

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + +

Wednesday, July 7, 1999

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The public meeting was held in Room 220, 441 Fourth Street,
N.W., Washington, D.C., pursuant to notice, at 12:59 p.m., Sheila Cross Reid,
Chairperson, presiding.

BOARD MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson

BETTY KING, Vice Chairperson

GERRY GILREATH

ANTHONY HOOD

STAFF PRESENT:

JOHN NYARKU, Staff

PAUL HART, Staff

PATRICIA YOUNG, OCC

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1 based exclusively on the public record. Avoiding any appearance to the contrary,
2 the Board requests that persons present not engage the members of the Board in
3 conversation.

4 The Board will make every effort to conclude the public hearing
5 as near as possible to 6:00 p.m. If the afternoon cases are not completed before
6 6:00 p.m., the Board will assess whether it can complete the pending cases or case
7 will remain on the agenda.

8 At this time the Board will consider any preliminary matters.
9 Preliminary matters are those which relate to whether a case will or should be heard
10 today, requests for postponement, continuance or withdrawal where proper and
11 adequate notice of the hearing has been given.

12 If you're not prepared to go forward with a case today or if you
13 believe that the Board should not proceed, now is the time to raise such a matter.
14 Are there any preliminary matters?

15 MR. PARKER: Good afternoon. My name is Arthur Parker on
16 behalf of the District of Columbia Corporation Counsel's Office. We are appearing
17 here today on behalf of the Zoning Administrator Agency of the District of the
18 Department of Consumer Regulatory Affairs.

19 We have filed as of yesterday a request to continue this matter,
20 and I don't know if the Board has sufficient copies before it or they've have a chance
21 to review the request.

22 Briefly, the normal procedure, as I understand how matters
23 proceed before the BZA, is that the Zoning Administrator comes forward to defend
24 the position below and is not generally represented by counsel from the Corporation
25 Counsel's Office.

26 I also understand the rules to be that when the notices go out,
27 the notices go just to the Zoning Administrator and not to any other council. Now, in

1 front of other administrative tribunals, there tends to be a notice that if a party -- if an
2 applicant is represented by counsel, a notice also goes to the Corporation Counsel
3 for them to have an opportunity to decide whether to represent the agency or to
4 come into the case.

5 That procedure isn't in place here. We found out about the
6 hearing some time just prior to the filing of the applicant statement on June 23rd in
7 our office, and when I mean our office, I'm referring to the Enforcement Division of
8 the Corporation Counsel's Office. We are the division that's charged with
9 representing agency interests before administrative tribunals.

10 We have made a determination that there are significant
11 interests involved in this hearing that put it on a plane different than the average
12 matter that comes before this Board, that there needs to be representation for the
13 agency.

14 We have made a diligent effort to try to become prepared to go
15 forward today, but because of the significance of the issues that involve not only the
16 applicant, but similar applicants, and to the state of litigation that involves the solid
17 waste handling industry, we feel it is incumbent to request additional time to prepare
18 for this case, also to permit the request that the ANC representative to be honored,
19 and so that we have a chance to consider the propriety of offer to resolve this matter
20 short of a hearing before the Board.

21 As we put in the motion, there has been discussion between the
22 applicant and the District regarding resolution of this matter, but we cannot
23 announce that there is a resolution or that there will be only because we don't feel
24 we've had proper time to have the parties that need to make the actual decisions on
25 these matters fully reflect and consider all of the ramifications that deal not with only
26 the applicant, but with the entire matter.

27 So for those primary reasons, we ask the Board to consider a

1 continuation of whatever time that this matter needs to be turned around for us to
2 take into consideration all of those matters.

3 CHAIRPERSON REID: Thank you.

4 MS. KING: How much time are you asking for?

5 MR. PARKER: I understand a new notice would have to go out
6 with 45 days prior to the hearing.

7 MS. KING: So it would be September.

8 MR. PARKER: I guess that's what we're --

9 MS. KING: That would be adequate for your purposes?

10 MR. PARKER: I believe that would be. We'd have adequate
11 time --

12 MS. KING: I mean, I don't know from the staff whether there's
13 an opening, but I mean the earliest would be the first week in September.

14 MR. PARKER: I think that would be more than adequate for us
15 because one of the things we ran up against here is obviously the holidays and
16 vacation schedules, and it was just difficult to assemble the decision makers
17 necessary to -- either to tell us to resolve this matter or to go forward with it, and
18 that's just simply where we are.

19 MR. GILREATH: Well, isn't there a possibility, from reading the
20 material and what you've said, that Corporation Counsel or your agency and the
21 applicant may possibly resolve this without us even having to deal with it? Isn't that
22 a potential?

23 MR. PARKER: That's the potential outcome, but I don't want to
24 mislead the Board --

25 MR. GILREATH: I understand.

26 MR. PARKER: -- and I'm sure the applicant wants to make it
27 very clear that there is no -- there is no settlement here, and that we have not

1 committed to that, and that they're like to oppose this request because of that.

2 MR. GILREATH: But that would give you extra time at least to
3 explore this more fully with the possibility, of course, that if it's not resolved --

4 MR. PARKER: Right.

5 MR. GILREATH: -- and we don't reach agreement, then we go
6 forward.

7 MR. PARKER: And I think the Board should be mindful of one
8 thing, and that is this is different from the typical application where a business has
9 not actually begun. The applicant is in business, is operating. The essential
10 prejudice to them is just the time on the calendar, and they're not losing time in their
11 operations.

12 So I would ask the court to keep that or the Board to keep that in
13 mind.

14 MS. KING: Is there a representative here from 5A who can
15 speak to their letter? I mean, the letter is self-explanatory, but I just wondered if
16 there was anybody here from 5A.

17 Apparently not.

18 CHAIRPERSON REID: Okay. For the record --

19 MS. KING: Yes.

20 CHAIRPERSON REID: -- with 5A.

21 MS. KING: Yes. Five A has not had time, and the 5A
22 designated to act or this is the person designated to act requesting a continuance
23 until September because there's a long history and serious environmental impact,
24 and it's a very convoluted case. They need more time to prepare and asked that it
25 be postponed until September.

26 CHAIRPERSON REID: And that was a letter dated July 1st --

27 MS. KING: That's correct.

1 CHAIRPERSON REID: -- from Karen Lancaster, Commissioner
2 of ANC-5A.

3 Okay. Thank you.

4 MR. PARKER: Thank you.

5 CHAIRPERSON REID: Now, the -- excuse me?

6 MR. HOOD: Madame Chair, if it's in order, I wanted to do a
7 disclosure.

8 I have done some community work with Waste Management,
9 and I feel and I know that this will not have any bearing on my decision in this case.

10 CHAIRPERSON REID: You don't feel it will impair your ability to
11 be objective?

12 MR. HOOD: No, it won't.

13 CHAIRPERSON REID: Okay. If there are no objections to Mr.
14 Hood taking on this case, we will proceed.

15 Sir? Excuse me, sir. Thank you very much.

16 MR. GLASGOW: Madame Chairperson, as a preliminary matter,
17 I have given Mr. Hart application to intervene in this case.

18 CHAIRPERSON REID: And you are, sir?

19 MR. GLASGOW: My name is Myles Glasgow, Your Honor. I
20 faxed to the commission -- the Board yesterday an application on behalf of George
21 Gaelich and Auto Bodies Supply Company, neighbors of 2160 Queens Chapel.

22 We filed a lawsuit as a nuisance against the site in 1994. We
23 have intervened in another companion BZA case, which our application addresses,
24 and we ask that these three cases be consolidated with that fourth case, which is
25 submitted by their partner, Caslin Associates, and I have submitted three copies to
26 Mr. Hart, if we could present it to you.

27 What we would like is to be approved as intervenors on behalf of

1 George Gaelich and Auto Bodies Supply Company, and we'd also like the
2 commission to consolidate these three cases with what was previously filed in 1997
3 by Caslin Associates, which essentially handles the same legal issue at a later time.

4 They waited three years before now filing these appeals in 1999.
5 They're appealing a 1996 denial of a 1995 application, essentially having sat on it
6 and waited, but Caslin did appeal in '97 from a '96 decision or '97 decision that
7 denied the '96 application.

8 What we would like is to be able to argue many of those same
9 issues that are in that Caslin case that is apparently now being held in abeyance by
10 the BZA without any notice to us so that their partner, Waste Management, can now
11 come in late in the game and try to raise issues that essentially are deal or should
12 be dead.

13 We'd like the approval to intervene, and we'd like the one case
14 consolidated with these three cases.

15 CHAIRPERSON REID: Okay.

16 MS. KING: This --

17 CHAIRPERSON REID: Wait, wait, Ms. King.

18 MS. KING: Deal with this first?

19 CHAIRPERSON REID: Let me ask questions.

20 MR. GLASGOW: Yes.

21 CHAIRPERSON REID: You are referring to which case
22 numbers?

23 MR. GLASGOW: I am referring to -- if Mr. Hart could pass my
24 three applications.

25 CHAIRPERSON REID: To all three of the applications? The
26 appeal?

27 MR. GLASGOW: These are three copies, three copies --

1 CHAIRPERSON REID: Okay. No, wait a minute. There is --

2 MR. GLASGOW: -- of just one application.

3 CHAIRPERSON REID: -- one application and there are two
4 appeals.

5 MR. GLASGOW: Correct, Your Honor. We'd like to have our
6 case, which is 16236, I believe, consolidated with these three cases.

7 We'd also like these three cases consolidated, although they are
8 appeals and an application. The issues, the factual issues, many of the factual
9 issues and many of the legal issues will be the same, and it doesn't make sense for
10 this commission to waste a lot of time which only benefits an illegal operator at 2160,
11 which still doesn't have --

12 CHAIRPERSON REID: Do not get --

13 MR. GLASGOW: -- a certificate of occupancy.

14 CHAIRPERSON REID: -- into the merits of the case.

15 MR. GLASGOW: I understand that.

16 CHAIRPERSON REID: Just basically this is a preliminary
17 matter, but let us try and get this straight first. What is your case number?

18 MR. GLASGOW: Our case number is 16236.

19 CHAIRPERSON REID: One, six, two, three, six.

20 MR. GLASGOW: One, six, two, three, six, which is a BZA case,
21 and the point is that they haven't brought that to your -- they did bring it to your
22 attention as a footnote. So if you look at a footnote in their pleading, you'll see that
23 already in front of the BZA, filed in perhaps February of '97, was an application by
24 Caslin Associates for a certificate of occupancy to operate a carting and hauling
25 yard at 2160.

26 We intervened on behalf of lots of neighbors, George Gaelich
27 and Auto Body Supply Company. We filed pleadings. We've been waiting for an

1 evidentiary hearing on those issues.

2 They realized that because the zoning regs. had already been
3 noticed for 96-5, by the time Caslin had filed that certificate of occupancy, that
4 certificate of occupancy had the clear hand of 96-5 on top of it.

5 That case has been waiting for an evidentiary hearing. What
6 they say in their pleading is that apparently the BZA, without any notice to the
7 intervenors, has somehow decided to hold, quote, in abeyance 16236 so that they
8 can now come three years later, after a '96 decision, and appeal that decision in
9 1999 when so much has gone underneath the bridge.

10 CHAIRPERSON REID: That case -- are you saying that that
11 case has been heard?

12 MR. GLASGOW: Has not been heard. We have been waiting to
13 be heard.

14 CHAIRPERSON REID: You said that the BZA -- wait a minute.
15 You said that the BZA is holding that case in abeyance.

16 MR. GLASGOW: Correct, Your Honor. That's their language,
17 and without any notice to the intervenors in that case, which are many neighbors.

18 CHAIRPERSON REID: Okay, but where is that case? Where is
19 that case now?

20 MR. GLASGOW: Physically it's in your files. Physically it's right
21 out there.

22 CHAIRPERSON REID: It has not been heard?

23 MR. GILREATH: It's not before us. It's not on our agenda.

24 MR. GLASGOW: And we're moving --

25 CHAIRPERSON REID: But you said that this case was from
26 1997.

27 MR. GLASGOW: Yes. It was filed -- it was filed in February of

1 1997.

2 CHAIRPERSON REID: Okay. Is that in the pipeline to be
3 heard?

4 MR. HART: The files are here, but it is not on --

5 CHAIRPERSON REID: No, but is that something that we were
6 planning on putting on the agenda in the future?

7 MR. HART: Yes.

8 CHAIRPERSON REID: And is that related to this case?

9 MR. HART: It's the same --

10 MR. GLASGOW: Same property.

11 MR. HART: That's right. Same address.

12 MR. GLASGOW: The same partner of Caslin Associates.

13 CHAIRPERSON REID: I'm trying to get some clarity. Wouldn't
14 that have automatically have been included in this?

15 MR. HART: There are several -- well, there are a couple of
16 different things. Because of the three cases that we should have spoken about
17 today or dealt with today, one has been requested to be postponed by the applicant
18 so it will further fragment the whole thing, and 16236 was not brought forward for
19 today. These --

20 CHAIRPERSON REID: My question was should it not have
21 been included here since it is a related case.

22 MR. HART: Well, based on the fact that it's the same property
23 and it's essentially the same problems and the same applicant, the same opposition,
24 yes, but for some reason these were the two that were -- that were --

25 CHAIRPERSON REID: Three.

26 MR. HART: The three actually. These are the three. There is a
27 problem there because the applicant has requested that the first -- the special

1 exception be postponed.

2 CHAIRPERSON REID: Okay. You're requesting that the Case
3 No. 16236 be included at the time that we consider these other three cases.

4 MR. GLASGOW: Absolutely, and we're also requesting that
5 George Gaelich and Auto Body Supply Company be approved as intervenors in this
6 case.

7 CHAIRPERSON REID: All right. All right. Now, you are a
8 party?

9 MR. GLASGOW: I am an attorney for Auto Body Supply
10 Company.

11 CHAIRPERSON REID: And Auto Body Supply Company has
12 not been granted party status? Are you asking for party status?

13 MR. GLASGOW: Correct, Your Honor. We're asking for party
14 status and --

15 CHAIRPERSON REID: And party status by virtue of the fact that
16 you are an abutting property?

17 MR. GLASGOW: We are diagonally across from two of the
18 entrances used by Waste Management on Adams Place for their long haul trucks to
19 come into the site.

20 CHAIRPERSON REID: How far are you away from the site?

21 MR. GLASGOW: Thirty feet, Your Honor. We're 30 feet across
22 the street from the most western entrance on Adams Place that their trucks use to
23 encircle CMC properties to come back into 2160 Queens Chapel.

24 So they're technically 2160 Queens Chapel, but they have two
25 entrances on Adams Place, which is essentially a 30 foot wide street.

26 CHAIRPERSON REID: Okay. Is there any --

27 MR. GLASGOW: And we have property abutting their eastern

1 entrance on Adams Place and their western entrance.

2 CHAIRPERSON REID: Okay. Is there any reason why your
3 concerns could not be handled through the ANC?

4 MR. GLASGOW: Your Honor, we are the property owner who's
5 losing the property value. We've gone to the tax assessor three times. They've
6 agreed with us each time that our property value has significantly decreased, by 30
7 percent, by this property value.

8 CHAIRPERSON REID: But my question was your particular
9 position cannot be aired through your ANC?

10 MR. GLASGOW: Absolutely not, Your Honor. The ANC has no
11 attorney. The ANC is essentially not representing my client's specific interests, nor
12 is it capable of doing it, Your Honor. The ANC is capable of articulating issues, but
13 they have none of the funds necessary to bring attorneys before this committee.
14 They have not --

15 CHAIRPERSON REID: Okay.

16 MR. GLASGOW: They have not been suffering the problems.
17 They are a governmental body.

18 My client has employees who have for five years suffered severe
19 disturbance by this kind of activity, the odors, the dust, et cetera, et cetera.

20 CHAIRPERSON REID: All right. Now, are you saying that you
21 want party status -- are you requesting party status for all four cases or just for the
22 16236?

23 MR. GLASGOW: No, Your Honor, we are already a party in
24 16236.

25 CHAIRPERSON REID: Okay. You're already a party there.

26 MR. GLASGOW: Correct.

27 CHAIRPERSON REID: So you want party status in these three

1 cases.

2 MR. GLASGOW: Exactly.

3 CHAIRPERSON REID: And you want that 16236 to be
4 combined with these three?

5 MR. GLASGOW: Correct, Your Honor.

6 CHAIRPERSON REID: Okay.

7 MR. GLASGOW: Because these are similar factual issues, and
8 they should be addressed so that the delay strategy of waiting three years to appeal
9 a 1996 decision is not continued, so that we then have decisions appealed from the
10 first two appeals and those two cases -- it's like a leapfrog delay strategy, Your
11 Honor, that will tie us up for ten more years unless we get all of these issues
12 wrapped up together.

13 CHAIRPERSON REID: Okay.

14 MR. GLASGOW: Your Honor, I'm just bringing to your attention
15 on the pleading that BZA has already heard 16041, and 16041 is where the BZA
16 ruled that the original 1994 certificate of occupancy, which is the only one that exists
17 for this property, should have been revoked in 1994. That was orally decided in May
18 of '95. It was written and --

19 CHAIRPERSON REID: Okay. Excuse me, sir. One, six, zero,
20 four, one, that's another -- that's another related case?

21 MR. GLASGOW: Yes, Your Honor. That is in front of the D.C.
22 Court of Appeals, but essentially the BZA ruled that the certificate of occupancy that
23 they are standing on should have been revoked in 1994, and they have hung their
24 hopes on undoing that BZA decision, but that BZA decision is a voluminous
25 decision, and there's no sense in your ignoring that decision. It has a record. It has
26 testimony, descriptions of how all of this came about.

27 So part of the problem has been that they have been able to

1 piecemeal their attacks without the government having a broad enough perspective
2 of exactly the problems, legally as well as factually, and I'm asking your --

3 CHAIRPERSON REID: Okay.

4 MR. GLASGOW: -- I'm asking your commission to be aware of
5 the many public records that have already been established on the Zoning
6 Commission 96-5, on the Zoning Commission 91-17, on the City Council's Solid
7 Waste Facility Permit Act hearings that led to the 1995 adoption of that act, the
8 hearings that led to the NCPC review of 96-5, as well as the hearings that led to the
9 amendments of the Solid Waste Facility Permit Act.

10 These are all public records that you are certainly more than
11 entitled to include through your administrative notice so that prior to this hearing,
12 there is a great deal of body of knowledge and information that your commission can
13 apprise itself of.

14 CHAIRPERSON REID: Okay.

15 MR. GLASGOW: Thank you very much.

16 MR. GILREATH: Madame Chair, I also think one of the things
17 he covered in terms of background, including BZA previous acts, is right in our
18 materials so we have access to that.

19 CHAIRPERSON REID: Okay, and then what we'll do is we will
20 before we make any decisions, we'll hear what everyone has to say. All right? Yes.

21 MR. WILSON: Are you prepared to hear from us now?

22 Thank you, Your Honor.

23 My name is Benjamin Wilson. I'm with the law firm of Beverage
24 & Diamond here in Washington, and we represent Waste Management in this
25 application.

26 With your permission, what I'd like to do is first address the
27 points made by Mr. Parker and then my colleague, Mr. Mishkin, will address the

1 points made by Mr. Glasgow.

2 CHAIRPERSON REID: Okay. Well, what is your -- what is your
3 -- are you going to --

4 MR. WILSON: We represent Waste Management, which is the
5 applicant, with respect to these C of O applications that are the subject of the
6 appeals today.

7 CHAIRPERSON REID: Do you have a position in regard to the
8 request for postponement?

9 MR. WILSON: Yes, ma'am.

10 CHAIRPERSON REID: And so preface whatever you have to
11 say with that, your position.

12 MR. WILSON: That's precisely what I will do.

13 CHAIRPERSON REID: Okay.

14 MR. WILSON: First of all, we do not have an objection, as Mr.
15 Hart has indicated, to postponing the special exception hearing, and the reason we
16 do not have an objection, it's different than that advanced by Corp. Counsel, but we
17 believe that we are entitled to our certificate of occupancy as a matter of right.

18 I will not go into the merits of that. We'll have that perhaps later
19 today in our hearing, but we believe that if, indeed, we have this hearing today on
20 that C of O for carting and hauling, and if we are granted it as a matter of right, then
21 it will not be necessary to have the special exception hearing, and as a matter of
22 judicial economy, it won't be necessary for this Board to address that issue.

23 CHAIRPERSON REID: Wait, wait a minute. Are you saying --
24 what are you saying? That the carting and hauling aspect of your case is a matter of
25 right?

26 MR. WILSON: Yes. We're saying that we are entitled to a
27 certificate of occupancy as a matter of right for carting and hauling.

1 CHAIRPERSON REID: Well, why -- why is that an application
2 for a special exception?

3 MR. WILSON: Well --

4 CHAIRPERSON REID: This is rather perplexing.

5 MR. WILSON: -- it is somewhat perplexing, but the fact of the
6 matter is it was never intended that that special exception hearing issue be heard
7 now, and indeed, it is our position that the special exception requirement should not
8 apply to a 1995 application that was filed prior to the passage of amendments which
9 created the special exception.

10 In short, we should be governed by the rules as they existed in
11 1995 at the time our application was filed, and at that time there was no requirement
12 for a special exception hearing.

13 CHAIRPERSON REID: So you're saying you're grandfathered?

14 MR. WILSON: Yes, ma'am, we're grandfathered. We're entitled
15 based on the rules as they existed at the time we applied.

16 MS. KING: Is there a grandfather provision in the legislation?

17 MR. WILSON: Literally, Your Honor, yes. What the legislation
18 indicates is that one is, in fact, entitled to a C of O for carting and hauling to a
19 terminal or yard. That's precisely what we do with solid waste, and the regulations
20 indicate, and, Ms. King, we say so on pages 14 and 15 of our prehearing statement,
21 that the new regulations that were set down in February of 1996 and that became
22 final in March of 1998 are to apply prospectively.

23 The regulations specifically say they shall not apply retroactively,
24 and therefore, we say as a matter of right we are entitled under the regulations as
25 they then existed at the time of our application in 1995.

26 CHAIRPERSON REID: Okay, but how did you get here?

27 MR. WILSON: Well, we got here by --

1 CHAIRPERSON REID: The Zoning Administrator?

2 MR. WILSON: Yes. The Zoning Administrator, but we also filed
3 the appeal, and the appeal that is before you today -- we have two appeals that are
4 before you today, one for carting and hauling, C of O application of November 21,
5 1995; and there is a second appeal of that same date for the name change
6 application.

7 There, again, we would agree with Corporation Counsel that that
8 name change application C of O hearing can be postponed. Why? Because that
9 issue is the subject of a hearing before the Court of Appeals of the District of
10 Columbia right now. The briefing on that has been completed. The arguments have
11 not taken place.

12 And so that may be an issue, again, that this Board would not
13 have to spend its good, valuable time on if, in fact, the Court of Appeals rules as we
14 anticipate that they will, that the name change application C of O is appropriate.

15 In the meantime, Your Honor, Waste Management has
16 expanded a great deal of time and a great deal of effort to be prepared for this C of
17 O hearing on carting and hauling today. A continuance will cost us more, contrary to
18 what Corporation Counsel has said.

19 Yes, we've gotten ready, but if we have to hurry up and wait, as
20 they say in the Army, until September, we're going to have to spend time getting
21 ready a second time.

22 Notice of this hearing on our C of O application for carting and
23 hauling has been in the D.C. Register since May 14, more than 40 days. Yes, I
24 believe them when they say that they were not contacted by DCRA until recently,
25 that DCRA wanted their assistance of counsel. I have no reason to disbelieve that.
26 They are honorable people.

27 But Waste Management should not be penalized. Justice

1 delayed is justice denied.

2 Very briefly, and you've been very patient with me, and I'll try to
3 be brief, our C of O application for carting and hauling has been pending since
4 November of 1995. Now the District government seeks to have this hearing delayed
5 further.

6 There are some who believe that the District of Columbia should
7 have no solid waste transfer stations, and we believe that they're wrong. In a time of
8 economic development, we don't understand why the District of Columbia would be
9 the only major city in American without any --

10 CHAIRPERSON REID: Wait. Now, you're getting into the
11 carriers.

12 MR. WILSON: No, ma'am.

13 -- without any solid waste transfer station, and ultimately, Your
14 Honor, respectfully, the question is going to turn on this. Ultimately, who is going to
15 run this? Will it be the rogues who have dominated the solid waste transfer stations
16 in the District for years?

17 CHAIRPERSON REID: Well, no, no, no.

18 MR. WILSON: Or responsible --

19 CHAIRPERSON REID: I have to stop you right there. What you
20 have to do is basically just capsulize the reason why you do not want to see this
21 case continued today, and you've done that.

22 MR. WILSON: Yes, ma'am.

23 CHAIRPERSON REID: You've done that.

24 MR. WILSON: All right.

25 CHAIRPERSON REID: We hear you.

26 MR. WILSON: Okay.

27 CHAIRPERSON REID: What we're going to do, I think --

1 MR. WILSON: Ms. Reid, may I respectfully ask that Mr. Mishkin
2 be heard on the points that Mr. Glasgow raised?

3 CHAIRPERSON REID: Yes.

4 MR. WILSON: Thank you.

5 MR. MISHKIN: I'm Andrew Mishkin. I'm with the law firm of
6 Dwayne, Morris & Butcher, also representing Waste Management.

7 Just one point of clarification and then a response on the
8 proposal by the proposed intervenor.

9 Caslin Associates is the owner of the property on which the
10 facility that Waste Management is the manager of is located. Waste Management
11 and Caslin are not partners. They are independent entities that have no other
12 relationship other than contractual, and we would like the record to reflect that.

13 With respect to the request by the proposed intervenor that the
14 Caslin case be consolidated with the Waste Management case, it's Waste
15 Management's position, and we believe it's also Caslin's position, that that should
16 not be done.

17 In the first instance, Caslin is not -- Caslin is not here today. Its
18 counsel is not here today. So we would respectfully request that it would be
19 inappropriate for the Board to grant a move to consolidate a case with the Waste
20 Management case where counsel for the party whose case is to be consolidated is
21 not even present to express his views.

22 Now, the record does show, and it was disclosed in Waste
23 Management's prehearing statement that Caslin did file an appeal of a denial of a
24 request for a certificate of occupancy. That appeal is pending before this Board.
25 Caslin has requested and Waste Management has joined in that request that the
26 Caslin proceeding be held in abeyance pending the resolution of the Waste
27 Management appeal and/or request for special exception.

1 And the reason for that is very simple, which is that if the Waste
2 Management matter is resolved in favor of Waste Management, then the Caslin
3 proceeding would be withdrawn, and there would be no need for the Board to hear
4 the Caslin appeal.

5 So we would request that at this point the Board not grant any
6 motion to consolidate these cases at this time.

7 CHAIRPERSON REID: I think that --

8 (The Board conferred.)

9 CHAIRPERSON REID: Because of the rather convoluted nature
10 of the request and the opposition to the request, I think what we're going to do is
11 take a few minutes and go into executive session and discuss the merits, and then
12 we'll come back and give you a decision in just a few minutes.

13 (Whereupon, the foregoing matter went off the record at 1:30
14 p.m. and went back on the record at 2:02 p.m.)

15 CHAIRPERSON REID: All right. We will please come back to
16 order.

17 After having taken the various issues that we have heard this
18 afternoon into consideration, we have determined that the responses to the various
19 requests are as follows.

20 One, the request for intervenor status by Mr. -- is it Glasgow?

21 MR. GLASGOW: Correct.

22 CHAIRPERSON REID: We have decided to grant you the
23 intervenor status.

24 MR. GLASGOW: Thank you.

25 MS. KING: Madame Chair, may I say --

26 CHAIRPERSON REID: Un-huh.

27 MS. KING: -- that we've asked also as Corporation Counsel to

1 tell us exactly what the privileges are of intervenors in an appeal such as this. Are
2 they identical to parties in a regular application or is there some other?

3 So we've asked for clarification of that so that we will know what
4 it is before we hold the next hearing.

5 MR. GLASGOW: Could I ask that I share in whatever input they
6 give to you?

7 CHAIRPERSON REID: Yes, you will be so notified.

8 MS. KING: Or you can consult with the staff.

9 MR. GLASGOW: Thank you.

10 MS. KING: With Paul.

11 CHAIRPERSON REID: The second item was in regard to the
12 continuation, the request from the ANC, as well as from Corp. Counsel's office. We
13 have determined that we would continue this case until September, given the fact
14 that the ANC's letter to us stipulated that they had not had adequate time to prepare,
15 and also the letter from Corp. Counsel likely stated that they needed additional time
16 to be able to correctly assess and to make whatever recommendations or whatever -
17 - the proffer to us whatever they need to proffer. So they will be granted the
18 continuance, the additional time.

19 And may I add that we will try to schedule a day, one day, to be
20 able to address this issue, this particular case fully because of the fact that it is very
21 involved.

22 And, Mr. Hart, can you give us a date certain?

23 MS. KING: Well, Mr. Gilreath has to check his calendar, but it
24 will probably --

25 CHAIRPERSON REID: It will be after the first week in
26 September.

27 MS. KING: It will probably be Wednesday of the second week in

1 September.

2 MR. GILREATH: I will definitely be here then, and I may -- it
3 may be possible I may just take maybe a day or two to take my daughter to school.
4 So there may not be any conflict, but I will let you know in a matter of days what the
5 situation is the first week of September.

6 MR. HOOD: Madame Chair, may I also add that we also asked
7 the Department of Health to give us any environmental issues affecting this case.

8 CHAIRPERSON REID: Okay. You requested that through the
9 Director.

10 MR. HOOD: Right. I just wanted to put that on the record.

11 CHAIRPERSON REID: Okay.

12 MS. KING: And I think that we -- that we decided that we would
13 not -- that we were going to instruct staff to contact the Advisory Neighborhood
14 Commission. The Corporation Counsel is here, but that we would not be
15 sympathetic to a further request for a postponement. We are sympathetic to the fact
16 that ANCs don't usually meet during July and August, but since we are continuing
17 this for them, that they will need to take official action at some point before the
18 whatever date we establish in the second week of September or whenever it is.

19 CHAIRPERSON REID: I'll recognize you. Just a moment.

20 Mr. Hart, are you still looking for the --

21 MR. HART: Oh, I thought the --

22 CHAIRPERSON REID: What date?

23 MR. HART: Mr. Gilreath -- is he --

24 MR. GILREATH: Well, right now the first week of September is
25 uncertain.

26 MR. HART: Right.

27 MR. GILREATH: Now, the second week I will be here.

1 MR. HART: Why don't we work --

2 MR. GILREATH: And I may be here most of the first week. I'm
3 just not sure, but there's some question about the first week of September for me.

4 MS. KING: When's our first September meeting?

5 MR. HART: Our first September meeting would be on the
6 September 1.

7 MR. GILREATH: That's close.

8 MR. HART: And the hearing will be the 15th. So we're talking
9 about I would suggest that we go after the hearing either the 8th or the 22nd. It
10 does not have to be on a Wednesday; is that correct?

11 CHAIRPERSON REID: Yes, but Wednesday is okay since we --

12 MR. HART: All right. The 8th or the 22nd.

13 CHAIRPERSON REID: The 8th, does that seem to jibe with
14 most everyone's calendar? The 8th at 9:30, September 8th at 9:30. All right.

15 MS. KING: But there will be a proper publication and proper
16 circulation of notice and so forth, will there not?

17 CHAIRPERSON REID: Mr. --

18 MS. KING: Or will there be?

19 CHAIRPERSON REID: Mr. Hart?

20 MR. HART: They would have to do -- let me see.

21 MS. KING: There will be -- we're not required to give notice to
22 the parties?

23 MR. HART: Yes, we need the party -- we need --

24 MS. KING: Let's not set an absolute date now.

25 MR. HART: Yes, I would prefer that.

26 MS. KING: But let's -- I mean, it has to be done 40 days in
27 advance.

1 MR. HART: That's right.

2 MS. KING: And even though it's not required, Madame Chair, I
3 would suggest that we ask staff to inform the intervenors, the petitioners, and the
4 ANC and the Corporation Counsel to make sure that everybody knows.

5 CHAIRPERSON REID: All right. Why not set a date certain?

6 MS. KING: I don't care.

7 CHAIRPERSON REID: I prefer to do that because when we --
8 Mr. Hart?

9 MR. HART: Yes.

10 CHAIRPERSON REID: When we set a date, a continuance
11 date, at this hearing, then we don't have to publicize it then, do we?

12 MR. HART: That's correct. We don't have to publicize it.

13 CHAIRPERSON REID: So this is notice at this hearing, as well
14 as the fact that since the ANC is not here and was specifically so notified that entity -
15 -

16 MR. HART: Yeah, but that was the other case has not been
17 noticed, the Caslin case. You know, that case has not been noticed, and --

18 CHAIRPERSON REID: Oh, I see.

19 MS. KING: We haven't got into that yet.

20 MR. HART: Okay.

21 CHAIRPERSON REID: Okay.

22 MR. HOOD: But I still think that if we could, I know that if we
23 announce a certain date here that we don't have to publicize it, but I still think it
24 would be in the best interest of the city that we still publicize it if at all possible.

25 MS. KING: Oh, no, we have to publish notice.

26 MR. HOOD: Right, but she was saying if we make a certain date
27 here now --

1 CHAIRPERSON REID: At the hearing we didn't have to.

2 MR. HOOD: -- we didn't have to publicize it, but I would still like
3 to encourage us to.

4 CHAIRPERSON REID: In this instance, she wants it to be --

5 MR. HOOD: In this case we need to publicize it.

6 CHAIRPERSON REID: Okay. Well, I have no problem with that.

7 Mr. Glasgow?

8 MR. GLASGOW: Thank you very much, Madame Chairperson.

9 The issues in this case are significant, and they are legal issues,
10 that even if this hearing had begun today would have had to had preliminary legal
11 determinations.

12 I would propose that the commission recognize that and set up a
13 briefing schedule on parties so far to identify key legal issues, giving, you know, a
14 briefing date, for example, to me to identify what legal issues I see; have the
15 proponents identify the legal issues that they see; and then have a chance, an
16 opportunity for the other parties to respond to that so that when you first meet in
17 September those issues can be resolved by you.

18 For example, one of the key issues is is it customary, is it
19 traditional, is it useful, is it possible for somebody to sit on a Zoning Administrator
20 order of 1996 and wait three years and then appear it in 1999.

21 CHAIRPERSON REID: Okay, but, Mr. Glasgow, and I'm cutting
22 you off, this is what Mr. Hart will be doing. He will, in developing the time line,
23 determine what time to give each entity to be able to submit, and then the
24 prehearing submissions, and then to give the other side an opportunity to respond to
25 that submission before the hearing.

26 MS. KING: Have you done --

27 MR. GLASGOW: What I would propose, Madame Chairperson,

1 is that one of the key issues is to dismiss delayed, sat on appeal, and if that is ruled
2 in favor of dismissing the appeal, then the preparation for the evidentiary hearing will
3 not have been necessary.

4 What I would suggest is that there be a separate date for
5 determining the underlying legal issues, which will also be evidentiary issues.

6 CHAIRPERSON REID: That's not something -- just one second.
7 That's not something that we commonly do.

8 MS. KING: No, I mean, timeliness would be an issue in any
9 presentation by the -- by the intervenor or whomever, and then you respond to each
10 other's presentations.

11 CHAIRPERSON REID: That's the way it's commonly done. We
12 don't usually set a date for briefings per se.

13 MS. KING: But there will be dates for submission. Have we
14 dealt with the issue of the Caslin case?

15 CHAIRPERSON REID: No, we haven't gotten to that yet.

16 MS. KING: Maybe we should deal with that before the two
17 attorneys start talking.

18 CHAIRPERSON REID: Okay. Let us finish what our
19 determinations have been, and then you can continue if you have anything else
20 you'd like to say.

21 MS. YOUNG: May I just say this? The rules do provide in 11
22 DCMR 3320.3 -- it provides for you to request at any time that the parties, the
23 respective parties, state their positions concerning any issue in the process, the
24 theory -- and theory in support of the issues, and it also says that you can hold
25 conferences on various issues sent to the parties.

26 So although it's not your normal procedure, I think if you wanted
27 to have that kind of briefing schedule, that's available to you based on a request, if

1 you consider it as a request that they state their respective positions concerning the
2 different issues.

3 CHAIRPERSON REID: Let me hear from -- give me your name
4 again.

5 MR. WILSON: My name is Benjamin Wilson.

6 CHAIRPERSON REID: -- Mr. Wilson on this matter.

7 MR. WILSON: I just wanted to note that Section 3320.3 relates
8 to procedures that occur during the course of a hearing, not as to what occurs prior
9 to hearing. So I would respectfully disagree.

10 I did want to ask, Your Honor, that if this is to be reset for hearing
11 just two very brief points. One, I believe Corp. Counsel joins with us on that, and I
12 believe it may have been a staff recommendation, but I'm not certain, but when this
13 is to be heard, we would still respectfully request that the appeal related to carting
14 and hauling be heard and resolved first, and that the special exception hearing be
15 held in abeyance because it may not prove necessary depending on your ruling.

16 And the second point I did wish to make, and Mr. Parker?

17 MR. PARKER: Yes.

18 MR. WILSON: He pointed out that we are not going to be
19 harmed if we -- if this hearing is delayed because we are an ongoing business, and
20 we have been subject to citation for operating without a C of O permit, and in light of
21 the fact that it is Corp. Counsel and DCRA who are asking for this extension, we
22 would respectfully request some restraint during this time period until such time as
23 these appeals are resolved.

24 MS. KING: I'm not sure that we have the authority to do that.

25 MR. HOOD: And I, Madame Chair, wouldn't be in favor of that
26 because they may be having some other violations over there aside from what we
27 are dealing with. We don't want to try to push anything like that. So I'm against any

1 set-aside violations.

2 MR. WILSON: No, we're not referring to -- we are only referring
3 to citations with respect to operating without a C of O. I'm not referring to any other
4 matters, Mr. Hood. I respect your point and agree with it.

5 CHAIRPERSON REID: We've done that before, Mr. Hood.

6 MR. HOOD: In that case I can agree with that.

7 CHAIRPERSON REID: Yeah.

8 MR. HOOD: As long as we're delaying, which is clear.

9 MR. WILSON: Okay. Thank you, sir.

10 CHAIRPERSON REID: And I have to talk to Corp. Counsel
11 more about how it's done, but if, in fact, it is a matter of us continuing the case, that
12 you should not have to be penalized in the interim until we get to the hearing date.

13 MR. PARKER: I'd just like to state our position for the record.
14 I've consulted with --

15 CHAIRPERSON REID: Give your name, please.

16 MR. PARKER: I'm sorry. Are you back on?

17 Okay. Arthur Parker, again, on behalf of the District of Columbia
18 and DCRA.

19 I've discussed with DCRA this situation, and we can take the
20 position that during this period of time until the next hearing we're not going to take
21 any enforcement action regarding their failure to have appropriate C of O --

22 CHAIRPERSON REID: Okay.

23 MR. PARKER: -- on this facility only, and we reserve all our
24 rights to issue enforcement citations for other issues --

25 CHAIRPERSON REID: Okay.

26 MR. PARKER: -- outside of the C of O issue.

27 CHAIRPERSON REID: I think that's understood, Mr. Wilson.

1 MR. WILSON: That's satisfactory. It's understood. We
2 appreciate it. Thank you.

3 CHAIRPERSON REID: Thank you.

4 MR. PARKER: You wanted to finish your ruling.

5 CHAIRPERSON REID: Okay.

6 MR. PARKER: I have some other comments, but I'd like you to
7 finish your ruling.

8 CHAIRPERSON REID: The other item was in regard to the
9 consolidation. Given the fact that there is no attorney present for Caslin today, we,
10 therefore, rule that it would not be appropriate to consolidate the cases.

11 However, what we have agreed to do is to schedule the cases
12 on the same day, and when we -- the date that we have the actual hearing, which is
13 supposed to be September 8th, we will then make the determination as to whether
14 or not we will consolidate at that time.

15 MS. KING: In the meantime, Caslin will be given a copy of the
16 motion to consolidate, and we will make a decision in the consolidation after they
17 have had an opportunity to comment.

18 CHAIRPERSON REID: Okay. In addition, we will hear Case
19 No. 16451 and 16452, the cases that deal with the appeal, prior to and if it is
20 necessary for the hearing of Case No. 16453, which is the special exception case.

21 Now --

22 MR. HOOD: Madame Chair, I have a point of clarification.

23 CHAIRPERSON REID: Sure.

24 MR. HOOD: Did we decide on September the 8th? Was that
25 going to be the date?

26 CHAIRPERSON REID: I think so.

27 MR. HOOD: No, it is my understanding that we were supposed

1 to -- you know, I had to work up some dates, and we hadn't --

2 MS. KING: No, it's September the 8th, Paul.

3 MR. HOOD: What is September the 8th?

4 CHAIRPERSON REID: If, in fact, that's available and if no one
5 has a scheduling conflict there, then we can go ahead and set it now.

6 MR. HOOD: Okay. Set it now.

7 MR. GLASGOW: May I reply?

8 CHAIRPERSON REID: Okay. Now.

9 MR. GLASGOW: I'm not sure that that's going to give parties
10 enough time to do the work and also go on vacation. I'll certainly do my work. I
11 always do even if I don't have vacation.

12 MS. KING: It's two months.

13 MR. GLASGOW: But it seems to me that --

14 CHAIRPERSON REID: Two months from today?

15 MR. GLASGOW: -- to identify issues, to get replies back, then to
16 prepare for the hearing, September 8th is acting as though everyone's at work in
17 August when half of us will be in Chicago on vacation.

18 CHAIRPERSON REID: Wait. Mr. Glasgow, let's just see.

19 Mr. Hart, have you developed a time line?

20 MR. HART: Yes, a time -- well, first, the longest time line, the
21 longest parameter is 40 days, and we'd have to start working almost immediately.
22 We are about two to three weeks left in July and through August, you know, that's --

23 CHAIRPERSON REID: We'll recess.

24 MR. HART: It's going to be real close.

25 CHAIRPERSON REID: Well, do we think that perhaps we may
26 want to do it the 26th of September. Would that be more realistic?

27 MR. HART: The 22nd of September?

1 CHAIRPERSON REID: The 22nd?

2 MR. HART: Yes, I -- you know, I think that would give us more
3 wiggle room.

4 CHAIRPERSON REID: Is that amenable to everyone here, the
5 22nd of September?

6 MS. KING: That will be nine days before --

7 MR. WILSON: That will be fine, Your Honor.

8 MS. KING: It will have to be concluded by the end of October or
9 there's no point in my sitting.

10 CHAIRPERSON REID: Okay. We'll make sure we do that.

11 MS. KING: I mean the decision and everything all in.

12 CHAIRPERSON REID: Yes, yes, by the end of October.

13 September 22nd, 9:30.

14 MR. WILSON: Madame Chair, I did not appreciate what Ms. --
15 should we -- I didn't understand what Ms. King was saying to you.

16 MS. KING: I was saying my term ends on the -- at the end of
17 September.

18 MR. WILSON: Yes, ma'am.

19 MS. KING: And I will not be -- although the law permits me to
20 serve beyond the end of my term, I will not be available beyond the end of October.
21 So by scheduling it on the 22nd of September, you know, I can come back, and that
22 will be the last case I'll ever hear. I can come back in October for decision making,
23 but will not be available after the 30th, 29th or 30th of October.

24 MR. GILREATH: And the Board feels that Ms. King, who has
25 served in various capacities in the District government over the years, she's very
26 knowledgeable and very able, and hopefully this could be concluded while she's still
27 on the Board. To lose her presence would be a significant loss.

1 MS. KING: Besides which my successor would have to read so
2 much material it wouldn't be fair.

3 MR. PARKER: I wanted to be heard on --

4 CHAIRPERSON REID: Your name?

5 MR. PARKER: Oh, again, I'm sorry. Arthur Parker on behalf of
6 the District of Columbia.

7 On the proposal to possibly have a date in advance of the
8 evidentiary hearing date to discuss the legal issues, I'm not sure if the Board is of
9 the mind that they can do that or not do that at this point, but to the extent that you
10 need some input from the District, we would think that would be productive, to have
11 a hearing in advance of the 20 -- the 26th or whatever the date is --

12 MR. HART: Second.

13 MR. PARKER: -- that we're going to have the --

14 CHAIRPERSON REID: 22nd.

15 MR. PARKER: -- evidentiary hearing on the legal issues only
16 because I can foresee that based on the number of parties that are attempting to be
17 involved in here and address these issues, and that some of the issues as outlined
18 by the intervenor could very well be dispositive; that it makes sense to try to do that,
19 but I defer to the Board in the exercise of its discretion as to how it wants to
20 schedule that.

21 MS. KING: Do we have to make a decision on that now?

22 MR. PARKER: Yeah, there's no need to make it now. You just
23 have to notify the party that you want to bring this in.

24 MS. KING: Notify the parties, of course, but if we're not doing
25 the -- if we're not doing the case until the 22nd of September, we give ourselves
26 some more wiggle room to fiddle around with dates and so forth, but it seems to me
27 that that might be wise.

1 CHAIRPERSON REID: Yeah, Mr. Parker. What we'll do is take
2 it under advisement and then make a decision.

3 MR. PARKER: And that should be -- when you make that
4 decision, that should be in conjunction with your briefing schedule order so that the
5 briefs are in place and the responses are in place and that we then appear for the
6 arguments.

7 CHAIRPERSON REID: Okay. Thank you.

8 Mr. Wilson.

9 MR. WILSON: Yes, Benjamin Wilson for Waste Management,
10 Your Honor -- Madame Chair. Excuse me.

11 While I do believe that you all have the right to waive your rules,
12 the rules literally do contemplate the departure that's being suggested here would
13 happen during a hearing and not before a hearing, and again, we just think that to
14 the maximum extent possible if this can be done in accordance with your ordinary
15 process with as few departures as possible, we think that's the better course, and
16 that's just our --

17 CHAIRPERSON REID: Thank you.

18 MR. WILSON: Thank you.

19 MR. GILREATH: You're saying the evidentiary part of it should
20 not occur, and it all occur at the actual hearing itself is what you're saying?

21 MR. WILSON: I say if that's the way -- that's my understanding
22 as to how you normally conduct these, and our request would be that you handle it
23 in the manner that you normally conduct.

24 MR. GILREATH: What if they submit -- the various parties
25 submit their legal briefs, we get them ahead of time, and we read them and are able
26 to discuss the matter with our Corporate Counsel. Do you think we can become
27 sufficiently knowledgeable and so forth to be able to make a decision?

1 CHAIRPERSON REID: I think if we need a departure from what
2 we commonly, normally -- our normal course or procedure would have to be
3 discussed more in depth with Corp. Counsel before we make a decision on that, and
4 then we will do that and --

5 MS. KING: And not the part of Corporation Counsel that is --

6 CHAIRPERSON REID: No, not the Enforcement Division.

7 And then we'll -- you take that to each entity.

8 MR. GILREATH: Then they'll need to be advised early on as to
9 particularly if they need to prepare for an evidentiary hearing.

10 CHAIRPERSON REID: And we'll make sure that's done.

11 MR. GILREATH: Okay.

12 CHAIRPERSON REID: Yes, Mr. Glasgow.

13 MR. GLASGOW: Your Honor, it seems to me that we began the
14 hearing already, that the objection from Waste Management --

15 CHAIRPERSON REID: No, no, no, no. This is not a hearing.

16 MR. GLASGOW: That what we're asking for is a continuance.

17 CHAIRPERSON REID: This is --

18 MR. GLASGOW: What has been asked for is a continuance of
19 the hearing.

20 CHAIRPERSON REID: Yeah, no what this is --

21 MR. GLASGOW: So that it opened and now it's being
22 continued.

23 CHAIRPERSON REID: No, what we're doing is preliminary
24 matters only. We have not gotten to the hearing and the scope of the case at all.

25 MR. WILSON: Madame Chair, just one final point. Our
26 preliminary statement or brief has been submitted. Obviously we would like to have
27 an opportunity to respond to what others may say in opposition, and we'll do so at

1 whatever time this Board says.

2 We thank you very much.

3 CHAIRPERSON REID: Okay. Mr. Hart, did you make that time
4 line now based on the 26th, the date of the 26th?

5 MS. KING: The 26th of September or the 22nd of September?

6 MR. HART: It's the 22nd.

7 CHAIRPERSON REID: The 22nd, the 22nd of September.

8 MR. HART: All submissions should be in no later than the 16th
9 of September.

10 MS. KING: They have got to have time to respond to each other.

11 CHAIRPERSON REID: The 16th of September?

12 MR. GLASGOW: I'm sorry, Your Honor. I didn't hear that.

13 MS. KING: Put it earlier. Put it a week earlier than that --

14 MR. HART: Okay, all right.

15 MS. KING: -- and then responses to submissions.

16 MR. HART: Okay. I just had submissions to get to the Board.

17 CHAIRPERSON REID: We've got with that the whole month of
18 August.

19 MR. HART: All right.

20 MR. PARKER: Could we suggest some dates --

21 MS. KING: Yeah, do.

22 MR. PARKER: -- inasmuch as we're the ones that are going to
23 have to deal with the rulings?

24 I would suggest that we have until what, the 15th or 20th of
25 August for initial submissions?

26 MR. GLASGOW: I'd do it earlier.

27 MR. PARKER: That's my request.

1 MR. GLASGOW: I'll defer to the government.

2 MR. WILSON: I can live with that. Let's make it August the
3 20th.

4 MR. PARKER: And then the response is due on -- when is
5 Labor Day? Can anybody tell?

6 CHAIRPERSON REID: The 7th?

7 MR. WILSON: It's later this year.

8 MR. PARKER: The 6th. How about -- how about the Monday
9 that follows Labor Day? Is that reasonable?

10 MR. WILSON: That sounds fine.

11 MR. PARKER: The 13th.

12 CHAIRPERSON REID: Who have a calendar? He has a
13 calendar, right?

14 MR. HART: The 7th is a Monday. The Labor Day is actually
15 Monday. So you're talking about the Tuesday after.

16 MR. PARKER: Right.

17 MR. HART: Okay. It's the 7th.

18 MR. PARKER: No, no, the Monday after Labor Day.

19 CHAIRPERSON REID: You said the Monday after Labor Day.

20 MR. PARKER: Right.

21 CHAIRPERSON REID: So that's a week.

22 MR. HART: The 13th.

23 MR. PARKER: That's the 13th, and then we're asking -- our
24 hearing is when, schedule now the 26th?

25 CHAIRPERSON REID: The 22nd.

26 MR. PARKER: The 22nd?

27 MS. KING: Two, two.

1 MR. HART: Two, two, yeah.

2 MR. PARKER: Okay. So that -- does the Board feel that's
3 enough time to review the documents or do you want us to move the final responses
4 back?

5 MS. KING: Say again now. August what?

6 MR. PARKER: August 20 for the initial submissions.

7 MS. KING: Okay, and then?

8 MR. PARKER: And August 13th for the responses.

9 MS. KING: No.

10 MR. PARKER: I'm sorry. September 13th.

11 MS. KING: September 13th.

12 MR. WILSON: And September 22nd for our hearing.

13 MR. PARKER: Then the question goes to the Board whether
14 that's enough time for you to review all of the submissions.

15 MS. KING: Well, we don't get the documents until the Friday
16 before the meeting.

17 CHAIRPERSON REID: Before the meeting is the day that we
18 get all of our packages. So it would be efficient, yes. To answer your question, yes.

19 MR. HOOD: Madame Chair, I would think hopefully as
20 documents come in --

21 MR. HART: Yes.

22 MR. HOOD: -- Mr. Hart, if we can get them so that we can have
23 time to review because it's going to be quite a bit --

24 CHAIRPERSON REID: If that is what you would like to have
25 done, then that sounds good to me. I have no problem with it.

26 MR. HOOD: It will give us sufficient time.

27 CHAIRPERSON REID: Start to basically distribute the

1 documents as they come in.

2 MS. KING: Right.

3 CHAIRPERSON REID: And then we'll conclude it when we get
4 our packages the week before the hearing.

5 PARTICIPANTS: Okay.

6 CHAIRPERSON REID: Board members, do you have anything
7 else to say? Anything else you want to say?

8 MS. KING: No.

9 MR. HART: Yes, but the absolute cutoff date for these
10 documents coming in would be the 16th.

11 MR. WILSON: No, not the 16th. As I understand it, it's August
12 20th for the first brief.

13 MR. HART: Sure.

14 MR. WILSON: September 13th for a response.

15 MR. HART: Correct.

16 MR. WILSON: The absolute cutoff for either of those is the --

17 MR. HART: The 16th.

18 MR. WILSON: -- 20th of August and the 13th --

19 MR. HART: No, no, no, no.

20 MR. WILSON: -- of -- of -- they're due when they're due.

21 CHAIRPERSON REID: One more time.

22 MS. KING: No, but -- but --

23 CHAIRPERSON REID: One more time.

24 MS. KING: -- for anybody else who wants to weigh in on this
25 matter and for the ANC and so forth --

26 MR. HART: Exactly.

27 MS. KING: -- the legal deadline?

1 MR. HART: Is the 16th. That's correct.

2 CHAIRPERSON REID: The 16th of? Mr. Hart, the 16th of?

3 MR. HART: September.

4 CHAIRPERSON REID: Of September?

5 MR. HART: Yes.

6 CHAIRPERSON REID: The initial submission is due August the

7 20th.

8 MR. HART: Okay. The initial submission is August 20th.

9 CHAIRPERSON REID: All right.

10 MS. KING: Responses?

11 MR. HART: The responses are due to the initial submissions

12 September the 13th. All right?

13 CHAIRPERSON REID: Okay.

14 MR. HART: That is the Monday after --

15 MS. KING: That's agreed amongst the lawyers here, but

16 anybody else who wants to weigh in on this and any other documents in the case

17 have to be received here by the close of business on the 16th of September.

18 MR. HART: That's exactly right.

19 And also I have the directive to submit the documents to the

20 Board as they come in.

21 MS. KING: Okay.

22 MR. HOOD: I really think that as you get a batch.

23 MR. HART: Yes.

24 MR. HOOD: Maybe not one by one.

25 MR. HART: Sure, sure, sure.

26 MR. HOOD: Cost effective.

27 CHAIRPERSON REID: Okay.

1 MS. KING: And you need to be in touch with the ANC to let
2 them know they'll be -- what's happened today.

3 CHAIRPERSON REID: Yeah, they have --

4 MR. HART: Sure.

5 MS. KING: If you'd be so kind.

6 CHAIRPERSON REID: And that we expect for them to have a
7 meeting in August so that they could be prepared for --

8 MS. KING: Or whenever. If they can do it in July, but they have
9 to be prepared.

10 CHAIRPERSON REID: Yes.

11 MR. HART: They need to be prepared.

12 MS. KING: And to ask the director to contact the Department of
13 Health about the environmental concerns.

14 CHAIRPERSON REID: All right. That concludes today's
15 hearing.

16 MR. HART: Just one more thing, please. The persons who are
17 here who have been involved in all of this, please make sure that I have your
18 business card.

19 PARTICIPANTS: Sure.

20 MR. HART: Because that's the best way for me to keep in touch
21 with you.

22 CHAIRPERSON REID: Okay. Thank you.

23 (Whereupon, at 2:30 p.m., the hearing was concluded.)