. Say if you are a Commissioner and just  
6 mention how long you have been on the Commission or a Board  
7 Member. And staff, if you want to introduce yourself and tell us  
8 what office in which you work. So if I can start all the way to my  
9 extreme left, which would be Mr. Sockwell.

10 MEMBER SOCKWELL: I am Robert Sockwell, a  
11 Commissioner since September of 1999.

12 VICE CHAIRMAN MITTEN: I am Carol Mitten. I have  
13 been a Zoning Commissioner since October of 1999.

14 MEMBER RENSHAW: I am Anne Renshaw, and I have been  
15 a BZA member since the first meeting in February 2000.

16 COMMISSIONER PARSONS: I am John Parsons. I have  
17 been representing the Director of the National Park Service since  
18 June of 1977.

19 COMMISSIONER FRANKLIN: He's just behind Senator  
20 Thurmond. I am Herb Franklin and I have been on the Zoning  
21 Commission since January of 1996.

22 CHAIRPERSON REID: Sheila Reid, Chair of the BZA. I  
23 have been on the BZA since 1994.

24 CHAIRMAN HOOD: I am Anthony Hood, the present  
25 chair of the Zoning Commission. I have been on the Commission

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1 since May of 1998.

2 COMMISSIONER HOLMAN: Kwasi Holman. I have been on  
3 the Zoning Commission since October of 1999, according to Ms.  
4 Mitten.

5 VICE CHAIRMAN MITTEN: Is that wrong?

6 COMMISSIONER HOLMAN: No, that is right.

7 MR. MOULDEN: Rodney Moulden from the National  
8 Capitol Planning Commission. I was just sworn in earlier today as  
9 a temporary replacement for Jerry Gilreath, who is sitting on the  
10 BZA.

11 MS. KRESS: Okay, thank you. I am Jerrily Kress,  
12 Director of the Office of Zoning.

13 MR. BERGSTEIN: My name is Alan Bergstein. I am at  
14 the moment Chief of the Land Use and Public Works Section, and on  
15 Friday, I will be acting managing attorney of the economic  
16 development cluster.

17 MR. BASTIDA: Alberto Bastida, Secretary to the  
18 Zoning Commissioner.

19 MS. PRUITT: Sheri Pruitt, Secretary to the BZA.

20 MEMBER SOCKWELL: Mr. Hood, if I might just say  
21 that I made a mistake in not fully identifying myself. I didn't  
22 say BZA. I just said Commission, and I apologize for that. And I  
23 am Vice Chair of the BZA.

24 CHAIRMAN HOOD: Okay, thank you. Staff -- let's  
25 start with Marie.

1 MS. SANSONE: I am Marie Sansone from the Office of  
2 Corporation Counsel.

3 CHAIRMAN HOOD: I think if you just stand where you  
4 are and just talk real loud, we can --

5 MS. KRESS: It is okay if they are not on the  
6 record.

7 MR. KAREET: Ken Kareet, Zoning Specialist with the  
8 Office of Zoning.

9 MR. NYARKU: John Nyarku, Zoning Specialist with  
10 the BZA.

11 MS. DAVIS: Betty Davis, Zoning Specialist, BZA.

12 MR. HART: Paul Hart, Zoning Specialist, BZA.

13 MS. BROWN: Stefanie Brown, Zoning Commission.

14 MR. ERONDU: Vincent Erondou, Zoning Commission.

15 CHAIRMAN HOOD: Okay, thank you. I am glad that we  
16 -- it makes the setting a little better if we all know each other.  
17 Let me first welcome Mr. Rodney Moulden and Ms. Anne Renshaw, who  
18 I believe are our two newest members. So welcome.

19 MR. MOULDEN: Thank you.

20 CHAIRMAN HOOD: Let me just state a few little  
21 ground rules before we get started. One of the things is, again,  
22 this is Valentine's Day. And if it wasn't, we would still want to  
23 cut back on our air time. We are all Commissioners and Board  
24 Members, and we like to elaborate. But today we are going to try  
25 to do this as expeditiously as possible. If I feel like the

1 dialogue is going back too much or too far, I am letting you know  
2 up front that we will do some cutting off. So I would like for us  
3 to adhere and govern ourselves accordingly. Let's try to stick to  
4 the issue. Let's resolve the issues because we have a lot in  
5 front of us. So with that, I will turn it over to Ms. Kress.

6 MS. KRESS: Thank you. I would like to start today  
7 and be very brief and not take too much time, but the budget is  
8 very important. We will be testifying on the 29th of February.  
9 And so I wanted you to have in front of you the budget. The budget  
10 is organized in a baseline and then what are enhancements or  
11 decision packages as they are calling them this year. You have  
12 those in front of you. One of the problems though was that I was  
13 told I could not put in for additional stipends. I would like for  
14 you to discuss that and perhaps assist me. Because I have heard  
15 from several of you that you feel the increased stipend is  
16 necessary. To remind you, a year ago the stipend was \$3,000.00  
17 for Commissioners and Board members and \$3,500.00 for the Chairs  
18 of the BZA and the Zoning Commission. As of this past fall,  
19 legislation was put into place to change those stipends to  
20 \$6,000.00. However, since we right now are having double the  
21 number of BZA meetings, that money is being spent very quickly and  
22 I expect for the BZA members, that stipend of now \$6,000.00 will  
23 be running out within a month or two. And so the BZA members will  
24 be continuing to work through the rest of the spring and summer  
25 with no stipend. So with that, I will just stop and ask for

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1 everyone's opinion on how you would like me to handle the requests  
2 relating to the stipends.

3 CHAIRMAN HOOD: I would like to hear from the  
4 chairperson of the Board of Zoning Adjustment on that issue.

5 CHAIRPERSON REID: Thank you. Ms. Kress and Mr.  
6 Hood, just recently one of the members of the Alcohol and  
7 Substance Abuse Control Board contacted me to discuss the fact  
8 that they are in the midst of developing a coalition to go after  
9 an increase of their stipend up to \$10,000.00. And they wanted us  
10 to more or less coalesce with them in trying to bring that about,  
11 which I have no problem with, because obviously I think that I  
12 speak for the majority of us, if not all, that if in fact that  
13 were to happen, then in parity we definitely would like to see our  
14 stipend to be in accord with that at least.

15 CHAIRMAN HOOD: Okay. I think, Ms. Kress, you are  
16 asking us how to proceed with that?

17 MS. KRESS: I just wanted to bring it to your  
18 attention to have you realize it is not currently in the budget,  
19 and to have your referendum, if you will, that I should be  
20 proceeding with this and taking it to the Council, regardless of  
21 what the financial folks have told me to do through the immediate  
22 budget procedures.

23 CHAIRMAN HOOD: I really believe that that  
24 discussion should come up at the budget hearings from us as  
25 Commissioners and Board Members. That is something that we need to

1 pursue also along with you, but we would encourage you to pursue  
2 it. I would like to hear from some other Board Members, actually.

3 Because it is really on the Board side as opposed to the  
4 Commission.

5 MS. KRESS: The stipend would be for everyone. But  
6 for right now, it is the Board Members who are the most  
7 significantly impacted.

8 MEMBER SOCKWELL: Robert Sockwell, BZA. My  
9 personal feeling is that the number of meetings being held by the  
10 Board far exceeds what would normally be expected of appointed  
11 Board Members in terms of time commitments outside of their  
12 professional lives and personal lives. And I do believe that an  
13 additional stipend would be in order in that along with everything  
14 else, we cover our costs for parking if we use the garage. We  
15 cannot recover certain lost time regardless of the stipend. But  
16 it is imperative that the government at least be able to show its  
17 appreciation for the service that they have asked us to provide by  
18 giving a minimum continuous stipend to offset costs and things  
19 like that. Thank you.

20 CHAIRMAN HOOD: Any other comments, Commissioners  
21 or Board Members? I saw -- Ms. Renshaw, did you want to say  
22 something?

23 MEMBER RENSHAW: No, just that -- Anne Renshaw,  
24 BZA. I just support what Mr. Sockwell has said.

25 CHAIRMAN HOOD: Okay. So, Ms. Kress, I think the

1 direction is clear. I think I see two or three ways that we could  
2 probably move to try to satisfy that, including Board Members at  
3 the budget hearing. All that has to come up. It is a lobbying  
4 effort from what I see.

5 COMMISSIONER HOLMAN: Here I go. All right, I am  
6 not going to speak in opposition to more money, obviously. But  
7 what I want to do is make sure that if you decide to do this that  
8 you bring it up with the people in the Mayor's office who handle  
9 Boards and Commissions. Because the worst thing you can do is  
10 surprise people on stage, so to speak. So I would advise that if  
11 you are going to do that, you should pursue that through those  
12 channels first before you jump out there. Otherwise, you may have  
13 a number of reactions that you weren't prepared to absorb.

14 CHAIRMAN HOOD: I think that is a good way, and we  
15 would probably want to proceed with that first.

16 MS. KRESS: Let me just answer that. In fact, I  
17 did discuss -- prior to Ms. Drissel's leaving, I did discuss this  
18 with her. And in fact she told me she was pursuing it with  
19 legislation because this is legislation that has to change to  
20 change our stipend. That is why I was surprised when I was  
21 putting together the budget and trying to put this forward that I  
22 was told I wasn't allowed -- or I was not to be putting that  
23 forward. Because I did have the understanding with Boards and  
24 Commissions. I need to  
25 -- now I am not sure who to talk to. Who is in charge?

1 CHAIRMAN HOOD: The new person should be coming on  
2 board. I was told he is an ANC Commissioner. I don't want to put  
3 too much out there, because I am not accurate. But I am sure he  
4 will be in in the next week or so. But still, we want to go back  
5 to that office and pursue it the same way.

6 MS. KRESS: I agree. And I need to be pursuing it  
7 with the person who is there instead of the person who isn't there  
8 anymore.

9 CHAIRMAN HOOD: Exactly. Ms. Reid, and then we are  
10 going to move on. I think we have satisfied. Ms. Reid had  
11 another comment.

12 CHAIRPERSON REID: No, my comment was I didn't know  
13 who now was the head of the Boards and Commissions Office. That  
14 was my question. So you say you know that something is coming.

15 CHAIRMAN HOOD: Someone is coming. I was told it  
16 was an ANC Commissioner, but I am not sure -- out of 6A or B.

17 CHAIRPERSON REID: The only thing about that is as  
18 you well know typically when there is a new position being filled,  
19 there is a learning curve and it takes time to kind of get  
20 familiar with what is happening. So we may need to talk to someone  
21 else in the interim.

22 CHAIRMAN HOOD: But there is a young lady -- I just  
23 know her first name.

24 MEMBER RENSHAW: It is Jackie Rendel.

25 CHAIRMAN HOOD: Jackie, yes. She is acting, I

1 believe, as we speak.

2 MEMBER RENSHAW: And she is deputy in the office.  
3 And I would add that it may be good to talk to Mrs. Crop's office  
4 in addition, because zoning comes up before the Committee on the  
5 whole. And Rob Miller perhaps should be spoken to about this  
6 issue.

7 MS. KRESS: That was my intent. I just didn't want  
8 to do that since I was getting conflicting information from the  
9 Mayor's office. I didn't want to go to the City Council or anyone  
10 else until everyone was aware of what was going on. Because I  
11 think this is awkward being told not to do something and then  
12 going forward. And I wanted to make sure how I proceeded and that  
13 the Board and the Commission was in agreement.

14 CHAIRMAN HOOD: Okay. I think that sounds good and  
15 we will proceed with that. We are going to take one more comment  
16 and we are going to move the agenda. Mr. Sockwell?

17 MEMBER SOCKWELL: Mr. Hood, I just wanted to make  
18 the statement that let it not be misunderstood that any increase  
19 in stipend that I would support is to increase the amount of money  
20 per man-hour or person-hour utilized, but just to make sure that  
21 there is a continuous coverage for the number of meetings that are  
22 being held. That is really what we are looking for. We are not  
23 asking for an increase in pay per se. We are asking for  
24 commensurate pay for the amount of time being spent dealing with  
25 the Board's various projects.

1 CHAIRMAN HOOD: Okay.

2 MS. KRESS: Thank you for that clarification. That  
3 is my understanding. And if anything else -- if anyone has a  
4 different understanding, I need to be told.

5 CHAIRMAN HOOD: Okay.

6 MS. KRESS: But my understanding is yours.

7 CHAIRMAN HOOD: I think we have satisfied that.  
8 Let's move the agenda --

9 MS. KRESS: Is there anything else on the budget  
10 that you all have reviewed that you would like to ask me about?  
11 By the way, feel free to call me in my office. In fact, I was not  
12 aware -- I thought we had handed out to you before lists of Board  
13 and Commission members as well as our phone numbers. Mr. Bastida,  
14 if those have not been passed out, would you please pass them out?

15 MR. BASTIDA: No, they were passed out already.

16 MS. KRESS: Thank you.

17 MR. BASTIDA: Somebody is missing them?

18 MS. KRESS: No. I am just bringing it up so that we  
19 don't have to take a lot of time if people want to just contact me  
20 directly.

21 MR. BASTIDA: Fine.

22 CHAIRMAN HOOD: Okay. We can proceed.

23 MS. KRESS: And we will make sure if you don't have  
24 them -- make sure you get to me. Anything else on the budget?

25 CHAIRMAN HOOD: Are there any questions on the --

1 okay, we are getting copies.

2 COMMISSIONER FRANKLIN: Just one question. I didn't  
3 see it, and maybe I read the budget too rapidly. In terms of  
4 getting at least to me as a Zoning Commissioner an up-to-date set  
5 of regulations, is that something that is budget sensitive?

6 MS. KRESS: Let me hop ahead on the agenda. I do  
7 have it down. Basically, we have had major problems. It is, as  
8 you know, legally the responsibility of the Office of Documents to  
9 compile an updated zoning regulation, which you also are probably  
10 aware hasn't happened in some five years. Right now, we have put  
11 together for ourselves an updated zoning regulation. We have run  
12 into technical difficulties with the Office of Documents, because  
13 basically they want to sell it. And they don't really want us  
14 updating our own and making our own available. What we  
15 have negotiated with them right now is to allow us -- and we are  
16 going to have our Website up over all of our dead bodies by the  
17 29th of February. And on that Website, we are going to be  
18 publishing an updated regulation. But it will be stipulated that  
19 it is unofficial and cannot be used in any way as the official  
20 document. But we will at least have out available to not only the  
21 Commission members but to the public at large an updated zoning  
22 regulation for the first time, even though it be unofficial.

23 COMMISSIONER FRANKLIN: So what I am hearing from  
24 you is that we will not get in hard copy an updated copy of our  
25 own regulations.

1 MS. KRESS: I will -- I feel that we can  
2 legitimately xerox this unofficial version for at least our Board  
3 and Commission members.

4 COMMISSIONER FRANKLIN: Okay.

5 MS. KRESS: Obviously, I don't think we have the  
6 funding to be able -- and I would run awry if we tried to give it  
7 to people outside. But certainly as we get this done -- we have  
8 now ascertained what we have to do to make our document officially  
9 unofficial, which should be finished soon. And then we will copy  
10 it and we will give it to you. Sorry, Alan has been working hand-  
11 in-hand with us with Office of Documents trying to arrange what we  
12 can and cannot do, and I owe him a great debt of thanks.

13 MR. BERGSTEIN: And also because you are not alone.  
14 It is an endemic topic within the District Government. DMV, my  
15 other client, very much wants to do the same thing. DCRA has sort  
16 of done the same thing. So it is a process that they have known  
17 about and they are aware of and they are discussing at the highest  
18 levels. But it is money. They are going to enter a contract with  
19 West Publishing to put everything on CD-ROMs. It is a lot of  
20 money and a lot of positions they are going to be able to fund. So  
21 it is very real to them.

22 MR. BASTIDA: In addition, I have been in  
23 negotiation with the administrator of the Register, and he has  
24 promised that there will be a new DCMR-11 printed sometime this  
25 year with the updates. But we cannot rely on that because it is

1 their budget and it is their commitment. But we have been pursuing  
2 it on all the avenues that we have in front of us.

3 CHAIRMAN HOOD: Okay. Mr. Bastida, if we can keep  
4 on pursuing it. Like you say, we can't rely on it. But if we can  
5 keep putting a little pressure or whatever we can, then maybe that  
6 will come to be a reality. Mr. Franklin, any further questions?

7 COMMISSIONER FRANKLIN: No, no.

8 CHAIRMAN HOOD: Any other questions?

9 MEMBER SOCKWELL: With regard to the zoning  
10 document itself, let's just hope that it will be reproduced in a  
11 form that it can be updated effectively and easily. I mean, today  
12 we are getting one-sided copies for the updates of certain  
13 sections, whereas the document itself is two-sided. It makes it  
14 much too voluminous and makes it harder to read for those people  
15 who buy it. So hopefully at the time that it is updated, this next  
16 cycle, the procedures will be put in place for it to be  
17 continuously updatable in a very coherent way similar to the way  
18 that other zoning ordinances in the general vicinity of D.C. are  
19 constantly updated and have been for years.

20 MR. BASTIDA: I have discussed your concern with  
21 the administrator, but they have the final say. So I will pursue  
22 that also.

23 MEMBER SOCKWELL: Thank you.

24 CHAIRPERSON REID: Ms. Kress, how much is the book?  
25 I mean, how much does it cost to get an updated copy?

1 MS. KRESS: How much do the regulation books cost  
2 right now?

3 MR. BASTIDA: \$25.00.

4 CHAIRPERSON REID: Okay. Well, you know, it --

5 MR. BASTIDA: They are --

6 MS. KRESS: They are five years out of date.

7 MR. BASTIDA: Out of date. They are out of date.

8 MS. KRESS: All the changes that have been made --

9 CHAIRPERSON REID: No. I am speaking of the most  
10 updated one that you are saying is being distributed by --

11 MS. KRESS: There is no updated one. We are doing  
12 one for ourselves unofficial with all of the updates in it that we  
13 are going to be able to copy for you. That will not be made  
14 available to the public.

15 CHAIRPERSON REID: Let me understand this, Ms.  
16 Kress. Who has responsibility for actually printing and  
17 distributing the regulations?

18 MS. KRESS: The Office of Documents.

19 CHAIRPERSON REID: The Office of Documents is five  
20 years behind?

21 MS. KRESS: Yes. And as Alan said --

22 MR. BERGSTEIN: I don't want to say they are five  
23 years behind. The Office of Documents periodically publishes new  
24 titles of the various findings of the DCMR, often based upon how  
25 active the volume is. I don't know if they have an individual

1 schedule. They do each month in the D.C. Register on the first  
2 issue of each month publish a supplemental update. So you can look  
3 at the last version of the D.C. Register on the first Friday of  
4 each month, and that will tell you -- if you look under Title 11,  
5 that will tell you all the regs that have changed. And then it is  
6 a matter of going and pulling them. But it is a vary arcane  
7 system. Our law library, for example, supplements as it goes  
8 along, and most law librarians would do that. So I won't say that  
9 they are behind. I think they never envisioned publishing annual  
10 versions of any title of DCMR. In fact, the total amount of  
11 amendments in your volume is not that substantial, except for the  
12 fact that now there is new chapters 30 and 33 --

13 MS. KRESS: 30 and 31.

14 MR. BERGSTEIN: 30 and 31. So that is -- actually,  
15 30. So that is the first real major change, where other volumes  
16 have had massive publications. So I don't know how they do it --  
17 I can't fairly speak to what the schedule is.

18 CHAIRPERSON REID: Well, it is just --

19 MR. BERGSTEIN: But I know they are going to a  
20 privatization scheme where --

21 CHAIRPERSON REID: Well, it just occurs to me that  
22 the regulations are what we utilize in order to be able to execute  
23 our business here. And as such, I cannot fathom why there is not  
24 a mechanism in place to ensure that we on a continuous basis have  
25 up-to-date regulations. That has been an ongoing problem since we

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1 have been here, and it is rather embarrassing when you have  
2 attorneys and other people coming before us and they quote  
3 regulations that we don't have. And we are vested with the  
4 responsibility to be able to utilize the regulations in order to  
5 be able to -- the basis for a decision that we make here. You  
6 know, so I just would like to make sure that from here out that we  
7 always have an updated version. If it is copying or what-have-  
8 you, there doesn't seem to me to be anything that complicated  
9 about making sure that that is done. I don't know who has ultimate  
10 responsibility, but we should always have updated regulations as  
11 soon as they are promulgated.

12 CHAIRMAN HOOD: Okay. We --

13 MEMBER SOCKWELL: Mr. Chairman --

14 CHAIRMAN HOOD: Let me just say this. I think that  
15 we have expounded enough on that. We won't get them printed here  
16 today. We understand the concerns. So I think, Ms. Kress, you have  
17 heard us loud and clear. You understand our concerns. It looks  
18 bad when lawyers -- and I want to set the example. I am not going  
19 to reiterate. But I hear the comments of Chairperson Reid. So  
20 with that, let's move the agenda.

21 MS. KRESS: All right. We were talking -- I just  
22 wanted to make sure there were no more budget questions. If not,  
23 I am going to move --

24 CHAIRMAN HOOD: Ms. Kress -- are there any more  
25 budget questions. Not Office of Document or printing questions,

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1 but any more budgetary questions. Okay, so we can move the agenda.

2 MS. KRESS: The major item for today is legal  
3 concerns. A lot of -- there is a couple of reasons for this being  
4 a major part of the agenda. Questions have been arising in our  
5 recent meetings at BZA with Board Members, and a lot of these  
6 kinds of issues are issues that really haven't been dealt with  
7 before, and there needs to be a uniform way of dealing with them.

8 Our regulations changed as of October 1 this year. So now there  
9 are new ways, particularly for BZA to be running their meetings  
10 and having party status established.

11 So I have put together a list compiled from  
12 concerns I have heard from Members and Commissioners and the  
13 community, and I have asked Alan to come today prepared to address  
14 these legal concerns as best as can be.

15 CHAIRMAN HOOD: Let me just add -- let me just say  
16 that we want to make sure that we get all the information, but we  
17 want to kind of hold it to a point. Let's kind of be brief. And  
18 then, Board Members and Commissioners, if we write down our  
19 questions at the end, or would you rather take them line item by  
20 line item. I am open for discussion.

21 MS. KRESS: There is a lot of issues here. I think  
22 if you wait until the end on all of them that you might not have  
23 time to ask all the questions. Perhaps if you do them, at least  
24 group them if you are going to hold questions. Because then if we  
25 don't finish them, we can have another meeting and go on to a

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1 different subject rather than holding questions.

2 CHAIRMAN HOOD: Okay, let's do three at a time.  
3 And then we will open it for questions.

4 MR. BERGSTEIN: Okay. And I will try to give you  
5 the bottom line and do a little bit of analysis if you are  
6 interested. And some of the questions I am hoping I gathered what  
7 the issues were, because I really didn't have time to talk to  
8 Jerrily about what all the concerns were, but I think I can guess  
9 most.

10 The first is the District Council's ability to  
11 remove D.C. Government land from zoning. The answer is, yes, they  
12 can. Let me walk you through what has happened here. I gave you  
13 a package, and I hope this will be in order. First you will see a  
14 divider for A which lists that issue. The next is the emergency  
15 legislation, which adds to the list of those District-owned  
16 properties which are not subject to zoning this flea market.

17 The next thing I gave you apart from the vote sheet  
18 is the section that was amended, which is Section 1-250. That  
19 section has a history that you will only understand if you want  
20 to, it is a long history. If you look at a case that I attached,  
21 which is what I will call the Hurt Home Case. The Hurt Home Case  
22 came into effect after the Council in 1990 passed that section  
23 which said all government uses are subject to zoning except  
24 limited grandfathering. And there was a question of whether or  
25 not the Hurt Home, which was in Georgetown and which was owned by

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1 a private music school and was later sold to the District  
2 Government for the care of mentally retarded individuals, was  
3 under that umbrella exemption.

4 The first thing the Court had to decide was was  
5 District properties exempt from zoning period, before you went to  
6 the issue of what the Council did. And the brief excerpt I gave  
7 you, which is this, is Judge Weisberg's trial decision, which the  
8 Court of Appeals agreed to almost completely. And it just simply  
9 says a municipality is not bound by its own zoning laws and  
10 regulations in the exercise of a government function unless the  
11 legislature had manifested a contrary intent. And then they later  
12 go on to expand that fairly broadly.

13 The only issue I see in this case is the fact that  
14 this flea market, unlike the other exemptions -- and by the way,  
15 the other exemptions that were added was the 911 transmitter at  
16 St. East, which I personally wrote, and the Hurt Home. And those  
17 either are functions that are actually carried on by the  
18 government or of a governmental character.

19 This flea market is almost purely proprietary. I  
20 suppose we can go back and try to get the Court of Appeals to  
21 argue perhaps that this flea market use should not be recognized  
22 as a valid exemption from zoning except that like everything else  
23 in the District of Columbia, this is an anomalous situation. In  
24 every other jurisdiction that I could think of, zoning is under  
25 the legislature. And so the conflict between zoning and the

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1 government uses is a conflict between the executive, which is to  
2 do things, and the legislature, which includes the Planning Board  
3 or Zoning Commission, which is to establish regulations.

4 In the District of Columbia, zoning functions were  
5 separated from the Council. But in my view, and I have attached  
6 the charter provisions that deal with zoning and the charter  
7 provisions that deal with the Council, and I could walk you  
8 through them. The Council was intended to have pervasive  
9 legislative authority. And any limitation on that has to be  
10 viewed very, very narrowly. So it has always been the position of  
11 my office, and I think it is a Home Rule issue, that this Zoning  
12 Commission has to be recognized as an aberration to normal Home  
13 Rule principles, where the Council sets zoning issues. And to the  
14 extent that the charter said that this Commission was in charge of  
15 zoning, it did not limit the Council's ability to decide with  
16 respect to the District Government and with respect to uses  
17 permitted on District Government property what zoning should be.  
18 And I think you would have a hard fight going against that notion.

19 This is a limited precedent in that it only says  
20 that the Council can exempt District property from zoning. Not  
21 other uses. I think that any attempt of the Council to exempt  
22 private uses from zoning would be seen as a zoning regulation  
23 conflict with the charter. But with respect to the overriding  
24 plenary authority of the District Council over District Government  
25 issues, I think it has the authority to exempt not only government

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1 property, which is exempt anyway, but even uses permitted on  
2 government property which would not normally be considered  
3 governmental itself. I could see an argument being made to the  
4 contrary I think would raise huge Home Rule concerns in terms of  
5 this Commission and its role in the District Government. So that  
6 is how I see that issue. The bottom line is that the District was  
7 always exempt from zoning. The things that the Congress passed  
8 that dealt with the central business district, the Court of  
9 Appeals said that was Congress saying we want to make sure that  
10 that is exempt. That the appointed Commissioners or Zoning  
11 Commission couldn't change that before Home Rule. But it wasn't  
12 an attempt to say that with respect to everything else in the  
13 District, that wasn't exempt from zoning too if that is what the  
14 Council wanted. And of course what the Council did was they made  
15 an express governmental decision that all government uses are  
16 subject to zoning, except they have crafted limited exceptions,  
17 which is the Hurt Home, the 911 transmitter, all the 1990  
18 grandfathered uses, and now a flea market.

19 This is emergency legislation. It is coming up as  
20 permanent. I think that there are important policy questions as  
21 to whether or not the Council should do this. And perhaps the  
22 Zoning Commission may want to suggest that in its comments on the  
23 permanent legislation. But I think the legal issue is, at least  
24 with respect to District property, that is cut and dry. All  
25 District property can be exempted. The Council chose not to, but

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1 that is its call. So that is where I am.

2 MEMBER SOCKWELL: May I just follow that thinking?

3 CHAIRMAN HOOD: Let me just say, I think we are  
4 going to do them in three's.

5 MS. KRESS: Maybe in this one on two, since these  
6 two issues are very closely related.

7 CHAIRMAN HOOD: Okay, in two's. Mr. Sockwell, if  
8 you don't mind. Because we are going to lose some folks in a  
9 little while, and we want to kind of keep it down to a point. But  
10 we want to make sure -- hopefully, I would hope to finish the  
11 whole agenda. So if we could maybe discuss the next one. Just  
12 write your questions down and discover the next one. And then we  
13 will stop and go back.

14 MR. BERGSTEIN: Okay. And if you will quickly just  
15 go through the pages so I can just quickly tell you why I put them  
16 there and later at your leisure, you can go back. The first thing  
17 I gave you is the Zoning Commission as it is stated in the  
18 charter. And the reason I put it there is this is the stuff that  
19 is untouchable. There is a lot of stuff in the D.C. Code that  
20 wasn't put in the charter. And I just wanted to give you this so  
21 that you know what it is that is in the charter. And I put a  
22 little bracket and asterisk on the second page, which is the key  
23 provision here that says the Zoning Commission shall exercise all  
24 powers and perform all duties in respect to zoning in the District  
25 as provided by law. And that is the real -- that was pages of

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1 Congressional debate.

2 The next thing I gave you is the charter provisions  
3 involving the Council, and the legislative power one is the one  
4 that I was going to point out to you as indicating how broad the  
5 Council's power post-Home Rule was intended to be.

6 And then that follows the limitations on the  
7 Council. And I put in there just to indicate that nowhere in  
8 there is a mention of the Zoning Commission, which is an argument  
9 that is always made with respect to what the real relationship is.

10 Okay, finally, if you go to B on the solid waste  
11 transfer issue. I believe everything I said about the Council's  
12 authority stands for the proposition that the Council with respect  
13 to its police powers can do anything it wants, even if it sounds  
14 like zoning. And I think the issue we are talking about here is  
15 the 300-foot setback in the zoning regs and the 500-foot setback  
16 in the solid waste permit act amendment.

17 Notwithstanding that, even Congress at the time  
18 when it passed the 1938 Act made it clear that the zoning  
19 requirements are minimum requirements or minimum standards. And  
20 that any agency in the District of Columbia can make more  
21 stringent standards. And what I am pointing out to you is Section  
22 5-42A of the Code, which as part of the Zoning Act of 1938. I  
23 bracketed the relevant language. And what it says is whenever a  
24 provision of any other statute or municipal regulations require a  
25 greater width or size of yards, courts or other open spaces or

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1 requires a lower height of building or a smaller number of stories  
2 or requires a greater percentage of lot unoccupied, which is the  
3 500 foot, or imposing other higher standards than are required by  
4 the regulations under the Zoning Act, the provisions of such other  
5 statute shall govern.

6 The bottom line here is the 500-foot setback was a  
7 valid exercise of the Council's police power. It comes right  
8 within the requirement. They can go more stringent than the zoning  
9 regulations and that is what they did and that is what they can  
10 do.

11 CHAIRMAN HOOD: Okay. Let's start with Mr.  
12 Sockwell. I think you had a question.

13 MEMBER SOCKWELL: No, actually it wasn't exactly a  
14 question. I just wanted to state with regard to the flea market  
15 issue, since the uses proposed is not one that either replace or  
16 subvert the principle use of the land, perhaps that gives some  
17 support to the Council's position on it. The principle use of the  
18 land would be intact. The one-day flea market is really just an  
19 overlay of a secondary use, not in fact affecting the primary use.  
20 And maybe therefore it could be considered inconsequential.

21 MR. BERGSTEIN: Well, I don't know because then you  
22 --

23 MEMBER SOCKWELL: But I am not sure of that.

24 MR. BERGSTEIN: Every private person saying that  
25 they could run a flea market on Sunday in the parking lot of an

1 office building. I mean --

2 MEMBER SOCKWELL: Yes, but that office building  
3 wouldn't be a public building under ownership of the District of  
4 Columbia Government.

5 MR. BERGSTEIN: Right. But the precedent -- the  
6 sort of logic you are arguing is more of a zoning overlay concept,  
7 almost like an accessory use or a minimal use that doesn't --

8 MEMBER SOCKWELL: Exactly.

9 MR. BERGSTEIN: -- invite the true enforcement of  
10 the zoning regulations. And the problem is that that argument  
11 could be used by anyone who is subject to zoning. There is almost  
12 like -- just like we have the 2 percentage of variance in area.  
13 They might -- what you are saying is this is a somewhat diminimus  
14 use variance. That if what you are doing on one day of the week  
15 for a small period of time which is not inconsistent with your use  
16 of the area might come within a diminimus use and therefore won't  
17 require a use variance.

18 MEMBER SOCKWELL: Actually, within the building  
19 code, there is a section with regard to principle use of a piece  
20 of property and that which determines its construction type, which  
21 would be at 10 percent. 10 percent is the point of break-off.

22 CHAIRMAN HOOD: Okay, any other questions,  
23 colleagues, on the first two? Okay. If not --

24 CHAIRPERSON REID: Oh, no. I did.

25 CHAIRMAN HOOD: Ms. Reid?

1 CHAIRPERSON REID: When we were discussing this  
2 previously, I was somewhat confused because my understanding of  
3 the regulations in regard to property that -- unzoned property in  
4 the District of Columbia pertaining to that property which was  
5 government-owned or owned by the District that was for public use  
6 by the District Government. And this appeared to me to be  
7 contrary to that particular stipulation in the regulation that  
8 this was a government-owned property that in effect was being put  
9 to private use.

10 MR. BERGSTEIN: I think I read the Court of Appeals  
11 decision as very broad that if it is government-owned property, in  
12 essence they could lease the property to a private use and still  
13 would not be subject to zoning. Now that is the line where we  
14 could have a debate. But my problem is that those normal concepts  
15 don't play into the scenario where the Council has spoken. Like I  
16 said, normally, a Council would pass zoning regulations and then  
17 the executive would try to say what doesn't apply to it. Here you  
18 have the Zoning Commission that is passing zoning regulations and  
19 the Council is saying, we say that this use on our property isn't  
20 subject to zoning. And because the Council has what I consider to  
21 be very plenary, broad authority, that its express exemption in  
22 relationship to how its property is used may even make irrelevant  
23 normal zoning principles like applicability. And that is what the  
24 fight would be. I suppose people could -- there is some courts  
25 that have said -- that have used eminent domain principles that

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1 say since a municipality has eminent domain, it can exempt itself  
2 from zoning completely, for whatever use, as long as it is its  
3 property. There are other courts that have said if it is  
4 performing a proprietary function, then it can't be exempted with  
5 respect to that. I read this Court of Appeals case as being very  
6 broad and applying to all District Property. The Hurt Home was  
7 something that was operated by the District. And I suppose that  
8 the Commission could try to come back to the Court of Appeals and  
9 say let's examine this fact pattern. But then I think that the  
10 argument that will be made is that the Council's express provision  
11 is not a zoning regulation. It is something much more than that.

12 And it is an expression of its legislative authority that was  
13 given to it in Home Rule and then it wins -- it just wins for no  
14 other reason than it said it.

15 CHAIRMAN HOOD: I just have a very quick question  
16 and this should be a straight answer. 500 or 300? When it comes  
17 in front of the BZA, which one do they go by?

18 MR. BERGSTEIN: 300. 300. Because you are not  
19 looking at -- you are not looking at licensing schemes. There are  
20 many, many uses that come before the BZA that have licensing  
21 schemes. And that may be facially in violation of the licensing  
22 requirements. But that is not your problem. You are only looking  
23 at zoning uses and zoning requirements, and that is all you are  
24 looking at. And there may be instances -- well, I won't go there.

25 CHAIRMAN HOOD: Okay.

1 MR. BERGSTEIN: But that is the bottom line. You  
2 are only looking at zoning -- in this case what happened was I  
3 think the presumption was that once the Zoning Commission spoke on  
4 the setback, that would be it. And what happened here was that the  
5 Council one-upped you. And normally you don't have -- I can't  
6 think of any instance where you have two zoning-like requirements  
7 that apply to the same issues. Because like for example with ABC  
8 Board, you don't get into setback issues. The ABC Board gets into  
9 that. But you could have some scenario where the Zoning Commission  
10 could impose a setback on liquor establishments, and the ABC --  
11 and basically whoever does the most stringent, I think, would  
12 probably win.

13 CHAIRMAN HOOD: Okay. We have one or two more  
14 questions and then we are going to move the agenda. Commissioner  
15 Holman?

16 COMMISSIONER HOLMAN: So in other words, if we know  
17 that something that the applicant is proposing is against some  
18 other regulation of the District Government, that is not something  
19 we should pursue? We should just let it go and hope that the  
20 appropriate body will take it up in due course?

21 MR. BERGSTEIN: I think so because you end up with  
22 a lose/lose situation. Historically in the District, the first  
23 question that the licensing people ask is do you have a C of O.  
24 If we said do you have a license and they said do you have a C of  
25 O, no one is going to go nowhere. And it is not written anywhere,

1 but that is the way it is done. Somebody has got to go first.  
2 And you can make your order. It is implicit -- there is case law  
3 that says when you have land, there are multiple permissions you  
4 must seek. And there was a billboard case where it was in  
5 violation of one but not in violation of the other. They gave them  
6 the first license and they argued, ahhh, it is waived. You can't  
7 not -- you have to give us the other license. And what the Court  
8 said is you have multiple permissions. They are mutually  
9 exclusive. One doesn't waive the other. You get them in the order  
10 presented and you can get under -- you can get one permission  
11 under one scenario, and you go to the next step and you are just  
12 dead.

13 COMMISSIONER HOLMAN: Okay.

14 CHAIRMAN HOOD: Any further questions? If not, we  
15 will move the agenda to the next two.

16 MR. BERGSTEIN: Okay. The next is timeliness,  
17 which is C. And don't look at it yet -- well, actually you can.  
18 This is your regulation, which is very unusual for an appellate  
19 body. Most appellate bodies, there is a firm time frame between  
20 when something happens and time for which you must appeal. Yours  
21 does not. In civil infractions there is actually automatically  
22 built-in a 15-day appeal. But for the BZA statute, there is not.

23 And your regulations just say it has to be timely. And that has  
24 been interpreted many ways with many different numbers and many  
25 different things triggering that. But the idea is that unlike the

1 normal scenario where you get a final decision and the parties say  
2 I got it and now I know I've got a certain period of time to do  
3 something, with permits and administrative decisions, they may not  
4 know. It may not be posted or the construction may not have begun  
5 or whatever. So there is no firm event in your appellate  
6 jurisdiction that really defines when a person has to absolutely  
7 do something.

8           And so there is two mushy things. That is the best  
9 way I could put it. The first thing is what starts the appeal  
10 period and what is it? And you don't really have either because  
11 it can be when you first see construction or it can be when you  
12 first see the postings or when you should have known something was  
13 going on. What I have done to give you an example of what you  
14 could do but not what you have to do is I have changed the section  
15 for appeal, which is 3112 to I have put a little blank for you to  
16 come up with a certain number of days, which I would recommend to  
17 be very short because once a person gets a permit to construct,  
18 they usually do it very, very quickly. And because you don't have  
19 a firm period of time, the Court of Appeals has taken up the  
20 issue, not just of how reasonable the time period was to appeal,  
21 but whether or not notwithstanding the reasonableness of it, the  
22 person has been guilty of laches. Which means the homeowner has  
23 undertaken such actions as to be so prejudicial to the homeowner  
24 or the property owner that the period of time the person waited  
25 was just too long. Even if it would be reasonable for an appeal.

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1 And I realize that is hard to grasp, but that is what they have  
2 said. But because you are dealing with things that permit  
3 something else to happen ordinarily, if you do construct a firm  
4 period, it should be short enough so that the property owner isn't  
5 prejudiced. But that is based upon the fact that a person has firm  
6 knowledge or should have had firm knowledge that they need to do  
7 something quick. And then the question is how long would you  
8 normally expect the person to do something. So that is why I  
9 changed it or suggested changing it to may file an appeal no later  
10 than blank days after the person knew or should have known of the  
11 order, the requirement, the decision, the determination or  
12 refusal. That is the way that you could build in a firm deadline  
13 and as firm an event as you are going to get. Because it could  
14 change by the thing we are talking about, the order, the  
15 requirement, the refusal to enforce.

16 We have something now where I know someone is  
17 thinking about appealing Yale Laundry, which is based upon a  
18 waiver of a housing requirement that took place a year ago. But  
19 they didn't know that the Zoning Administrator had signed his  
20 initial on the bottom of the request from a law firm asking for an  
21 interpretation. So when was it reasonable -- I don't want to get  
22 into specifics, but that is an example.

23 MS. KRESS: That happened to be on our agenda.

24 MR. BERGSTEIN: All right. Well, there you go. But  
25 that is -- the other thing I would say -- and I didn't put it in

1 here -- is that I think you need to make clear that while you  
2 encourage aggrieved persons to talk with the property owner, that  
3 that doesn't toll the period. Because what happens in many of  
4 these appeals is that the parties engage in dialogue or the people  
5 start talking to the Zoning Administrator, they start talking to  
6 the Council, and they think as long as they are doing something,  
7 it stays to appear that they have to do something for you.  
8 Meanwhile, the property owner is building their house and then  
9 they say, hey, you waited too long. So even though you would  
10 normally want to encourage people to work things out, the nature  
11 of what is being appealed from is such that you can't really allow  
12 that to stay it. If you decide to do something, it has got to be  
13 hard and fast in terms of the time. Or else you are going to  
14 invite so many of these appeals. So that is just a suggestion I  
15 have, and it is probably worth an afternoon of conversation  
16 frankly.

17 CHAIRMAN HOOD: Okay.

18 MS. KRESS: I would just like to add that this will  
19 be on the list of regulations that -- in fact Alan and I have been  
20 working for months on miscellaneous items that we need to change  
21 in our rules and regulations, and we will be doing that over the  
22 next couple of months and then bringing it forward to everyone  
23 here and for public hearing. So this will be followed up on.

24 CHAIRMAN HOOD: Okay. We have one more item before  
25 we take questions.

1 MR. BERGSTEIN: Oh, good, site visit. Is that what  
2 it is? I am sorry, no. It is the effect of the --

3 CHAIRMAN HOOD: It is limitation on site visits.

4 MR. BERGSTEIN: Limitation on site visits. Marie  
5 prepared a short summary, and the answer is you really shouldn't  
6 by yourself. And actually I was looking at -- and we will get to  
7 this later -- I was looking at the D.C. Administrative Procedures  
8 Act, and I guess I lost my place. Oh, here it is. And I just  
9 want to read this, because this really explains what the problem  
10 is. "The testimony exhibits together with all papers and requests  
11 filed in a proceeding and all material facts not appearing in  
12 evidence but with respect to which official notice is taken shall  
13 constitute the exclusive record of the order or decision. No  
14 sanctions shall be imposed or rule or order or decision be issued  
15 except upon consideration of such exclusive record or lesser  
16 portions thereof as may be agreed to by the parties in such case."

17 That is all it is saying. That when you bang the  
18 gavel and you start a hearing, that is the record. And the parties  
19 should be able to expect that is all you are looking at. And if  
20 you go out on your own and take a look at the property and in your  
21 vote you don't articulate it, but you say, boy, they were right,  
22 that thing just doesn't fit in, and you don't share that, you are  
23 violating that rule and the expectation of the parties that you  
24 are going to do stuff on the record.

25 You can do site visits. I actually did a site visit

1 when I was involved in a default termination of Union Station. I  
2 called up my co-council to remember what happened. But we all  
3 went down there with the judges and we had a tour. We actually  
4 wrote out what we were going to look at and we designated one  
5 person who was going to be our spokesman. And as it got to each  
6 point of the tour, they would say what it is that we wanted the  
7 judges to look at, and then they would respond to the judges, and  
8 that was it. The lawyers just shut up. And that was how it was  
9 accomplished. But I think what Marie wrote and what the APA says  
10 that you've got to respect the notion of the record, that is the  
11 inherent due process in a contested case proceeding. And that is  
12 why unilateral site visits are discouraged. And of course, you may  
13 be riding by and see something and stuff that may strike you. And  
14 if you think it is significant enough, the thing to do is to share  
15 it. It is not going to ruin the hearing, but you can say I went by  
16 the other day -- I didn't mean to, but I just happened to notice  
17 how grotesque it was or whatever. I don't know, or whatever. But  
18 it may come up, and that doesn't make it reversible error. It  
19 means that it is something that you saw that was significant and  
20 you want to share it, and then you give the parties an opportunity  
21 to comment on it. Oh, you didn't see it in the right light. Oh,  
22 we were just there with the scaffolding that day and that is down  
23 now, or whatever. But it is a matter of everybody has to know what  
24 you are making the decision on, and that is what is being taken  
25 down and put in in your record, and that is the way contested

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1 cases work.

2 CHAIRMAN HOOD: Okay. We have finished the next  
3 two. So any questions, colleagues? Mr. Parsons and then  
4 Commissioner Holman.

5 COMMISSIONER PARSONS: Well, being the subject of a  
6 lawsuit some 15 years ago on this issue, I want to caution  
7 everybody. I specifically went to a site in a BZA case and  
8 mentioned that during the decision meeting, using what I had  
9 learned that morning to convince my colleagues that this was a bad  
10 idea. I subsequently was sued and turned around. So, Alan, I  
11 would only suggest that if you are going to make a drive-by and  
12 accidentally see something, you should do that before the hearing  
13 and bring it up at the hearing, which was my mistake to do that at  
14 a decision meeting after the record was closed.

15 MR. BERGSTEIN: Not so much an accidental drive-by,  
16 where it is in your neighborhood or you went shopping or you saw  
17 it and whatever it was, curiosity just killed you and you just  
18 turned and the stoplight was over and you just couldn't ignore it.  
19 I mean, we are human beings. And I think if it really affected  
20 you, you might want to say something. But if you pass it every  
21 day, you just pass it every day. And that is just the nature of  
22 the beast. But it is --

23 COMMISSIONER PARSONS: What I mean is -- I think  
24 you are missing my point. I am not making myself clear. You said  
25 bring it up and let the parties respond to that.

1 MR. BERGSTEIN: I meant before the decision, yes.

2 COMMISSIONER PARSONS: Yes.

3 MR. BERGSTEIN: Yes, absolutely.

4 COMMISSIONER PARSONS: Okay.

5 MR. BERGSTEIN: Oh, absolutely. That is what I  
6 meant.

7 COMMISSIONER PARSONS: I didn't think you were  
8 agreeing with me. Okay, I am sorry.

9 MR. BERGSTEIN: Okay. My apologies.

10 COMMISSIONER PARSONS: That is all right.

11 COMMISSIONER HOLMAN: Here is the other side of  
12 that. And I have heard this -- I may even have heard it up here.  
13 Oh, I have lived in that area for 20 years, and I know that that  
14 clock faces south. That is kind of like judicial notice. That is  
15 probably not a good thing to do either or is it?

16 MR. BERGSTEIN: I think you can say what your  
17 assumption is and give the parties the opportunity to persuade you  
18 otherwise.

19 COMMISSIONER HOLMAN: But it sounds like the best  
20 thing is to just pretend like you are dumb and ignorant and never  
21 lived in the District of Columbia.

22 MR. BERGSTEIN: Well, I mean I have heard perfectly  
23 valid discussions where people will say what their perceptions  
24 were of something. You know -- that is a hard question. I think  
25 that the fact that the BZA and the Zoning Commission is a Board

1 that is predicated upon experience and observation. And I think  
2 you all wouldn't be doing your job if you hadn't had experience in  
3 the District and in communities and have a sense of how  
4 communities work. And I think you might consider it sort of  
5 background knowledge that allows you then to make the specific  
6 findings that you have to make. So I think no one is asking you to  
7 forget the reason why you are on the Board or Commission in the  
8 first place.

9 CHAIRPERSON REID: Yes. I think it is important to  
10 distinguish between the two by virtue of the fact that many of us  
11 are D.C. residents and only because of the fact that we live in  
12 the District it is part and parcel of what we bring to the Board,  
13 the experience and the knowledge and the information we have about  
14 the city in general. And I think that that is a little different  
15 from when you specifically go to a site to see it and then you  
16 come on the record and make a statement that you went to a site  
17 that was germane to a particular case. But I don't think that we  
18 want to limit Board Members from being able to interject within  
19 the conversation the fact that they have some knowledge or they  
20 are familiar with the particular site.

21 CHAIRMAN HOOD: Okay, good. Commissioner Mitten,  
22 we will take one or two, and then we are going to move.

23 VICE CHAIRMAN MITTEN: This has to do with the  
24 timeliness of appeals -- that point. Alan, you had said that  
25 something is up and people know they need to do something and they

1 may be in conversations with the property owner or whatever about  
2 resolving their issues or whatever it is. But at the same time,  
3 they shouldn't delay in taking the action. Is there any way for  
4 us to facilitate people knowing what the action should be? So,  
5 for instance, in a hypothetical situation where somebody was  
6 talking to DCRA about a building permit, they might be thinking,  
7 well, I am talking to the people that I would make an appeal to  
8 because I am talking about a building permit, when in fact what  
9 appeal they need to make is really a zoning thing, but they don't  
10 know that. So how can you introduce this sort of -- the aspect of  
11 knowledge of the appropriate venue to be appealing in?

12 MR. BERGSTEIN: I am not sure I understand. The  
13 kind of appeals we are talking about generally speaking are  
14 appeals that get triggered by something that should be obvious --  
15 the posting of a permit, the beginning of construction.

16 VICE CHAIRMAN MITTEN: Right.

17 MR. BERGSTEIN: And at that point, what they really  
18 need to do -- and you are probably going to get a lot of  
19 protective appeals. That is the best way I can call it. But what  
20 they really need to do is file an appeal and investigate as  
21 quickly as they can. But if they are up against the 30th day --  
22 it happens all the time in the government, where you know  
23 something stinks, so you file a protective appeal. And in good  
24 faith say I think it was issued in error. But it is better to do  
25 that so that the property owner can make a choice or can make a

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1 decision. Do I continue with this construction or not? The  
2 problem is if they wait too long and investigate too much, you are  
3 past the point of no return for the property owner and the  
4 prejudice is all on the property owner and not on the aggrieved  
5 person anymore. So the idea is that in most instances, the thing  
6 that people need to be educated on with this rule is that if a  
7 building permit goes up and you suspect that it may be -- what is  
8 stated on the building permit is wrong or you see construction  
9 going up without a building permit and want to find out if a  
10 building permit was issued, then that is something you need to do  
11 expeditiously. Because at that point, you knew or should have  
12 known that something had happened.

13 VICE CHAIRMAN MITTEN: Okay. I guess my point is  
14 that the -- the venue for permits is DCRA. And how can we get  
15 people sensitized when they are over at DCRA that, hey, you really  
16 need to be making an appeal about zoning. How can we get the  
17 message out? That is my -- how can we improve people's level of  
18 knowledge about where they are supposed to be making these timely  
19 appeals?

20 MS. KRESS: I would like to answer that. We are  
21 meeting on a regular basis with DCRA and Armando Lorenzo and the  
22 Zoning Administrator. We have just started those meetings. I  
23 think that is the perfect place to bring this kind of thing up and  
24 to ask that they be more forthcoming than perhaps they have in the  
25 past in telling people the venues, be it civil infractions, coming

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1 to BZA. And also I think as part of our outreach and meeting with  
2 the community, we should also be pointing that out to the  
3 community as well.

4 VICE CHAIRMAN MITTEN: I mean, it puts DCRA in an  
5 interesting position, which is, oh, if you disagree with me or you  
6 think you might, go file an appeal. They are not indifferent to  
7 that. So I would encourage you to press the point with them.

8 MR. BERGSTEIN: But it is not unusual for the  
9 District Government to be helpful in that. Our office, for  
10 example, has a number if you want to sue, and it tells you exactly  
11 how to sue. Because that is the only -- we do. And I will give you  
12 that number, Ms. Mitten, if you like. But because we have a  
13 claims process and a settlement process. But it is not unusual to  
14 do that. And that is why every final decision tells people their  
15 appeals rights. And in essence, because we don't have those type  
16 of final decisions, we have something more ad hoc than that, it  
17 wouldn't be that inappropriate for the building permits office to  
18 say if you are inquiring about a building permit, please be  
19 advised that if you disagree with the permit that was issued, you  
20 must do this. I think that is just the way it has to be.

21 MEMBER SOCKWELL: I think one of the problems that  
22 we have, if I may state this, is that for -- and I am glad that  
23 Ms. Mitten brought this up. It is that if we are dealing with an  
24 issue where there is say something being built, certainly a  
25 building permit gets issued by DCRA. And in the scheme of Eveready

1 Bunnies, the thing just keeps growing and growing and growing.  
2 Well, you don't know that it is an elephant until it has become  
3 much larger than that bunny rabbit that it was supposed to be. So  
4 at that point, that is when people get sensitized and that is when  
5 they begin to organize to appeal. So they become sensitized, they  
6 organize and they appeal. Or they become sensitized, they appeal.

7 And it is very difficult to make that determination as to when it  
8 is not timely. It may not be timely in the estimation of the  
9 person growing the elephant. But it is certainly timely in the  
10 estimation of the person who realized it was going to be an  
11 elephant once it had more than just legs on it. So it is a  
12 circumstance that is very difficult to tie down. I think we may  
13 have to -- if we codify it, we may have to put it into a couple of  
14 categories. The known category of a decision having been made  
15 against an individual by an agency, and then there is a time frame  
16 from the date of that decision being either handed down verbally  
17 or in writing or in some way that it is documented.

18 And on the second case, if timeliness means what  
19 was a reasonable period of time from the point of having been  
20 sensitized or realization, then that is a much greyer area. But  
21 we can see it. If people don't know something is wrong until it  
22 begins to look wrong -- they know something is happening, but they  
23 don't know it is wrong until it begins to look wrong. And that is  
24 very difficult to put into firm language.

25 MR. BERGSTEIN: But you are going to have to

1 distinguish between the situation where someone is building  
2 something in accordance with a legal permit and building something  
3 illegal in accordance with a lawful permit. And the latter  
4 situation is not something that BZA would take as an appeal.  
5 Although arguably if DCRA refused to enforce, they could appeal  
6 that to you. But the normal appeal goes to the legality of the  
7 permit, and I thought that when someone applies for a permit, they  
8 have to have plans with the permit. So that a person could  
9 investigate and see the plans and find out that what is being  
10 proposed is an elephant, but that does place a large burden. The  
11 other choice is to say, as you are suggesting, to have a should-  
12 have-known category that includes when you first became aware of  
13 the illegality. But then you are really going to get into some  
14 metaphysics trying to figure that out.

15 CHAIRMAN HOOD: Okay, Ms. Renshaw?

16 MEMBER RENSHAW: Yes, Mr. Hood. I just wanted to  
17 point out that we cannot handicap the neighborhoods to a great  
18 degree. Because the people do not understand how this works.  
19 Sometimes you have to get an appointment to the BZA or the Zoning  
20 Commission to figure this out. But we are dealing with people who  
21 cannot understand where to go to get information. And when we  
22 talk about DCRA, we are talking about an agency that does not  
23 answer the telephone, is very lax on any kind of enforcement  
24 procedures, even if you get someone on the phone and say I think  
25 that there is something wrong. These are people -- neighborhoods

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1 are full of homeowners who try but get so discouraged when they  
2 cannot get a reaction out of the District Government. So if they  
3 come here and appeal to us, we have to be careful not to penalize  
4 the homeowner to such a degree that they go off and say, it  
5 doesn't work, it never can work, it is hopeless. And up to the  
6 time you change your regulation and make it hard and fast how you  
7 are going to operate and get it out to the communities, there has  
8 to be some leeway.

9 CHAIRMAN HOOD: Any other questions on that? If  
10 not, let's -- colleagues, let's look at the clock and let's set a  
11 goal as to what time we all want to be out of here. The only  
12 thing -- I heard someone say now. But I mean let's be truthful.

13 MEMBER SOCKWELL: Is 8:00 okay with you?

14 CHAIRMAN HOOD: Mr. Parsons has to leave at 4:00.  
15 Let's get through this as quickly as possible. My goal is 4:30,  
16 if not sooner. Okay, so let's proceed.

17 MR. BASTIDA: Do you want me to start the clock?

18 MR. BERGSTEIN: The next one is the Sunshine Act.  
19 What I have done is attach the decision, which is Dupont Circle  
20 versus BZA. And what it says is the Sunshine Act does not apply  
21 to the BZA's deliberations. If it were interpreted that way, it  
22 would probably be unconstitutional. That when the BZA statute  
23 says the meetings are open, they mean voting meetings or decision  
24 meetings -- I mean, I am sorry, the hearings. The hearings take  
25 place. They do not mean meetings where things are decided. It is

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1 our office's position that you should still vote in public. And  
2 actually it is your decision whether or not you want to deliberate  
3 in public. The only question is whether or not you have the right  
4 to deliberate like a jury in private without pressure so you can  
5 have frank discussions. The Court of Appeals says that is what  
6 its expectation is. And that is what the case says. It is up to  
7 you. I was almost going to read it out loud because it is so well  
8 written. But I invite you to read it, because it says that the  
9 Sunshine Act is not applicable to you in your deliberations.

10 COMMISSIONER FRANKLIN: The Zoning Commission as  
11 well as BZA?

12 MR. BERGSTEIN: Yes.

13 MS. KRESS: However, as you realize, the community  
14 does not believe that. And there is a certain expectation from  
15 the community about how meetings are held and deliberations are  
16 made. I just wanted you to hear the legal point of view, where it  
17 comes from, and how it comes.

18 CHAIRMAN HOOD: Let me just say we want to make  
19 sure we stay -- we are going to do two items and then we ask  
20 questions. Unless -- I will yield that to Mr. Parsons, who has to  
21 leave at 4:00. And that is the Chair's discretion.

22 COMMISSIONER PARSONS: One would certainly object  
23 to any discussions that involve decisions in private preliminary  
24 discussions or executive sessions to only the most complex issues  
25 that would require Alan's advice.

1 CHAIRMAN HOOD: Okay, go ahead.

2 CHAIRPERSON REID: I was going to say that given  
3 the objections that we have heard from the community and also the  
4 recommendation by Alan, we had decided pretty much for the BZA  
5 that we would do just that, Mr. Parsons. Try to have executive  
6 sessions to discuss the most complicated cases in part, and then  
7 once we kind of got our arms around it somewhat, then to come out  
8 on the dias and then to further discuss and to give a decision.  
9 So kind of like a hybrid between the two. Not all outside of the  
10 hearing room, but at the same time to be able to discuss  
11 partially. And all of the ones that are not complicated, we  
12 always still do right here on the dias.

13 CHAIRMAN HOOD: Okay, let's move --

14 MS. KRESS: I just think this a very critical issue  
15 that everybody is dealing with all the same way. The other  
16 additional piece is that people don't really state where they  
17 stand in the executive session. That is stated only out here for  
18 the first time. I am not telling you what to do. That is my  
19 understanding of how we are working now, and I just want to make  
20 sure that everybody is on the same page. Only the most complex  
21 issues, and then each person's individual perspective on what  
22 their vote is going to be is ont stated. But it is stated out here  
23 on the podium with the discussion. Am I hearing the right thing  
24 and are we all in agreement?

25 COMMISSIONER FRANKLIN: I'm not in agreement. I am

1 sorry. Sometimes -- well, the fact that we are all on a panel and  
2 deciding something together means there should be a certain amount  
3 of deliberation and give and take. And it may be very helpful to  
4 know where everyone is coming from before you take the vote. I  
5 agree with Chairman Reid that a hybrid process is the best.  
6 Because to some degree, a lot of people don't understand the  
7 extent to which these issues are very complicated. And to hear a  
8 lot of debate that doesn't seem to be resolved and then have  
9 people vote, that doesn't seem to be responsive to the kind of  
10 reasoning that has been expressed back and forth. That can be  
11 just as damaging as appearing to be secretive. So I think on a  
12 very complex case, I would like to know before we go out where  
13 people are coming from. And then sometimes those votes might  
14 shift. I mean, it happens all the time in courts of law.

15 MS. KRESS: I don't have a stand. I just wanted to  
16 make sure that everyone was discussing this. Because I get asked  
17 how things are happening and how they are supposed to happen. And  
18 to me, this is a decision made by you all.

19 COMMISSIONER FRANKLIN: Well, it should be within  
20 the discretion of the chair of each commission as to how that  
21 should be handled. That is my thought.

22 CHAIRMAN HOOD: Let me just say for the record that  
23 since these issues are so involved and we do need to discuss them,  
24 we are going to now change it to one item at a time. But I would  
25 ask each commissioner to just ask the question or make the comment

1 and let's keep proceeding. Commissioner Mitten and then I saw  
2 Chairperson Reid and then Commissioner Holman.

3 VICE CHAIRMAN MITTEN: I have a procedural  
4 question, and Mr. Franklin just sort of touched on it. And I just  
5 want to be sure what the proper procedure is. Is it the  
6 discretion of the chair about whether or not you go into executive  
7 session, or is that a vote of the body to decide? So do the  
8 individual members have a say about whether they want to go into  
9 executive session or not?

10 MS. KRESS: Do you want to make the --

11 MR. BERGSTEIN: I was going to look at the  
12 responsibilities of the presiding officer. I don't know if it is  
13 delineated specifically in the Zoning Commission. I don't think  
14 it is there. And because it is not there, my sense is that if a  
15 member asked to go into executive session, I think it is something  
16 you might have to vote on.

17 COMMISSIONER FRANKLIN: I would agree with that. I  
18 may have misspoke. Actually, I think frankly this would be useful  
19 to discuss in each commission and board separately in executive  
20 session.

21 MR. BERGSTEIN: I think the best thing is to avoid  
22 leaving in the middle of something. I mean, if you are going to do  
23 anything, the executive session should be institutionalized where  
24 you know you have a large case. Because the worst thing you can  
25 do is be in the room and the meeting is delayed and then everybody

1 knows what is going on. So I think that if you have a major PUD  
2 coming up, leave some time for yourself. And that may be the  
3 discretion of the chair, at least in setting an executive session  
4 with ample time to do that and polling the members and saying this  
5 is what I would like to do. Or any member could ask the chair,  
6 could we set something up a little bit before. But I think if  
7 there are -- and if I know there is a big issue coming up, as we  
8 did with that BZA case where I knew there was going to be a  
9 timeliness issue that afternoon and I wanted to give you the  
10 heads-up so you would all at least think about how you wanted to  
11 react to that. I think you just need to build that in on the big  
12 cases, and not invite the perception that you are doing something  
13 behind closed doors.

14 COMMISSIONER FRANKLIN: Alan, if I can remind you,  
15 you have advised us in the past -- and I know, Mr. Chairman, you  
16 don't want to prolong this. But there may be things said in that  
17 decision meeting, as somebody expressing the reasons for their  
18 vote, which does not get reflected in the written order and  
19 decision. And if I recollect your advice to us before, it was to  
20 say as little as possible in those decision sessions to avoid that  
21 kind of problem.

22 MR. BERGSTEIN: Well, it is not -- I would say I  
23 think what I have talked about is legal issues. Where you are  
24 talking -- not the planning issues that I think you do very well.  
25 But where you have complex issues like latches, I do believe the

1 less said the better. That is something we can fill in for you.  
2 But I don't want anything I have said to be treated as saying you  
3 shouldn't have a full discussion of the issues that you feel  
4 comfortable with. And the fact is that as long as -- and this is  
5 a matter of some controversy -- but as long as you sign the final  
6 order, it can state rationales that are substantially different  
7 from your decision meeting. Because the APA doesn't recognize  
8 anything other than the final decision as your decision. There  
9 have been appeals where the Zoning Commission or the BZA has said  
10 totally contrary things to the decision. But there was enough in  
11 the decision that the Court of Appeals could use to find. But  
12 that is the only thing the Court of Appeals is going to look at.  
13 It does not look at your transcript. Because the APA doesn't  
14 recognize oral decision making. The only thing that counts for  
15 the Court of Appeals is your written decision.

16 But in fact what you say -- the one experience we  
17 have had as we have been writing these appeals is that what you do  
18 say is very, very helpful in helping us fashion the appeals. And  
19 there have been instances where not enough has been said, at least  
20 in terms of the underlying planning with a special exception going  
21 through and saying, I think parking is a problem or I think there  
22 is going to be too much traffic. And those are things that I would  
23 invite you to expound upon. But going into latches or going into  
24 estoppel or going into things of that nature is very difficult for  
25 a lay body, and those are things that I think once you are

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1 comfortable with the legal concepts, you let us take the ball and  
2 run with it on the written decision.

3 CHAIRMAN HOOD: Okay, thank you. We are going to  
4 take two more questions. Ms. Reid?

5 CHAIRPERSON REID: A follow-up on what Alan is  
6 saying. In the executive session, rather than getting into a  
7 discussion per se on the vote, we talk instead about the -- we go  
8 in for the purpose of assessing the issues and to get  
9 clarification as to the legal ramifications of what we are doing  
10 both legally and procedurally to make sure that we are conducting  
11 ourselves in a proper manner. And then once we have done that to  
12 kind of create some type of framework -- and this is only in the  
13 most complicated cases where you have a lot of legal issues --  
14 then we come to the dias and take the vote and then distend the  
15 reason for which we gave our particular vote. Now it has not --  
16 and correct me if I am wrong -- we have not voted in the executive  
17 session ever, and I don't ever know really where we are going to  
18 go until we get here after we have had our executive session and  
19 we sit down and everyone has had an opportunity to think about it  
20 and then we will determine, based on what they feel is the correct  
21 or whatever they believe their vote should be. They then reveal  
22 that to us. Although we may have some discussion, there is no  
23 vote -- no actual vote. And like you said, the only thing that  
24 really matters is the vote.

25 MR. BERGSTEIN: Well, actually the decision is what

1 really matters. The vote allows the decision, but the decision is  
2 what really matters in terms of the Court of Appeals. The Court  
3 of Appeals isn't going to look at your transcript to see what you  
4 said.

5 MS. KRESS: The written order.

6 MR. BASTIDA: The written decision is the one that  
7 matters.

8 MR. BERGSTEIN: Right. If you made a beautiful oral  
9 --

10 CHAIRPERSON REID: Oh, that is what I mean. The  
11 vote basically reflects your decision.

12 MR. BERGSTEIN: Yes.

13 CHAIRPERSON REID: That is what I am saying. We  
14 are saying the same thing exactly.

15 CHAIRMAN HOOD: Okay. Commissioner Holman? And  
16 then we are going to move on.

17 COMMISSIONER HOLMAN: Okay. And this will be really  
18 quick. This is just an observation. I just think two phrases that  
19 we should try to keep out of our vocabulary goes something like,  
20 as we discussed in the other room, or walking in late -- and that  
21 is not an expression, but walking in late when someone has filed  
22 something -- a new piece of paper. We should try to make it our  
23 business to be here on time so that the meeting starts  
24 approximately when it is supposed to start, so that we keep that  
25 perception down. Because there is that perception that the

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1 business community or the developers, whoever, run us. And so we  
2 should just be sensitive to that, that is all.

3 CHAIRMAN HOOD: Okay. Let's govern ourselves. The  
4 next issue is what, party status?

5 MR. BERGSTEIN: I am going to let Ms. Kress go with  
6 that. I don't have anything in package.

7 MS. KRESS: That is just very simply the regs that  
8 went into effect October 1. One of the things we got caught in  
9 was a case where the case was filed prior to October 1 as far as  
10 whether there was going to be a determined party status through  
11 the procedure of the filing 14 days ahead, or whether it was going  
12 to be done under the old mechanism, which was interviewing and  
13 determining party status regardless of whether a letter was sent.

14 This is just basically for your information. It was the Hilton,  
15 and there was a case made that by the letter of the law, which is  
16 true, prior to October 1st, the way our regs read is if it was  
17 prior to the date, then you went by the old regulations. Or if it  
18 was prior to the formal notice of public hearing. The formal  
19 notice of public hearing turned out to be middle of October. So by  
20 letter of the law, it should have been done under the new  
21 mechanism now for party status. But we have had major discussions  
22 about this, and I think we are in agreement that this is a perfect  
23 time for the Board to waive its rules. And if another one comes up  
24 like that, without setting precedent. Because this is a confined  
25 period of time when this change was happening, and for the things

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1 that get caught in the regulation changes around that period of  
2 time, we feel that it is quite reasonable for the Board to waive  
3 its rules.

4 CHAIRMAN HOOD: Any comments?

5 CHAIRPERSON REID: Clear.

6 CHAIRMAN HOOD: I think it is very clear and  
7 straightforward. Let me see what we are on. I am sharing agendas  
8 with Ms. Reid here.

9 MS. KRESS: Public notice for condominium owners.

10 CHAIRMAN HOOD: Okay.

11 MS. KRESS: This is something that we need a little  
12 bit of discussion on. We are having quite a bit of problems. Did  
13 you have any comments on that?

14 MR. BERGSTEIN: No, except you can do a rule change  
15 if you want to. How about that?

16 MS. KRESS: This came out of the management reform,  
17 as many of you may remember. It was a way for the applicant "to  
18 save a lot of time." Unfortunately what has happened is the  
19 condominium owners, the management company in many cases -- I  
20 should have Sheri speak to this -- who receives the notice does  
21 not get it out to the condominium owners. Do you want to pick up  
22 here?

23 MS. PRUITT: The problem is the way the regs are  
24 written out is if you are in 25 units or larger, you don't have to  
25 notify individual people. But you do have to notify the condo

1 board. The problem is most condo boards -- or the management  
2 companies won't give out the names of those on the condo board --  
3 kind of understandably. So they don't really have a person to  
4 send it to. They may send it to the management company, but then  
5 the company doesn't always get it to the Board of Directors. And  
6 we also hear the argument that the Board of Directors don't always  
7 have the authority then to respond to the overall community. And  
8 the bottom line is a lot of times we have had several cases where  
9 there have been condominiums over 25, and people have come in with  
10 the issue of not getting proper notice. And it is mostly because  
11 it is this sort of snafu in how to identify a person and making  
12 sure once that person is identified, it does get to the condo  
13 owners. And we have had a big problem on almost any project that  
14 is over 25. Invariably, we have someone come up saying they  
15 didn't get noticed or their condo board didn't get noticed or  
16 something. And it has been a big issue for us.

17 CHAIRMAN HOOD: So do we have a -- what is the  
18 remedy?

19 MS. KRESS: We have two remedies right now.  
20 Basically we are telling applicants --

21 MS. PRUITT: To do the old thing.

22 MS. KRESS: To do it the way we did before. And  
23 that is to give us all the names of all the owners of the property  
24 in the condo. So we are giving them advice against what our regs  
25 say. And we are suggesting that they do it by notifying every

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1 single person. I don't know if you all realize. We get the lists  
2 -- it is the obligation of the applicant to give us the list of  
3 everyone within 200 feet, including all of those condominium  
4 owners. We actually do the mailing out, but they give us the list.  
5 So we are causing ourselves more work, but we feel it is worth it.

6 We are asking the applicants to continue doing that, although we  
7 have no legal right to ask them. That is what we are doing. And  
8 this is also on our list for suggestions in the next couple of  
9 months. As we review the regulations, we are going to -- we would  
10 like to suggest to you all that this be reviewed as well. Because  
11 we don't think this was something that was positive or helpful  
12 from a staff point of view.

13 CHAIRMAN HOOD: Any other comments? Okay, so let's  
14 move.

15 CHAIRPERSON REID: Well, I think that just to  
16 simply say that -- I think if that is what solves the problem,  
17 let's do it.

18 CHAIRMAN HOOD: Right. Okay. General consensus.  
19 Let's move up to H, scope of presentation and cross examination.

20 MR. BERGSTEIN: These next three are really I think  
21 all related.

22 CHAIRMAN HOOD: All related? Let's put them  
23 together then.

24 MR. BERGSTEIN: Put them together. Okay. And let  
25 me just give you a background. This is in what I gave you. It is

1 under H, scope of presentation and cross examination. And what I  
2 enclosed was 1-1509, which many of you hear me say over and over  
3 again, 1-1509. This is the contested case provision of the APA.  
4 This is the Bible. This is -- you can do more than this, but you  
5 can't do less. And the pertinent language is all the way at the  
6 bottom of that page 218, two lines from the bottom. "The Mayor and  
7 every agency shall exclude irrelevant, immaterial and unduly  
8 repetitious evidence. Every party shall have the right to present  
9 in person or by counsel his case or defense by oral and  
10 documentary evidence, to submit rebuttal evidence, and to conduct  
11 such cross examination as may be required for a full and true  
12 disclosure of the facts."

13 So that is the standard. What I have done on the  
14 next page was to try very quickly to outline some options for you.  
15 There are procedural options and process options. And I will go  
16 through them very quickly. It is going to take more time than I  
17 think you have to discuss them, but maybe it is something you can  
18 think about. The first option is to simply place time limits on  
19 cross. If you've got a big case, you look at how long the  
20 testimony was and you look at how many people are going to ask  
21 questions, and you say, well, they had an hour and we have got  
22 four people, so 15 minutes each, that is it. Or you say this was  
23 really complex testimony, more. You can do that, but then you have  
24 got to be prepared, I think, at the end of cross if they are  
25 really going and they are really asking good questions. You can

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1 say, can we wrap it up? Where are you going from here? And you  
2 can in the -- well, I will go to the next one. But that is one,  
3 just setting a time limit and making sure they adhere to that. And  
4 your rules allow you to do that. But keep in mind that standard I  
5 just read. That it has to permit a full and true examination of  
6 the issues.

7           The next is to require or encourage parties with  
8 shared interest to consolidate and designate single questioners.  
9 And this relates to a process I will be talking about later, some  
10 sort of pre-hearing events to try to get in very complex cases  
11 with lots of parties a way for the Board before a hearing to sit  
12 down and say, okay, how many of you are against this thing? How  
13 many of you are against this thing because you think it is going  
14 to have adverse economic impact. Okay, all of you get together and  
15 you find one person and let him ask the questions. That is how  
16 the ABC Board works. And they seem to be able to do it. But they  
17 are able to do it because they have a real process in place where  
18 they do a roll call vote before their hearings and then they go  
19 into the room with an assistant corporation counsel and he beats  
20 them over the head until they agree to some sort of process. That  
21 is not how you do it. And you have much smaller cases and I don't  
22 think you need to do it nine out of ten times. But it is another  
23 option for you to consider and try to get parties to consolidate.  
24 I know in some instances you in fact have done that, but that is  
25 another option.

1           The third one, which is something that I really do  
2 recommend, is to end the process of panel witnesses. Where the  
3 applicant will bring in five people to discuss something and go  
4 bang, bang, bang, bang, bang. And then the poor person -- I have  
5 got to tell you, I've done cross examinations. And I would die if  
6 someone said you have to go through five directs and then do a  
7 cross. I just think you are asking -- that is asking too much of  
8 a lawyer to do. And then the reason people get skewed in their  
9 cross examinations is they can't remember what the hell the person  
10 said. I think if you have -- it also requires people to present  
11 relevant testimony. If one person is going on and they finish and  
12 then you ask yourself, what did that have to do with anything.  
13 And there are sometimes where I will hear that and I wonder that  
14 myself. But at least at the end of it, everybody knows what the  
15 direct was. And then that will help you when the person starts  
16 crossing them. You will remember what the direct was, and you can  
17 exercise a little bit more control over the testimony.

18           CHAIRPERSON REID: Mr. Bergstein, are you referring  
19 to the applicant segment of it?

20           MR. BERGSTEIN: Yes.

21           CHAIRPERSON REID: Or are you referring to when --

22           MR. BERGSTEIN: I am referring to the applicant in,  
23 for example, campus plans or like the hospital case. They  
24 produced a traffic guy and then produced the parking guy. And it  
25 is very difficult and it goes on forever and they've got 20

1 exhibits going at the same time. And it is just tough. And I  
2 think you are asking an awful lot of these lay cross examiners to  
3 try to deal with that. I think sometimes you might almost want to  
4 break up an examination by issue, but that would really be -- may  
5 have more --- may not have as many benefits. But at least you know  
6 what the direct was. And so when people start going off the wall,  
7 you can say I remember. That is not what he was talking about. He  
8 is the traffic expert. If you want to talk to the parking expert,  
9 go wait for this guy to testify.

10 Four is to encourage parties to actually object. I  
11 have heard private counsel tell me that they believe that the  
12 philosophy of the Board and Commission is to let everything in.  
13 And they are afraid to object and so they don't. And I think that  
14 if you really want the parties to do that, at this point you  
15 almost have to say to them we encourage the parties to object to  
16 irrelevancies. The problem is a lot of people come in here and  
17 they think it is Perry Mason and they will just object --  
18 objection, objection, objection, objection. And you may end up  
19 having to spend more time arguing over objections than not. So  
20 you may have to judge your participants too. But the fact is that  
21 I have -- except for maybe one proceeding, I don't think I have  
22 ever heard a counsel make an objection for some really off-the-  
23 wall stuff, and I am in the back saying that is asked and  
24 answered. That is asked and answered. How many times are you going  
25 to ask the same damn question? And so they don't. The other side

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1 of it is for you to do that. I realize you are a lay board and it  
2 is hard judging issues of relevancy and asked and answered and  
3 whether or not that really is the same question. But sometimes you  
4 just have a gut feeling that come on, how many times is he going  
5 to beat around that bush. And at that point, you say can you wrap  
6 it up or I think you've been through that. Or you are being  
7 argumentative. That happens all the time. But it is a question  
8 then -- and unfortunately, it is the presiding officer's  
9 obligation to do that. That is one thing the presiding officer is  
10 supposed to do. And it is a question of whether or not the  
11 presiding officer is comfortable at mixing it up with some high  
12 priced legal talent.

13           So those are the options. The next one, five, is  
14 to either before cross examination the first time in a case or  
15 hand out what I consider to be the basic rules of cross  
16 examination, which I have listed here. And I can go over them if  
17 you want. But basically cross examination is limited to questions  
18 based upon the direct testimony. Questions should be short and not  
19 argumentative. It is helpful before asking a question or a series  
20 of questions to indicate the issue or portion of testimony to  
21 which the questioning is related. That is something I always do.  
22 It is the only way you can help the Court or help the decision  
23 maker understand what you are doing. I want to talk to you now  
24 about what you said about your traffic count. It is the easiest  
25 thing in the world to do and it helps everybody understand whether

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1 or not something is -- because you say, I want to talk to you  
2 about what you said at the ANC meeting last Tuesday. It is a  
3 process. I don't know if you want to teach people how to do cross.  
4 But that is one of the basic rules of cross is setting it up.

5 Try to pose a question so that the answer is yes or  
6 no. On cross examination, you can do leading questions. And then  
7 you ask why or why not. Often the questions posed call for a  
8 narrative. That is one of the things you are not allowed to do in  
9 court. The question calls for a narrative. Tell me what you did  
10 today? Well, I woke up. Or did you wake up at 9:00? Yes.

11 CHAIRMAN HOOD: You don't have to go all through  
12 them.

13 MR. BERGSTEIN: Sorry. I like to teach. All right.  
14 I won't go through the rest. That is what I consider the basic  
15 rules of cross. And if you look at them and maybe hand them out,  
16 it will work for you. Six, I just talked about about having the  
17 presiding officer be more aggressive. Seven deals with expert  
18 testimony. Part of the problem I see is that expert testimony is  
19 used here and it is not used with any sense of why it is being  
20 used. The first thing is that with an administrative proceeding,  
21 you can have opinion testimony. The rules of the Court don't  
22 apply. Opinion testimony is always relevant. And particularly in  
23 the BZA. That is what your testimony is all about. But if they  
24 are going to have expert witnesses, at least share with us what  
25 the field is the expert is testifying about. I mean, I see people

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1 bring in people -- you know who they are. Listen, they are an  
2 expert. And they've got a -- the basic rule of expert testimony  
3 is you've got to identify what the person is an expert in, and  
4 that it is something you need expert testimony about. That is the  
5 rule. And then if they are going to present expert testimony,  
6 then they have got to qualify them. And after they qualify them,  
7 then each party gets to question those qualifications and then  
8 object to the qualifications. And that is generally not being  
9 done. The reason I am suggesting that in cross is that a lot of  
10 people come in and they are experts and we don't know why they are  
11 experts and there is all sorts of wild questioning that goes in.  
12 And I think if they are going to use experts, it would help you  
13 define the cross examination if you know what they are supposed to  
14 be testifying about.

15 The process issues, I suggest that your  
16 applications make the applicant identify the issues. And for lay  
17 persons, help them. For a special exception, what is the impact  
18 on noise, on traffic, et cetera. For variances, what is it about  
19 your property that you believe is unique. Then require the  
20 parties -- I mean, the persons who are requesting party status --  
21 and you have to amend your rules to do this -- to say what issues  
22 do you contest?

23 MS. KRESS: Our practice and rules in parties in  
24 the past in determining party status does allow this. I mean, I  
25 don't think we have to change our rules to ask that the people

1 filing for party status tell us how they are uniquely affected.

2 That is the words we have got written down.

3 MR. BERGSTEIN: Well, I mean uniquely affected --  
4 but that doesn't answer the question. That is just, I live close  
5 to the person. If they build this building, I am not going to have  
6 a vista. But that doesn't answer the question of, okay, you are  
7 affected. So what is your problem here? What is it about their  
8 application that you are contesting. If they are saying that it  
9 won't affect traffic, why do you believe it would? To have a  
10 generalized objection to a special exception, I don't like it, is  
11 not going to be helpful and it is going to invite very, very broad  
12 direct testimony. And their cross is never going to be limited to  
13 their own issues. So I am suggesting that at least if you had the  
14 applicant do it -- when you go and open a case for the first time,  
15 you will see the issues. And then you can say to yourself, are  
16 these issues germane? Have they addressed all the issues here?  
17 It is just a way, instead of beginning a hearing and not -- and  
18 just letting them go on, it would allow you to limit the direct  
19 and by virtue of that limit the cross. So that is my suggestion  
20 there.

21 MS. KRESS: This is imperative in that it is new,  
22 because we have not had party status done this way in the past. So  
23 as we are setting things up, it is an opportunity to set things up  
24 in a different, maybe more helpful way.

25 MR. BERGSTEIN: The second thing, which you could

1 consider in major, major cases is having the parties meet -- once  
2 they are identified as parties or even potentially when they  
3 suggest party status, to meet and try to work out issues involving  
4 facts and even settlement, or to meet with the Board. And for your  
5 information, on the very last page, I have provided a pre-hearing  
6 practice for the Contracts Appeal Board, which simply provides  
7 that the Board at any time can request a telephone conference of  
8 the parties to work out these basic issues. So that when they go  
9 into a big hearing, everybody agrees what the issues are and what  
10 the facts are and what the testimony is. And again, it is  
11 something you might only want to consider in major cases. But I  
12 am providing to you as a model what another agency does in order  
13 to before a big hearing begins save themselves a little time. Sit  
14 down with the parties for an hour. It is not ex-parte because they  
15 are the parties. And just say can't we agree on some basic facts  
16 here. We don't need to have -- we agree Georgetown University was  
17 founded in 18-whatever. You know, we don't need to have that as  
18 testimony. Let's get down to the bottom line here and figure out  
19 what the bottom line is. These are just my humble suggestions,  
20 but I thought I would share them with you.

21 CHAIRMAN HOOD: Let's go ahead and ask questions on  
22 these last three issues. But before we get started, Alan, I  
23 wanted to say what a great job I think you have done on this  
24 document here. And I would encourage all of us to keep it handy.

25 CHAIRPERSON REID: It is most helpful.

1 CHAIRMAN HOOD: So, questions or comments?

2 CHAIRPERSON REID: I agree totally with the  
3 Chairpersons or Chairman's assessment of the report that you gave  
4 us. It is really excellent. Thank you. My question, though, is in  
5 regard to this 210 pre-hearing procedures. Now I had never seen or  
6 heard this report. It is like are you saying that the Board is in  
7 the posture of a quasi-mediator?

8 MR. BERGSTEIN: This isn't your rules. This is  
9 somebody else's rules.

10 CHAIRPERSON REID: Oh, okay.

11 MR. BERGSTEIN: I am sorry, I wanted to give you an  
12 example.

13 CHAIRPERSON REID: But how? That is not something  
14 that we can really -- I mean, can we do that?

15 MR. BERGSTEIN: Sure. I don't see that there is  
16 anything -- once you've got party status, it is your hearing. And  
17 I don't see any reason why -- well, I think it would be good to  
18 have the rules published. But there is no reason why in a big --  
19 instead of going right to a hearing on a major campus plan, have a  
20 status conference for the parties. Once you identify the parties,  
21 say okay. Let's sit down and talk about what the real issues here  
22 are. You tell me how long it is going to take you to present your  
23 case. What are your witnesses? Why are they going to testify? I  
24 don't need to hear this person. That is not relevant. And can't  
25 we sit down and figure out what the real -- what the facts are.

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1 And one way, again, is to have the parties do it beforehand and  
2 force them to sit down and try to work things out. But the other  
3 is to try to use a process of informally meeting with them. It  
4 does not have to be on the record. Though what they do with the  
5 CAB is they do an order that summarizes all the agreements that  
6 were reached. But you can -- and if you think there is any  
7 chances of settlement, use your good offices. Again, it is not  
8 ex-parte. But you can -- there is a lot that can be accomplished  
9 in an office with parties. It is done every day in Superior Court.

10 In fact, it is mandatory in Superior Court that you meet with a  
11 judge before a trial in his chambers and go over these things. I  
12 don't know if it is really necessary, but it seems that often --  
13 not often, but I have seen some hearings that nobody knows why the  
14 testimony is being presented. It is just being thrown out there.  
15 And I think that it might be helpful to focus on major proceedings  
16 about what are the relevant issues. I can think of the hospital  
17 case where there was a lot of testimony about is this -- should  
18 this hospital be here. And that wasn't an issue. And perhaps if  
19 the Board had met with everybody and said that is not the issue.  
20 We don't care how badly you need this hospital. You go talk to  
21 the hospital certification people about that. And we don't care  
22 that they could have put it someplace else, because that is not  
23 the issue either. The issue in a special exception is is this use  
24 here going to have an adverse effect. Not was it a good idea for  
25 them not to build it over there. And if you sit down and really

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1 figure out what it is they are throwing at you and figure out do  
2 you need to hear it, you might -- it may take you an hour to do  
3 it, but you may save three hours of hearing time. But then again,  
4 it is a tough thing to do too. So I am just suggesting that  
5 another agency has done it, and you might want to consider it. If  
6 you really think you have a problem with controlling your cross  
7 and direct. And one of the reasons you might have that problem is  
8 because people aren't focused about their presentation and they  
9 are not focused about their cross.

10 VICE CHAIRMAN MITTEN: Alan, could you maybe offer  
11 some advice or speak to the issue of members of the Commission or  
12 Members of the Board in the conduct of the hearing basically  
13 providing testimony from their own experience or having more of  
14 like a conversation with the person they are supposed to be asking  
15 questions of rather than just asking questions?

16 MR. BERGSTEIN: I hope I am not going to insult  
17 anybody. I discourage -- I mean, at a hearing, you are the  
18 recipients of information. You are the creators of a record. It  
19 is perfectly appropriate for you to ask questions if you feel it  
20 is necessary to elaborate. But it is somewhat confusing to get  
21 into a dialogue, any sort of dialogue. Even saying I disagree with  
22 your argument. I don't think your argument is correct. I think  
23 you wait until the final decision for that. So preferably a  
24 hearing should be very, very quiet except to make rulings and to  
25 ask the questions. And then the question you need to ask -- I

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1 don't know if you have it in your rules of when you ask those  
2 questions. I guess it is after the testimony and before cross. Or  
3 maybe it is after cross. I can't remember.

4 MS. KRESS: It is several times through the  
5 process. But basically it is after the  
6 applicant --

7 MR. BERGSTEIN: Why not all have an agreement as to  
8 where it is. If we do a single witness, do you want the  
9 opportunity then to ask your questions? I think the better  
10 practice is to let the parties -- and that is how it is done in  
11 court. You let the parties do their cross and see what they come  
12 up with. And then if there are issues that you don't think they  
13 have handled, then you do your questions. But that is in my mind  
14 the sum total of what the bench should be doing with the parties  
15 during the hearing.

VICE CHAIRMAN MITTEN: Okay. If we  
16 admit someone as an expert, are we effectively -- or is their  
17 testimony limited to their area of expertise then?

18 MR. BERGSTEIN: Well, you know it is very unclear  
19 what the Court of Appeals expects you to do after you have named  
20 somebody as an expert either. The rule is that the only time a  
21 Board will be overruled for not listening to an expert is where  
22 there is a comparable weakness in lay testimony and you accept the  
23 lay testimony. The ordinary rule for an agency -- it doesn't have  
24 to explain its ultimate fact-finding. But the expert should be  
25 limited to their expertise. Because to the extent there is

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1 anything special you've got to do with that expert, it should be  
2 limited to that area. If you let them go beyond it, then you  
3 don't know what you are supposed to do with that extraneous  
4 testimony. Are you going to have to elaborate in that one  
5 instance or not? But I want to make it clear that an expert is  
6 not like the ANC, and an expert is not like the Office of  
7 Planning. You don't have to give an expert great weight in agency  
8 decision making. The only thing the Court of Appeals has said is  
9 that if you have expert testimony and you have comparatively weak  
10 lay testimony and you accept the lay testimony, you should at  
11 least explain why you did that to us. But if you have two  
12 experts, you don't have to explain why you chose one over the  
13 other. You just say you do. It is very important you understand  
14 that the Court of Appeals in your fact-finding only asks that you  
15 set forth the facts under  
16 -- the basic facts that you used to set out your conclusion. You  
17 don't have to explain why you chose one series of facts over  
18 another series of facts. It will look into the record and see if  
19 there is something to support it. The standard is as long as  
20 there is a scintilla of evidence in the record, your finding of  
21 fact will be affirmed. But your finding of facts have to be full,  
22 and you can't leave out a necessary fact. Because they won't draw  
23 the connection. But great deference is given to your fact-  
24 finding. And that is why you don't have to say I choose this  
25 traffic expert over the other traffic expert because blah, blah,

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1 blah. You just say you did.

2 VICE CHAIRMAN MITTEN: I guess my question was more  
3 to is it fair to say if an expert starts to wonder into other  
4 subject matter as a means of facilitating the whole process to say  
5 aren't you here to talk about historic preservation and could we  
6 please limit your testimony to that? Is that fair?

7 MR. BERGSTEIN: Yes, you can. Because that is what  
8 he has been -- to the extent that there is any significance to  
9 being an expert, then his testimony can only be to that. I mean,  
10 if I were a lawyer and I lost my battle to disqualify the expert,  
11 the only thing worse than that is if the guy starts talking about  
12 or woman starts talking about something totally different, which  
13 actually happened to me once. And that is why in fact I think I  
14 put it in here that courts require that when you use an expert  
15 that you identify the expert before the hearing. You give what is  
16 called a 26-before statement, in which they actually list what  
17 their expertise is in and what their opinions are going to be. So  
18 that everybody has a fair crack before the hearing of at least  
19 knowing what it is the guy or woman is going to say. That is one  
20 of my other suggestions. That if an applicant is going to have an  
21 expert, let him identify the expert. Do you require that?

22 MS. KRESS: We do require that.

23 MR. BERGSTEIN: Okay. I am sorry I missed that. I  
24 have never seen it.

25 MS. KRESS: I have --

1 MR. BERGSTEIN: No, I have never seen it actually  
2 in the file that anybody has actually used it or offered it.

3 MS. KRESS: The Zoning Commission has for years.  
4 The BZA hasn't because we haven't had the prequalification of  
5 parties. We just haven't yet been able to perfect it. Some of the  
6 same things that the Zoning Commission has for the BZA.

7 MR. BERGSTEIN: But that is your road map for an  
8 expert. If they go outside that statement, everybody has just got  
9 to watch it. And again, if you encourage the parties to object,  
10 then a good party would object if an expert goes outside that  
11 proffered statement. Because that is what that is there for.

12 MEMBER RENSHAW: Is there a requirement that  
13 experts have to be entered into the proceedings X number of days  
14 before the case comes up rather than having resumes passed in at  
15 the last moment?

16 MS. KRESS: Yes, our regulations do require the --

17 MEMBER RENSHAW: How many days? 14 days?

18 MS. KRESS: 14 days.

19 MR. BERGSTEIN: But again, that doesn't go to the  
20 qualifications. That is just the heads-up that I am going to be  
21 putting in an expert and this is what the expert is going to talk  
22 about. But you've got to give the parties a chance to say this  
23 guy is not qualified or it is really not something you need expert  
24 testimony about, which is one of the issues.

25 CHAIRMAN HOOD: Okay. While we are looking for Ms.

1 Renshaw's answer --

2 MS. KRESS: We have the answer.

3 CHAIRMAN HOOD: You have it?

4 MS. KRESS: I was just looking for the exact  
5 regulation.

6 CHAIRMAN HOOD: Exact. Okay. Maybe, Board Member  
7 Renshaw, if we can get that later?

8 MS. SANSONE: Mr. Chairman, can I just make one  
9 point about this voluntary procedure?

10 CHAIRMAN HOOD: Sure.

11 MS. SANSONE: I just wanted you all to have this  
12 because it is a simple guide to how to make motions and how to  
13 conduct votes and some of the terminology you can use. But when  
14 you look through here, you will notice it talks about a two-thirds  
15 vote for some types of votes. Your votes don't -- your rules don't  
16 provide for two-thirds votes. Ignore that. It is majority vote,  
17 and you will be fine. Everything else is special voting here.

18 CHAIRMAN HOOD: Let me just ask, is that debatable?  
19 No, I am just joking. Okay. Any other questions? Any other  
20 questions? Good. I think we can now try to conclude now. I want  
21 to thank you for a very thorough job and again the hand-out.

22 CHAIRPERSON REID: I am sorry, Mr. Chair, may I  
23 please ask a question regarding hearing time limits?

24 CHAIRMAN HOOD: Let me see if that is in line. Go  
25 right ahead.

1 CHAIRPERSON REID: Hearing time limits and  
2 specifically for being able to limit cross examination. Because  
3 that has come up and has caused quite a bit of consternation. How  
4 -- I mean when we try to impose time limits, we were instructed  
5 that we couldn't do it.

6 MR. BERGSTEIN: There is -- Marie pointed out to me  
7 that there is a specific rule that authorizes you to set time  
8 limits at cross examination. You have that authority. Now there  
9 is two time limits. There is the time limit on the parties, which  
10 according to the new rules is one hour for all parties and  
11 witnesses, exclusive of the ANC. That is how we are reading it,  
12 at least for the ANC report. You are going to have a nicer issue  
13 when they start presenting witnesses. But in terms of their  
14 presenting a report, like any other government entity, they should  
15 be held to that. But that is one issue. But that is exclusive of  
16 cross examination. But your rules do afford you the right to  
17 limit cross and to set time limits on cross. And that is why I am  
18 suggesting that you could say, based upon the total time of direct  
19 -- if the total time of direct is an hour, you could say we will  
20 give the opposition an hour for cross or a half hour for cross and  
21 then figure out how many people are going to do cross and divide  
22 it. But you've got to remember that the APA does require you give  
23 them the opportunity to do such cross as is necessary to fully  
24 bring out the truth of the matter. And in many instances, cross  
25 examination exceeds the time for direct.

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1 CHAIRPERSON REID: So then you basically just  
2 contradicted what you said earlier about limiting it if APA  
3 requires that you give them time to get what they wanted out.

4 MR. BERGSTEIN: No, you can set limits. What I am  
5 saying is if you come to the end of the time and the person is  
6 really posing relevant questions and it is clear they have got  
7 more to go -- and you can just ask them -- judges ask me all the  
8 time what else do you got to cover. I want to just cover this and  
9 I want to just cover that, Your Honor.

10 CHAIRPERSON REID: But the thing about it is that  
11 they always do -- they always have something else that they want  
12 to get out or something more to cover. So it is very difficult to  
13 try to limit it to a time.

14 MR. BASTIDA: Is it relevant to the case?

15 CHAIRPERSON REID: They think it is.

16 MR. BASTIDA: I think that Alan can address that  
17 better. If it is not relevant to the case, you don't have to take  
18 it into the record.

19 CHAIRPERSON REID: But they think it is relevant,  
20 so therefore they want to continue.

21 MR. BERGSTEIN: You've got to be strong.

22 CHAIRPERSON REID: And they claim that it is and  
23 you don't know that it is not relevant until after they have said  
24 it oftentimes. You say, that wasn't relevant.

25 MR. BERGSTEIN: Again, that is why it is important

1 to understand before the case begins what are the material issues.

2 CHAIRPERSON REID: I think that giving out the  
3 procedures perhaps prior to the case being -- having a hearing may  
4 be helpful in instructing everyone as to what we expect as far as  
5 the cross examinations. Because you know how attorneys are.  
6 Especially attorneys, they take certain liberties.

7 MR. BERGSTEIN: Well, I do, but I have had limits  
8 placed on me and I know how to take it seriously. And it is  
9 credibility. It is really credibility. I mean, if they know that  
10 you are going to cut them off and you have given them time. I  
11 mean, if they have spent 15 minutes going over and over and over a  
12 single point and you tell them you have 15 minutes and they just  
13 did a bad cross --

14 CHAIRPERSON REID: Okay.

15 MR. BERGSTEIN: But it is tough. You are right. It  
16 is easy for me to sit here and say you cut them off.

17 CHAIRMAN HOOD: Let me do this. Let me interject.  
18 I am sure Alan will be around for a few minutes if someone wants  
19 to stay back and continue that conversation. But let me adjourn  
20 this meeting. We said 4:30. But I want to thank, again, Alan. I  
21 think I have done it three times now. But let me do it four  
22 times.

23 MR. BERGSTEIN: I think you mean it this time.

24 CHAIRMAN HOOD: Thank you for all you put into it.

25 MR. BERGSTEIN: It is always a pleasure working

1 with the Board.

2 CHAIRMAN HOOD: And also, I would like to thank --

3 MEMBER RENSHAW: Mr. Chair --

4 CHAIRMAN HOOD: Let me just also thank the staff.

5 And when I say the staff, I mean the people who we don't see all  
6 the time in the back. And I want you to know that on behalf of  
7 this Commission, we know the work that you put in, and you put  
8 some work into it. So, again, I would encourage you to keep  
9 working hard and keep doing the best that you can do. Ms. Kress,  
10 I think that we had some other things on the agenda that we wanted  
11 to speak to. The only two that I see that -- if you want to take  
12 about two minutes and comment on would be the self-certification  
13 issue.

14 MS. KRESS: That is more complex, and I think that  
15 demands some special attention.

16 CHAIRMAN HOOD: But my concern is I want to make  
17 sure that we start answering some of those letters that are coming  
18 in.

19 MS. KRESS: I think we will answer them that we are  
20 working on them.

21 CHAIRMAN HOOD: Some type of response. And also to  
22 the Commissioners about the disposition of the computers. I think  
23 everything else we have handled and is in order.

24 MS. KRESS: There are more issues, but I think they  
25 will be for another time.

1 CHAIRMAN HOOD: Okay, but meanwhile I don't know  
2 when the next time we are going to have a joint meeting. But we  
3 want to make sure that we proceed with what is in front of us, and  
4 we at least are responding to these issues.

5 MS. KRESS: Absolutely.

6 CHAIRMAN HOOD: So it won't come back three months  
7 later saying they didn't hear anything from us.

8 CHAIRPERSON REID: Can we have regularly scheduled  
9 meetings quarterly perhaps? I think that is necessary so you  
10 won't have -- then you don't have such an ambitious agenda before  
11 you. That is probably because of the fact that we haven't met in  
12 since last spring maybe.

13 CHAIRMAN HOOD: Okay.

14 CHAIRPERSON REID: So if we meet regularly, then  
15 perhaps we can address issues more --

16 CHAIRMAN HOOD: Sure. You and I will talk about  
17 that right after this meeting. And we will govern ourselves  
18 accordingly. Anything else, colleagues? Okay. With that again,  
19 let's govern ourselves accordingly and thanks for all the hard  
20 work you do. This combined meeting is adjourned.

21 (Whereupon, at 4:38 p.m., the joint meeting was  
22 adjourned.)

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