

D TAB 31

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

JOSEPH JORGENS, III, *et. al.*
Petitioners,

v.

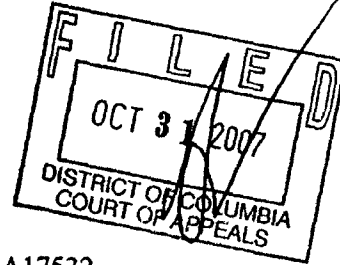
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
Respondent,

and

APPLE TREE INSTITUTE
FOR EDUCATION INNOVATION
Intervenor.

Agency No. BZA17532

Appeal No: 07 AA 943



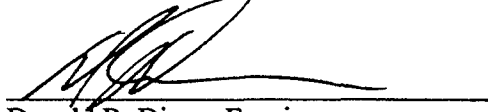
MOTION TO DISMISS

Petitioners Joseph Jorgens, III, *et. al.* ("Petitioners") hereby move to dismiss the appeal in this case. The reason therefore is that Petitioners believe that the issues raised by the appeal of the District of Columbia Board of Zoning Appeal's decision in BZA Appeal No. 17532, dated July 25, 200, have become moot in light of the District of Columbia Zoning Commission's subsequent adoption and promulgation thereof of Text Amendment Z.C. Case No. 07-03 minimum lot dimensions in the Residential Districts, which amended 11 DCMR §401.01. The government consents to this dismissal.

DATED: October 31, 2007

Respectfully Submitted,

ROETZEL & ANDRESS, LPA



Donald R. Dinan, Esquire
1300 Eye Street, N.W.
Suite 400 East
Washington, D.C. 20005
Telephone: 202.625.0600
Facsimile: 202.338.6340

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this October 31, 2007, a copy of the foregoing was mailed, first class, postage prepaid to:

Mark A. Perry, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, SE
Washington, DC 20003

Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013

Nicholas Alberti
Single Member District Commissioner 6A04
P.O. Box 75115
Washington, DC 20013

Matthew LeGrant, Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, NE
Suite 2000
Washington, DC 20002

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, NE
4th Floor
Washington, DC 20002

Alan Bergstein, Esquire
Office of the Attorney General
441 4th Street, NW
7th Floor
Washington, DC 20001

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulator Affairs
941 North Capitol Street, NE
Suite 9400
Washington, DC 20002


Donald R. Dinan

D TAB 32

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

Joseph Jorgens, III, et al.,	)	
	)	
<i>Petitioners,</i>	)	Agency Case No. 17532
v.	)	Appeal No. 07 AA 943
	)	
Government of the District of	)	
Columbia, Board of Zoning	)	
Adjustment,	)	
	)	
<i>Respondent.</i>	)	
	)	
and	)	
	)	
AppleTree Institute for Education	)	
Innovation, Inc.,	)	
	)	
<i>Intervenor.</i>	)	

**INTERVENOR'S RESPONSE
TO PETITIONERS' MOTION TO DISMISS**

Intervenor AppleTree Institute for Education Innovation, Inc. ("AppleTree") is the prevailing party in the July 25, 2007 order of the Board of Zoning Adjustment that Petitioners have asked this Court to review. On October 31, 2007, Petitioners filed a motion to dismiss this appeal. Although AppleTree has no objection to dismissal, it is important to note that the premise of Petitioners' motion is incorrect.

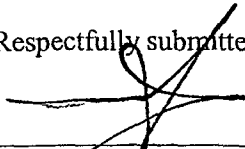
Petitioners "believe" that this appeal has "become moot" as a result of the Zoning Commission's adoption of certain amendments to 11 DCMR § 401.1, which governs minimum lot dimensions in residential districts. Mot. at 1. That belief is misplaced. The Commission's order adopting those amendments (No. 07-03) was published in the *D.C. Register* on September 14, 2007, and became effective on that date. 11 DCMR § 3028.9 ("A written order setting forth a final action shall become final and effective upon publication in the *D.C. Register*").

Because the amendments cited in Petitioners' motion did not take effect until September 14, 2007, they do not apply to AppleTree's application. "All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated." 11 DCMR § 3202.6. The BZA's order authorizing the issuance of a building permit to AppleTree was promulgated on July 25, 2007 and became final and effective on August 6, 2007. *See* 11 DCMR § 3125.9. Thus, any subsequent amendments to the Zoning Regulations—including the amendments effective September 14, 2007—do not apply to the application at issue.

The Court should be aware that on October 26, 2007, the Department of Consumer and Regulatory Affairs issued a building permit to AppleTree. *See* Exh. A, *infra*. If the Court grants Petitioners' motion and dismisses this appeal, Petitioners will have forfeited any opportunity to obtain judicial review of the BZA's order authorizing issuance of the permit.

Dated: November 5, 2007

Respectfully submitted,



Mark A. Perry, D.C. Bar No. 438203
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, D.C. 20036-5306
Telephone: (202) 955-8500
Facsimile: (202) 467-0539
MPerry@gibsondunn.com

*Attorneys for Intervenor AppleTree Institute for
Education Innovation, Inc.*

CERTIFICATE OF SERVICE

I certify that on November 5, 2007, copies of the foregoing Response to Petitioners' Motion to Dismiss were sent by first-class U.S. Mail to the following individuals:

Donald R. Dinan, Esq.
Roetzel & Andress, LPA
1300 Eye Street, N.W.
Suite 400 East
Washington, D.C. 20005

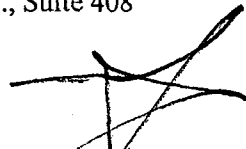
Todd Kim, Esq.
Solicitor General
Office of the Attorney General
Suite 600 South
441 Fourth Street, N.W.
Washington, D.C. 20001

George R. Keys, Jr., Esq.
Jordan & Keys, LLP
1400 16th Street, N.W., Suite 520
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Single Member District Commissioner 6A04
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Tommy Wells, City Councilmember, Ward Six
1350 Pennsylvania Ave., N.W., Suite 408
Washington, D.C. 20004



Mark A. Perry
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, D.C. 20036-5306
Telephone: (202) 955-8500
Facsimile: (202) 467-0539
MPerry@gibsondunn.com

Department of Consumer and Regulatory Affairs Permit Center

941 North Capitol St. NE Room 2100
Washington DC 20002

Tel: (202) 442-4589

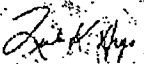
B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 89587

DATE: 10/26/2007

ADDRESS OF PROJECT: 138 12TH ST NE		SSL	SQ: 0888	SK	LOT: 820
		WARD:	6 ZONE RA		
DESCRIPTION OF WORK: INTERIOR RENOVATION EXISTING 2 STORY BLDG DEMO 3 STORY ADDITION WITH BASEMENT WITH BZAN17632 - JULY 24, 2007					
PERMIT TYPE: ADDITION/ALTERATION/REPAIR	PLANS/WORK: Y	EXISTING USE: ASSEMBLY USES/OTHERS	PROPOSED USE: Education		
PERMISSION IS HEREBY GRANTED TO: OWNER: appletree institute		PERMIT FEE: \$010,400			
AGENT NAME: MIKE WILSON 301-721-4787					
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS; SEPARATE ELECTRICAL PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED; AS PER HERE APPROVAL & PER STAMPED PLANS.					
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639.					
Acting DIRECTOR:  Linda K. Algo		PERMIT CLERK: 		EXPIRATION DATE: 10/25/2008	

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

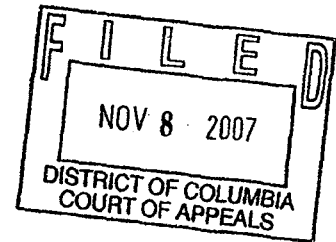
THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE (202) 442-9557 at 941 NORTH CAPITOL ST NE WASHINGTON DC 20002

Separate permits are required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

D TAB 33

**District of Columbia
Court of Appeals**



No. 07-AA-943

JOSEPH JORGENS, *et al.*,

Petitioners,

BZA17532

v.

DC BOARD OF ZONING ADJUSTMENT,

Respondent,

and

APPLETREE INSTITUTE FOR
EDUCATION INNOVATION, INC.,

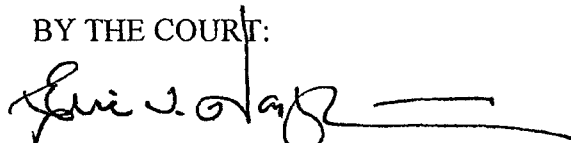
Intervenor.

ORDER

On consideration of petitioners' motion to dismiss this petition for review, to which no opposition has been filed, it is

ORDERED that the motion is granted and this petition for review is hereby dismissed. *See* D.C. App. R. 13 (b).

BY THE COURT:


ERIC T. WASHINGTON
Chief Judge

Copies to:

Donald R. Dinan, Esquire
1300 Eye St., NW
Suite 400 East
Washington, DC 20005

Todd Kim, Esquire
Solicitor General for DC

Mark A. Perry, Esquire
1050 Connecticut Ave., NW
Suite 900
Washington, DC 20036

dln

D TAB 34

GOVERNMENT OF THE DISTRICT OF COLUMBIA
~~DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS~~



Office of the Director

**By Personal Service or
Certified Mail, Return Receipt Requested, and
First Class Mail**

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003

**NOTICE OF REVOCATION
BUILDING PERMIT NO. 89587**

This is an official Order from the Department of Consumer and Regulatory Affairs ("DCRA") revoking Building Permit No. 89587 (the "Permit"), pursuant to 12A DCMR §105.6(6). The Permit is being revoked because DCRA issued the Permit in error, prior to completion of reviews by all of the disciplines required to approve the application, specifically environmental and zoning.

Building Permit No. 89587 was issued at approximately 11:00 a.m. on October 29, 2007. Within an hour of the permit grant, DCRA staff requested that the permit be surrendered voluntarily for cancellation, since the permit had been issued in error. In addition, your attorney, Mr. Mark Perry of Gibson, Dunn & Crutcher, was contacted by DCRA's counsel on October 29, 2007, and asked to surrender the permit voluntarily for cancellation. Mr. Perry was also advised, verbally and by email, that unless the permit was surrendered voluntarily, DCRA would initiate proceedings to revoke the permit. Your attorney was also advised that any construction pursuant to the erroneously-issued permit would be at your own risk.

At the time of issuance, at least two disciplines, environmental and zoning, still needed to clear the application for grant. Reflecting this processing status, DCRA had placed a "hold" on the granting of the application subject to clearances by two senior managers, the Zoning Administrator and the Acting Deputy Director, Permit Operations. This application status was noted in three internal tracking databases maintained by DCRA in connection with construction permit processing. On October 29, 2007, a DCRA employee exceeded his authority by removing the "hold" on the application, and authorizing the granting of the application. DCRA has determined that the DCRA employee erred in authorizing the granting of the permit prior to the application receiving the required approvals and in

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003
p. 2

direct contravention of his superiors' directives.¹

The permit is being revoked so that DCRA can complete the reviews required as part of its processing procedures, reviews which were truncated by the erroneous issuance of the permit on October 29, 2007. One of the issues to be considered by the Zoning Administrator was the impact of an amendment of the Zoning Regulations pursuant to Zoning Commission Order 06-33, published in the District of Columbia Register on September 14, 2007. This zoning review could not be completed until the District Department of the Environment (DDOE) returned the permit application and plans to DCRA.³ The application and plans were not returned by DDOE until October 25, 2007. Before the zoning review could be completed, and contrary to the computer "hold" on the application to enable such review, the permit was granted. Moreover, even though DDOE returned the plans to DCRA on October 25, 2007, it is DCRA's understanding that DDOE had not, and still has not, completed its investigation with respect to the toxic waste issue.

Pursuant to 12A DCMR §105.6(6), DCRA is authorized to revoke a building permit if the permit was issued in error. Accordingly, DCRA hereby revokes Building Permit No. 89587.

RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit. To appeal, your appeal must be mailed to the Office of Administrative Hearings at P.O. Box 77718, Washington, DC 20002. Alternatively, you may hand-deliver your appeal or request to the Office of Administrative Hearings at 941 North Capitol Street, NE, Suite 9100, Washington, DC 20002. The deadline for such an appeal or request is ten (10) business days following your receipt of this Notice.

Any questions about this Notice may be directed to the Permit Operations at (202) 442-4541.

Nov. 15, 2007
Date

Linda K. Argo
Linda K. Argo, Director

CC: Mark Perry, Esq.

¹ Following an internal investigation, your permit expeditor was cleared of any wrongdoing in connection with the permit issuance.

³ The application and plans had been sent to DDOE for review on or about September 1, 2007, for DDOE to determine if the construction site was contaminated by hazardous chemicals as had been alleged. In an August 30, 2007 letter and email from Advisory Neighborhood Commission 6A Commissioner David Holmes, Mr. Holmes raised the concerns of his constituents that the site contained hazardous chemicals, stemming from when the site had been operated as a distribution site for oil and other petroleum distillates.

D TAB 35

GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306

(202) 955-8500

www.gibsondunn.com
MPerry@gibsondunn.com

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2007 NOV 30 P 4: 02

November 30, 2007

Direct Dial

(202) 887-3667

Fax No.

(202) 530-9696

Client No.

C 04753-00001

VIA AND HAND DELIVERY AND U.S. MAIL

Office of Administrative Hearings
941 North Capitol Street, NE
Suite 9100
Washington, D.C. 20002
Fax: (202) 442-9451

Re: ***Request for Hearing on Notice Revocation of Building Permit No. 89587***

To Whom It May Concern:

On behalf of AppleTree Institute for Education Innovation, I am writing to request a hearing on the November 15, 2007 Notice of Revocation of Building Permit No. 89587. See Exh. A. DCRA issued the permit on October 26, 2007. See Exh. B. DCRA now contends that it may revoke the permit because it issued the permit "in error." Exh. A at 1.

Although the regulations authorize the revocation of permits that have "been issued in error," 12 D.C.M.R. § 105.6(6), that authorization cannot be construed to allow DCRA to revoke a permit any time it decides that it would rather have not issued the permit in the first instance. Such an overbroad interpretation not only would do violence to the structure and text of the limitations on DCRA's revocation authority, but would also deprive property owners and investors of confidence in their permits and incentives to invest in the development of the District of Columbia.

Here, DCRA does not contend that any action by *AppleTree* authorizes DCRA's revocation of the permit. Instead, DCRA attempts to undo its own administrative actions and divest *AppleTree* of its settled expectations by asserting that *DCRA* erred. As is clear from the

GIBSON, DUNN & CRUTCHER LLP

face of DCRA's Notice of Revocation, the permit did not result from inadvertent error, such as a typographical mistake or excusable confusion among permit applicants. Rather, DCRA contends that the permit was issued intentionally by an employee who, supposedly, did not first obtain certain clearances from his managers. Exh. A at 1-2. The permit itself, however, bears not only the signature of a permit clerk, but also that of DCRA's Acting Director, Linda K. Argo. See Exh. B. Thus, DCRA's efforts to revoke the permit appear to be the result of second-guessing, and not an excusable error of the kind that falls within the limited circumstances in which revocation of an intentionally granted permit is authorized.

Moreover, DCRA is required to review permit applications "within a reasonable time after filing" and to issue permits "as soon as practicable." 12 D.C.M.R. § 105.3.1. AppleTree's application for a building permit was filed on February 9, 2006. After an initial denial by the Zoning Administrator, the Board of Zoning Appeals issued an order directing the permit to issue on July 25, 2007. The Board declined to stay its order, the Zoning Commission did not order *sua sponte* review, and the D.C. Court of Appeals recently dismissed an appeal from the Board's order. Thus, there is no legal basis for DCRA's continued delay in issuance of the permit.

The Notice states that "[o]ne of the issues to be considered by the Zoning Administrator was the impact of an amendment of the Zoning Regulations pursuant to Zoning Commission Order 06-33." That amendment does not apply to this application. "All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations *in effect* on the date those orders are promulgated." 11 D.C.M.R. § 3202.6 (emphasis added). The Zoning Commission order amending the regulations was not published in the District of Columbia Register, and therefore was not in effect, until September 14, 2007. 11 D.C.M.R. § 3028.9 ("A written order setting forth a final action shall become final and effective upon publication in the D.C. Register"). The BZA order authorizing AppleTree's building permit was promulgated before then, on July 25, 2007. In fact, it became final and effective on August 6, 2007. Thus, the amendments referenced in the Notice are wholly inapplicable.

The Notice further states that the District Department of the Environment has not "completed its investigation with respect to the toxic waste issue." This so-called "issue" is a spurious and untimely attempt to inject a complication into this project where there should be none. There is no credible evidence of any "toxic waste" on the property. In all events, the Notice acknowledges that "[t]he application and plans [were] sent to DDOE for review on or about September 1, 2007"—more than two months ago. DDOE has had ample time to investigate the allegations of environmental contamination. There is no reason to further delay issuance of this permit.

At the hearing, AppleTree intends to exercise its right to solicit evidence from persons knowledgeable about the processing of this permit application and the purported revocation of the permit, including Ms. Argo as the Director of DCRA; the Zoning Administrator; the Acting Deputy Director, Permit Operations; the as-yet unnamed "DCRA employee" who was involved in issuing the permit; the Director of DDOE; and any other District employee who may have been involved in this process.

GIBSON, DUNN & CRUTCHER LLP

Respectfully submitted,

 / BY PERMISSION
JASON J MENDRO

Mark A. Perry

Enclosures

cc (by U.S. mail and fax):

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, SE
Washington, D.C. 20003

Ms. Linda K. Argo
Director
D.C. Department of Consumer
and Regulatory Affairs
941 North Capitol Street, NE
Suite 9500
Washington, D.C. 20002

Dennis M. Taylor, Esq.
Assistant Attorney General
941 North Capitol Street, NE
Suite 9401
Washington, D.C. 20001

100344193_2.DOC

EXHIBIT A

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**



Office of the Director

**By Personal Service or
Certified Mail, Return Receipt Requested, and
First Class Mail**

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003

**NOTICE OF REVOCATION
BUILDING PERMIT NO. 89587**

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At the time of issuance, at least two disciplines, environmental and zoning, still needed to clear the application for grant. Reflecting this processing status, DCRA had placed a "hold" on the granting of the application subject to clearances by two senior managers, the Zoning Administrator and the Acting Deputy Director, Permit Operations. This application status was noted in three internal tracking databases maintained by DCRA in connection with construction permit processing. On October 29, 2007, a DCRA employee exceeded his authority by removing the "hold" on the application, and authorizing the granting of the application. DCRA has determined that the DCRA employee erred in authorizing the granting of the permit prior to the application receiving the required approvals and in

Mr. Russ Williams
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p. 2

direct contravention of his superiors' directives.¹

The permit is being revoked so that DCRA can complete the reviews required as part of its processing procedures, reviews which were truncated by the erroneous issuance of the permit on October 29, 2007. One of the issues to be considered by the Zoning Administrator was the impact of an amendment of the Zoning Regulations pursuant to Zoning Commission Order 06-33, published in the District of Columbia Register on September 14, 2007. This zoning review could not be completed until the District Department of the Environment (DDOE) returned the permit application and plans to DCRA.³ The application and plans were not returned by DDOE until October 25, 2007. Before the zoning review could be completed, and contrary to the computer "hold" on the application to enable such review, the permit was granted. Moreover, even though DDOE returned the plans to DCRA on October 25, 2007, it is DCRA's understanding that DDOE had not, and still has not, completed its investigation with respect to the toxic waste issue.

Pursuant to 12A DCMR §105.6(6), DCRA is authorized to revoke a building permit if the permit was issued in error. Accordingly, DCRA hereby revokes Building Permit No. 89587.

RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit. To appeal, your appeal must be mailed to the Office of Administrative Hearings at P.O. Box 77718, Washington, DC 20002. Alternatively, you may hand-deliver your appeal or request to the Office of Administrative Hearings at 941 North Capitol Street, NE, Suite 9100, Washington, DC 20002. The deadline for such an appeal or request is ten (10) business days following your receipt of this Notice.

Any questions about this Notice may be directed to the Permit Operations at (202) 442-4541.

Nov. 15, 2007
Date

Linda K. Argo
Linda K. Argo, Director

CC: Mark Perry, Esq.

¹ Following an internal investigation, your permit expeditor was cleared of any wrongdoing in connection with the permit issuance.

³ The application and plans had been sent to DDOE for review on or about September 1, 2007, for DDOE to determine if the construction site was contaminated by hazardous chemicals as had been alleged. In an August 30, 2007 letter and email from Advisory Neighborhood Commission 6A Commissioner David Holmes, Mr. Holmes raised the concerns of his constituents that the site contained hazardous chemicals, stemming from when the site had been operated as a distribution site for oil and other petroleum distillates.

EXHIBIT B

Department of Consumer and Regulatory Affairs Permit Center

941 North Capitol St. NE Room 2100

Washington DC 20002

Tel: (202) 442-4589

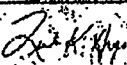
B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 89587

DATE: 10/26/2007

ADDRESS OF PROJECT: 139 12TH ST NE		SSL	SQ: 0588	SS	LOT: 620
WARD:		ZONE: RA			
DESCRIPTION OF WORK: INTERIOR RENOVATION EXISTING 2 STORY BLDG DEMO 1 STORY ADDITION WITH BASEMENT WITH BZAH17632 - JULY 25, 2007					
PERMIT TYPE: ADDITION/ALTERATION/REPAIR	PLANS/DATE: Y	EXISTING USE: ASSEMBLY USES/OTHERS	PROPOSED USE: Education		
PERMISSION IS HEREBY GRANTED TO OWNER: Appletree Institute		PERMIT FEE: \$0.100000			
AGENT NAME: MIKE WILSON 301-731-4787					
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS; SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED; AS PER APPROVAL & PER STAMPED PLANS.					
TO REPORT WASTE, FRAUD, OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639.					
Acting DIRECTOR:  Linda K. Argo		PERMIT CLERK: 		EXPIRATION DATE: 10/25/2008	

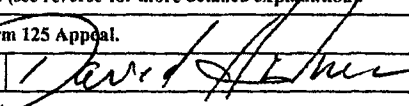
CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE (202) 442-8557 or 941 NORTH CAPITOL ST NE WASHINGTON DC 20002

Separate permits are required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

D TAB 36

Form 125 — Exhibit 1 (Revised 03/15/02)		Case No. _____	
 BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA 			
APPEAL Notice: Click Here for Appeal Form Instructions			
Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken			
from the administrative decision of:*		DCRA Building Permit No. 89587	
made on*	12/24/2007	, to the effect that*	
See attached - The DCRA erred in its decision to grant Zoning and Environment Disciplines contained in the Building Plan Review Status Tracking Number 3758 A 2006.			
Address(es)* of Affected Premises	Square(s)*	Lot(s)*	Zoning Districts*
138 12th St NE	988	820	R-4
Present Use of Property:*	Private Club		
Proposed Use of Property:*	Public Charter School		
Owner of Property:*	AppleTree Institute for Education Innovation	Telephone No.:	(202)488-3990
Name, address and telephone number of lessee:			
None			
Name, address and telephone number of appellant, if other than owner:			
Advisory Neighborhood Commission 6A PO Box 75115 Washington, DC 20013			
State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation)			
Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.			
Date:*	12/24/2007	Signature:	
* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.			
To be notified of hearing and decision: (Appellant or Authorized Agent)*			
Name:*	Nicholas Alberti		
Address:*	1330 North Carolina Ave NE	City:*	Washington, DC
		State:*	None
		Zip:*	20002
Phone No.:*	(202)543-3512	Fax No.:	
		E-Mail:	alberti4a04@yahoo.com
ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.			

2007 DEC 24 AM 10:52

D.C. OFFICE OF ZONING

RECEIVED

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
)
Advisory Neighborhood Commission 6A from the)
Administrative Decision of DCRA on)
Building Plan Review Status 3758 A 2006 on)
Approval of Zoning and Environmental Disciplines)

Statement of the Applicant

Advisory Neighborhood Commission 6A (ANC6A) hereby requests that the Board of Zoning Adjustment (the Board) GRANT the Appeal from the Administrative Decision of the Department of Consumer and Regulatory Affairs Building and Land Regulation Administration approval of the Zoning and Environmental Disciplines at 138 12th St NE and in support of its appeal states the following:

SUMMARY OF APPEAL

The Department of Consumer and Regulatory Affairs (DCRA) erred in its decision to grant Zoning and Environment Disciplines contained in the Building Plan Review Status Tracking Number 3758 A 2006. The property, which is the subject of this appeal, is located at 138 12th St NE. The property is in an R-4 District. The proposed purpose of the property is as a public charter school. The appeal is requested for two reasons: (1) DCRA has failed to adequately review or evaluate the environmental impact as required by D.C. Law 8-86 "District of Columbia Environmental Policy Act of 1989" and the rules promulgated by DCRA for projects of this magnitude and scope; and (2) the property does not meet the lot size or lot width requirements stipulated by Title 11 DCMR §401.3 as recently amended by Z.C. Order No. 06-06.

DISCUSSION

- 1) DCRA has failed to adequately review or evaluate the environmental impact as required by D.C. Law 8-86 "District of Columbia Environmental Policy Act of 1989" and the rules promulgated by DCRA for projects of this magnitude and scope.

DCRA has failed to require AppleTree Institute for Education Innovation (AT), the owner, to complete an EISF and as a consequence, failed to complete an adequate review of the environmental impacts of this project as required by D.C. Law 8-86.

The current owner plans to convert the current building at 138 12th St NE into a charter school that can accommodate 72 students plus staff. Their plans include the complete demolition and reconstruction of the interior of the current structure, the excavation of a basement over which a 3,240 square foot three-story addition to the current structure will be built and the construction of a children's play area in the rear. The entire rear of the property is currently paved asphalt, which would be removed during the excavation of a basement and construction of a play area.

Pursuant to the *Environmental Policy Act Regulations* (Title 20 DCMR, Ch. 72), no agency is permitted to issue a license, permit, certificate or authorization until the environmental impact review is complete. D.C. Law 8-86 "District of Columbia Environmental Policy Act of 1989" requires that an Environmental Impact Statement be prepared whenever a proposed 'major' action is likely to have substantial negative impact on the environment. A 'major' action is defined by D.C. Law 8-86 as a project that costs over 1 million dollars based on 1989 dollars adjusted annually according to the Consumer Price Index. One million dollars in 1989 in dollars is currently equivalent to 1.64 million dollars. Rules promulgated by DCRA require that applicants complete an Environmental Impact Screening Form (EISF) whenever the total cost of the project exceeds 1.5 million dollars, or the project will dispose of hazardous substances as defined in 20 DCMR §7200 or will produce emissions of air pollutants.

Based on the plans submitted with the application, a realistic estimate of the total cost to demolish and rebuild the interior and to construct a large addition suitable for use as a public charter school will be in excess of 2 million dollars. This figure is supported by the applicant who, in a public statement posted on the web site of the AppleTree Institute for Education Innovation (<http://www.appletreeinstitute.org/aboutUs/mediaRoom/12thStreetNEFAQs.cfm>), provides the following assessment of the cost:

Q. How much will the project cost?

AppleTree Institute purchased the building from the Knights of Saint John and Ladies Auxiliary for \$1,500,000. Total renovation and soft costs are \$2,300,000.¹

The AppleTree Institute for Education Innovation reported the total cost of the project as 1.25 million dollars on its building permit application. This figure dramatically understates the true cost of this project. Had DCRA adequately evaluated the total project cost, as reflected by the project plans, it would have recognized the discrepancy between a realistic estimate of the total cost and the estimate reported by the applicant. Instead, DCRA erroneously relied on the total cost figure reported by the applicant, which circumvented the need for an Environmental Impact Screen Form. The EISF is designed to help the District government agencies determine whether or not a project would likely result in adverse environmental impacts during its construction phase.

¹ See Attachment 1- Statements from the AppleTree Institute for Education Innovation web site

The project will require the disposal of hazardous materials. The removal of asphalt will expose underlying hazardous material and the planned excavation will expose neighbors to toxic dust, if not performed properly. The building was built for the offices of Steuart Petroleum, in approximately 1915 and uses for that purpose until sometime in the mid-1960s. While Steuart Petroleum occupied the property, they fueled vehicles from the site and maintained a substantial workshop for repair and maintenance of company vehicles in the rear yard. The workshop would have inevitable produced spillages of petroleum distillates. The workshop was razed in approximately 1969. The entire rear yard (more than 2,500 sq ft. in area) was then paved for parking which encapsulated whatever environmental hazards may be present. This occurred prior to the enactment of current environmental laws.

- 2) The property does not meet the lot size or lot width requirements stipulated by Title 11 DCMR §401.3 as recently amended by Z.C. Order No. 06-06

The property is located in an R-4 District. The proposed use by the current owners is as a public charter school. The property is 4,230 sq. ft. in area with a width of 36 ft. Its prior use was as a 'private club'.

The permit issued by DCRA on October 26, 2007 does not comply with the Zoning Regulations, specifically the lot dimension requirements, in effect on that date - 'Any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued', 11 DCMR §3202.4.

Title 11 DCMR §401.3 as recently amended by Z.C. Order No. 06-06 (Charter Schools Test Amendments) stipulates that a property to be used as a 'public school' have a minimum lot size of 9,000 sq. ft. and a minimum lot width of 120 ft. Furthermore, Title 11 DCMR §401.1 as recently amended by Z.C. Order No. 07-03 (Minimum Lot Dimensions in the Residential Districts) stipulates that, even though the lot and building existed prior to 1958, it must meet the minimum lot area and minimum lot width requirements of §401.3 if the building is being converted to a use that requires more lot area and lot width than is on the building's lot. The lot area and lot width required for the conversion of use to a 'public charter school' is larger than that available on the lot at 138 12th St. NE.

The DCRA could not approve the Environmental Discipline prior to September 14, 2007 the effective date of Z.C. 07-03² because sufficient information to approve that discipline was not available until after that date. DCRA states in the November 15, 2007 'Notice of Revocation Building Permit No. 89587' that "...even though DDOE returned the plans to DCRA on October 25, 2007, it is DCRA's [sic] understanding that DDOE had, and still has not, completed its investigation with respect to the toxic waste issue". Furthermore, as we argue in 1), above, DCRA still has not compiled sufficient information with which to adequately evaluate the requirements of the Environmental Discipline.

² See Attachment 2 - Notice of Revocation Building Permit No. 89587

The Board's July 25, 2007 order addressing its decision on the Appeal No. 17532 of the AppleTree Institute for Education Innovation does not authorize the issuance of building permits as of the date of that order. That order found that the DCRA erred in its issuance of building permits. The application for building permits could not be processed on effective date of the Board's order because the application was not sufficiently complete as required by the Zoning Regulations – "All application for building permits authorized by orders of the BZA may be processed in accordance with the Zoning Regulation in effect on the date those orders are promulgated: Provided, that all application for building permits shall be accompanied by the plans and other information required by §3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation" 11 DCMR §3202.6.

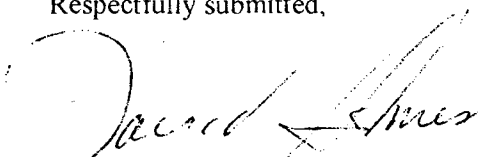
It is for these reasons that the construction authorized by the building permits issued on October 26, 2007 must comply with the Zoning Regulations governing lot area and lot width requirements in effect on that date. As we have shown, it does not comply with those regulations.

REQUEST FOR RELIEF

The appellant requests that the Board ORDER the Department of Consumer and Regulatory Affairs to:

1. Revoke the Zoning and Environmental Disciplines and any approved building and construction permits for the Permit No. 89587
2. Deny the pending zoning and certificate of occupancy requests based on the fact that the property under consideration does not be the minimum lot dimension requirements (lot area and lot width) of Title 11 DCMR §401.3.

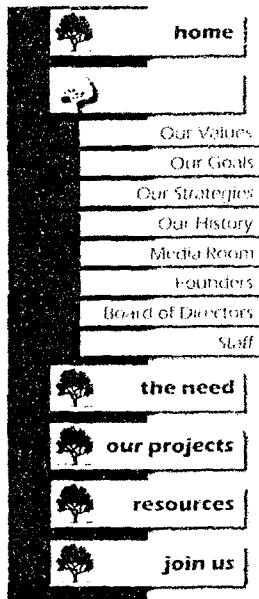
Respectfully submitted,



David Holmes, Vice Chair
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013



ATTACHMENT 1



Frequently Asked Questions About AppleTree's Zoning Issue

Q. Why does AppleTree want a charter school to be in a residential neighborhood?
Neighborhoods are where the children are.

Under the DC Zoning Ordinances, DC public charter schools have the same right as DC public schools to develop property throughout the city as a "matter of right." It is still a long and difficult process to develop a property, but doing so as a matter of right makes the process slightly less difficult. Given the many disadvantages that charters face in obtaining suitable facilities, this distinction makes a significant difference.

Many families want to have good, small schools that are close to their home, within walking distance. Historically, most schools were located in neighborhoods. Many of the older DCPS elementary schools were developed as neighborhood schools. (Now many of the oldest have been redeveloped into residences.) Larger schools, with large campuses, located away from neighborhoods are a recent phenomenon—since the 1960's.

Q. Why do we need a preschool charter program anyway? Is it daycare?
Unfortunately, many young children in Washington, DC grow up with daily access to language, vocabulary or literature and they come school far behind their more advantaged peers.

By the 4th grade, most fall far behind, which is why 9 out of 10 4th grade students in DC public schools cannot read at a proficient level, as measured by the National Assessment of Educational Progress, also known as the Nation's Report Card.

High quality preschool, like AppleTree Early Learning Public Charter School, makes a huge difference in the trajectory of learning for these children. Quality programs develop young children's vocabulary (which is essential for later reading comprehension) and basic reading skills (identifying the letters of

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High quality preschool, like AppleTree Early Learning Public Charter School, makes a huge difference in the trajectory of learning for these children. Quality programs develop young children’s vocabulary (which is essential for later reading comprehension) and basic reading skills (identifying the letters of the alphabet, the sounds they represent, and understanding the way print is organized). They also develop their social and emotional skills so that they are ready to learn.

Preschool is not daycare. Preschool involves intentional, explicit, ongoing instruction and interactions between skilled instructors implementing a comprehensive, research-based instructional program that builds language and literacy skills.

Q. Won’t a preschool bring a lot of noise, traffic and people that will disrupt the neighborhood?
AppleTree plans two classrooms for 3 year-old children, and one classroom for 4 year-old children at 138 12th Street. Each classroom has eighteen children, meaning that 54 children will learn at this site. Our ratio of teachers to students is 1:6, meaning that nine full-time instructional staff will be working in the classrooms. Most of the teachers will commute using Metro, as they do at our preschool in Southwest.

Many of the children will come from the Lincoln Park neighborhood, so it is likely that they will

walk to school. Dropping off children and picking up children does bring extra traffic for a short time each day. It is also a time when most people are off to work for the day. There are a number of ways that preschools can minimize this disruption. For example, by having staff members meet the children at their cars and walk them into school, parents can say “good-bye” and reduce the drop-off to less than a minute.

Preschool children aren’t terribly noisy, and the high ratio of staff to students at AppleTree Early Learning Public Charter School ensures that much of the day they are engaged in meaningful interaction aimed at developing their language and literacy skills.

While we expect to use Lincoln Park, which will involve walking children to and from the Park, it will hardly be disruptive.

Q. How big is the school that AppleTree wants to build at 138 12th Street?

Our school will be about 8,800 square feet, and will occupy about 60% of the lot. Our building was constructed for commercial purposes in 1904, and it occupies a double lot. Our renovation plans call for us to add onto the rear of the building to bring the wall back to the same level as the two homes that abut our property, so our lot coverage will be the same as other buildings, and significantly less than some of the residences in the neighborhood. We will also add a third floor that will not be visible from the street (this has been validated by tests conducted by the Historic Preservation Review Board prior to their approval of our project.)

Q. How much will the project cost?

AppleTree Institute purchased the building from the Knights of Saint John and Ladies Auxiliary for \$1,500,000. Total renovation and soft costs are \$2,300,000.

Q. Who is likely to attend?

Children in the Lincoln Park neighborhood and from the neighborhoods east to RFK, west to the Capitol, north to H Street and south to Pennsylvania Avenue. Demand for public, high quality preschool programs is strong among all demographic groups. Many Capitol Hill families are on the waiting list of our other school in Southwest.

Q. Why can’t AppleTree just put preschools in church basements or in the kinds of space where daycares are located?

A quality early learning program, like any other educational program, should be in space that supports and fits the program. Unfortunately, since most early childhood programs lack a strong base of financial support, they “fit” their program into the least expensive available space, much as we did in Southwest at Riverside Baptist Church. We made \$60,000 worth of improvements to that space in the summer of 2005. The opportunity for our preschool at 138 12th Street, NE is to have running water in the classrooms, bathrooms off the classrooms, a rainy day play area, meeting space for staff and parents, administrative space for our principal and secretary, and storage space for records, supplies and materials.

Q. What is the issue regarding the emergency set down of amendments to the zoning ordinances on February 13, 2006?

There is a substantive issue as well as a process issue. The substantive issue is that the Office of Planning made recommendations that essentially eliminate small schools of any kind (under 9,000 square feet) from DC neighborhoods in the future. This means daycares, charter schools, or independent schools. The Office of Planning recommendations take away rights that public charter schools have enjoyed for ten years, with no evidence that there is a community reason for this “taking.”

There is documentation in the form of email communication and a recent news article of the Voice of the Hill that these changes were initiated by a small group of neighbors to block AppleTree Institute from developing the property we purchased. The amendments were set down on an emergency basis to provide Zoning Administrator Bill Crews with a reason to deny construction permits he, otherwise, would have to issue under the law.

The —process issue is that the manner in which these rules were rushed through violated the DC Administrative Procedures Act and was simply bad process. Despite assurances to the contrary, Office of Planning neglected to consult the affected parties, the DC Public Charter School Board, the DC Office of Charter School Financing, the DC Office of Early Care and Education or the DC Master Facilities Plan.

AppleTree Institute had purchased the property under the old rules that permit the development of this property as “a matter of right” for use as a public charter preschool. Our plans had already received approval from the Historic Preservation Review Board, and we had filed for construction permits—before the Zoning Commission met. The only reasons cited by Zoning Administrator Crews for denying our permits were the new amendments to the zoning ordinances set down after we had applied.

This simply isn’t permitted under the DC Administrative Procedures Act or under the law.

Q. Shouldn’t the neighborhood and the ANC’s have more input into projects of this kind?
The existing processes provide neighborhoods and ANC’s several opportunities to provide input to projects as they are developed. In the case of our project, and other projects that require revisions, project developers often offer to meet with groups of neighbors to work through issues. The problem with our project is not the amount of input, but a disagreement with neighbors and ANC Commissioners over the proposed “use.”

Q. What input has the neighborhood and ANC had in the project?

1. AppleTree presented our plans to the ANC 6A Economic Development Committee, which was a public meeting. We received a great deal of feedback at that meeting, and made significant revisions to our plans as a result.

2. We then presented our revised plans to the full meeting of ANC 6, and received a great deal of

feedback at that meeting, at which we invited ANC Commissioners and neighbors to work with us to address the concerns and objections they had.

3. We met with the Capitol Hill Restoration Society three times to receive their input with regard to the architectural plans for the renovation and made revisions to our plan as a result of their inputs.

4. We presented our plans to the Historic Preservation Review Board, which requested further revisions, which we made before receiving their approval to apply for construction permits.

5. We offered six times to meet with neighbors about our plans and met with ANC Commissioners Cody Rice, Nick Alberti and Capitol Hill Restoration Society's Nancy Metzger to review our final plans that were approved by the Historic Preservation Review Board.

Q. Is AppleTree Institute a for-profit, Boston-based corporation?

No. AppleTree Institute for Education Innovation is a Washington, DC-based 501(c)(3) not-for-profit organization that was originally incorporated in Massachusetts. It is common for corporations to be incorporated in Delaware, or jurisdictions other than where they operate. In fact, many Washington, DC-based organizations are incorporated in jurisdictions other than Washington, DC.

Q. Why not just locate the school somewhere else, such as in a DCPS school?

AppleTree would like to expand the enrollment of our early language and literacy preschool charter program to serve children throughout the city. We are implementing a variety of strategies to build classrooms in partnership with community development corporations, DC public schools and private elementary schools.

It takes time for policies, such as co-location with a DC public school, to develop. For example, AppleTree is working with EdBuild, a not-for-profit organization working with DCPS to manage co-location projects with under-enrolled DC Public Schools. The timeline is long and the decision-making process complex. There are opportunity costs that are both financial and human. We are working with a blend of strategies that is intended to provide us with a predictable process of expansion so that we can reach our programmatic and financial goals. That's why developing the property we bought remains an important part of our plans, regardless of whether classrooms open in September of 2006, 2007 or 2008.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**



Office of the Director

**By Personal Service or
Certified Mail, Return Receipt Requested, and
First Class Mail**

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003

NOTICE OF REVOCATION
BUILDING PERMIT NO. 89587

This is an official Order from the Department of Consumer and Regulatory Affairs ("DCRA") revoking Building Permit No. 89587 (the "Permit"), pursuant to 12A DCMR §105.6(6). The Permit is being revoked because DCRA issued the Permit in error, prior to completion of reviews by all of the disciplines required to approve the application, specifically environmental and zoning.

Building Permit No. 89587 was issued at approximately 11:00 a.m. on October 29, 2007. Within an hour of the permit grant, DCRA staff requested that the permit be surrendered voluntarily for cancellation, since the permit had been issued in error. In addition, your attorney, Mr. Mark Perry of Gibson, Dunn & Crutcher, was contacted by DCRA's counsel on October 29, 2007, and asked to surrender the permit voluntarily for cancellation. Mr. Perry was also advised, verbally and by email, that unless the permit was surrendered voluntarily, DCRA would initiate proceedings to revoke the permit. Your attorney was also advised that any construction pursuant to the erroneously-issued permit would be at your own risk.

At the time of issuance, at least two disciplines, environmental and zoning, still needed to clear the application for grant. Reflecting this processing status, DCRA had placed a "hold" on the granting of the application subject to clearances by two senior managers, the Zoning Administrator and the Acting Deputy Director, Permit Operations. This application status was noted in three internal tracking databases maintained by DCRA in connection with construction permit processing. On October 29, 2007, a DCRA employee exceeded his authority by removing the "hold" on the application, and authorizing the granting of the application. DCRA has determined that the DCRA employee erred in authorizing the granting of the permit prior to the application receiving the required approvals and in

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003
p. 2

direct contravention of his superiors' directives.¹

The permit is being revoked so that DCRA can complete the reviews required as part of its processing procedures, reviews which were truncated by the erroneous issuance of the permit on October 29, 2007. One of the issues to be considered by the Zoning Administrator was the impact of an amendment of the Zoning Regulations pursuant to Zoning Commission Order 06-33, published in the District of Columbia Register on September 14, 2007. This zoning review could not be completed until the District Department of the Environment (DDOE) returned the permit application and plans to DCRA.³ The application and plans were not returned by DDOE until October 25, 2007. Before the zoning review could be completed, and contrary to the computer "hold" on the application to enable such review, the permit was granted. Moreover, even though DDOE returned the plans to DCRA on October 25, 2007, it is DCRA's understanding that DDOE had not, and still has not, completed its investigation with respect to the toxic waste issue.

Pursuant to 12A DCMR §105.6(6), DCRA is authorized to revoke a building permit if the permit was issued in error. Accordingly, DCRA hereby revokes Building Permit No. 89587.

RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit. To appeal, your appeal must be mailed to the Office of Administrative Hearings at P.O. Box 77718, Washington, DC 20002. Alternatively, you may hand-deliver your appeal or request to the Office of Administrative Hearings at 941 North Capitol Street, NE, Suite 9100, Washington, DC 20002. The deadline for such an appeal or request is ten (10) business days following your receipt of this Notice.

Any questions about this Notice may be directed to the Permit Operations at (202) 442-4541.

Nov. 15, 2007
Date

Linda K. Argo
Linda K. Argo, Director

CC: Mark Perry, Esq.

¹ Following an internal investigation, your permit expediter was cleared of any wrongdoing in connection with the permit issuance.

³ The application and plans had been sent to DDOE for review on or about September 1, 2007, for DDOE to determine if the construction site was contaminated by hazardous chemicals as had been alleged. In an August 30, 2007 letter and email from Advisory Neighborhood Commission 6A Commissioner David Holmes, Mr. Holmes raised the concerns of his constituents that the site contained hazardous chemicals, stemming from when the site had been operated as a distribution site for oil and other petroleum distillates.

**Department of Consumer and Regulatory Affairs
Permit Center**941 North Capitol St. NE Room 2100
Washington DC 20002

Tel: (202) 442-4589

B**Building Permit**THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 89587

DATE: 10/26/2007

ADDRESS OF PROJECT: 130 12TH ST NE		SS L	SQ: 0988 WARD: 6	ZONE: RM	LOT: 820
DESCRIPTION OF WORK: INTERIOR RENOVATION EXISTING 2 STORY BLDG DEMO 3 STORY ADDITION WITH BASEMENT WITH BZAM17632 - JULY 26, 2007.					
PERMIT TYPE: ADDITIONAL ALTERATION/REPAIR	PLANS/OTHER: Y	EXISTING USE: ASSEMBLY USES/OTHERS	PROPOSED USE: Education		
PERMISSION IS HEREBY GRANTED TO OWNER: appletree institute		PERMIT FEE: \$5,164.00			
AGENT NAME: MIKE WILSON 301-731-4787					
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS; SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED; AS PER PRB APPROVAL & PER STAMPED PLANS. TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1839.					
Acting DIRECTOR: Linda K. Aliso		PERMIT CLERK: 		EXPIRATION DATE: 10/25/2008	

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS: PHONE (202) 442-4567 at 941 NORTH CAPITOL ST NE WASHINGTON DC 20002.

Separate permits are required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

D TAB 37

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IN THE DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

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-----X
APPLETREE INSTITUTE FOR EDUCATION :
INNOVATION, :

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Petitioner :

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vs. :

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DISTRICT OF COLUMBIA DEPARTMENT :
OF CONSUMER AND REGULATORY :
AFFAIRS, :

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Respondent :

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Washington, D.C.

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wednesday, February 20, 2008

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Deposition of:

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MATTHEW LE GRANT

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called for oral examination by counsel for
Petitioner, pursuant to notice, at Office of the
Attorney General, 941 N. Capitol Street, N.E.,
Suite 9500, before Monica A. Voorhees, of Capital
Reporting, RPR/CSR, a Notary Public in and for the
District of Columbia, beginning at 12:02 p.m., when
were present on behalf of the respective parties:

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A P P E A R A N C E S

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On behalf of Petitioner:

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Jason J. Mendro, Esquire
Ajay Sutaria
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-3726
(202) 887-3726

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On behalf of Respondent:

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Dennis M. Taylor, Esquire
Assistant Attorney General
Office of the Attorney General
For the District of Columbia
941 N. Capitol Street, N.W.
Suite 9500
Washington, D.C. 20002
(202) 442-8199

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C O N T E N T S

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0004

P R O C E E D I N G S

1 WHEREUPON,
2
3 MATTHEW LE GRANT,
4 called as a witness, and having been first duly
5 sworn, was examined and testified as follows:
6 EXAMINATION BY COUNSEL FOR PETITIONER
7 BY MR. MENDRO:
8 Q. My name is Jason Mendro. I'm an
9 attorney at Gibson, Dunn and Crutcher, and we
10 represent AppleTree.
11 MR. MENDRO: We'll just go around the
12 table and introduce everybody.
13 MR. SUTARIA: I'm Ajay Sutaria, also
14 with Gibson, Dunn.
15 MR. TAYLOR: Dennis Taylor, Assistant
16 Attorney General, representing DCRA.
17 THE WITNESS: Matthew Le Grant, I'm the
18 Zoning Administrator, District of Columbia.
19 BY MR. MENDRO:
20 Q. Thank you very much for your time today,
21 Mr. Le Grant.
22 A. Certainly.

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1 Q. If you could please state your full name
2 for the record?
3 A. Yes, Matthew Le Grant.
4 Q. And have you ever been deposed before?
5 A. I have.
6 Q. You have. Just, you know, for the sake
7 of the preliminaries, I'll just walk through some of
8 the deposition rules of engagement.
9 A. Thank you.
10 Q. We're going to be having a conversation,
11 but everything that we're saying is going to be
12 typed, so it will be very helpful if we try to take
13 turns speaking. I'll try to wait and make sure that

14 you're done answering your questions before I ask
15 another question and it will be helpful to the court
16 reporter if you can wait until my questions are
17 finished before you answer it.

18 Obviously we're not in a courtroom
19 today, but everything is under oath.

20 A. Yes.

21 Q. Although it will be tempting sometimes
22 to nod or shake your head, because everything is

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1 being typed, it will be most useful if the answers
2 were all audible. And if you ever have any
3 questions about what I mean when I ask you
4 something, please just feel free to ask me for
5 clarification. My job here today is to ask clear
6 questions and to get clear answers and to help
7 develop our factual record and I want to assist you
8 in understanding what I'm trying to ask.

9 A. Okay.

10 Q. If for any reason you need a break
11 today, to use the restroom or to get a drink, you
12 know, as long as there's not a question pending,
13 just say so and we'll stop as often as we need to.

14 Does all of that make sense?

15 A. Yes, thank you.

16 Q. And is there any reason today why you
17 can't give full and accurate testimony?

18 A. No.

19 Q. It's a silly question but people ask all
20 the time, no alcohol or medication that would
21 inhibit your memory?

22 A. None so whatever.

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1 Q. Thank you. Let's just start by if you
2 could tell us what your educational background is.

3 A. My educational background is in city
4 planning. I have a Bachelor's of Science in city
5 regional planning from California Polytechnic State
6 University San Luis Obispo from 1978. I also have a
7 Master's Degree in city planning from the University
8 of California at Berkeley, 1984.

9 Q. And after 1984, could you just walk
10 through the different jobs you've had?

11 A. Certainly.

12 I worked for a consulting firm in
13 San Francisco called Sedway Cooke in approximately
14 1986 and from 1987 to 2002, I was employed with the
15 City of Berkeley California. I worked from 2005 to
16 2006 at the City of Alexandria, Virginia, and I
17 began my employment with the District of Columbia in
18 April 2006.

19 Q. Okay. And I think we left off between
20 2002 to 2005, unless I missed it.

21 A. Yes, I was a house husband --

22 Q. Okay.

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1 A. -- at that point in time. And I, let me
2 add, I also did some consulting work for the City of
3 Berkeley, California, at the time.

4 Q. I see. And you said that you began in
5 April of 2006 at DCRA; is that correct?

6 A. Correct.

7 Q. And what position did you begin in?

8 A. I began my employment with the District
9 as the Deputy Zoning Administrator, a position I
10 held from April 2006 through June of 2007.

11 Q. And then in June 2007, your position
12 changed?

13 A. I was appointed the interim Zoning
14 Administrator, a position I held until October 2007,
15 at which point I was appointed the Zoning
16 Administrator.

17 Q. And what, what does the interim Zoning
18 Administrator mean?

19 A. I was appointed to be the interim or
20 Acting Zoning Administrator pending completion of an
21 employment search that the Director undertook before
22 the position was filled permanently.

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1 Q. So there was, if I understand correctly,
2 there was an opening in the position of Zoning
3 Administrator?

4 A. Yes.

5 Q. And during, before that position was
6 filled you were Acting or interim Zoning
7 Administrator?

8 A. Yes.

9 Q. Do you know how that opening in the
10 position of Zoning Administrator came about?

11 A. Yes.

12 Q. Could you explain that for us?

13 A. The then Zoning Administrator, Mr. Bill
14 Crews, was placed on administrative leave in the end
15 of June 2007 and he ultimately resigned.

16 Q. And what is your understanding of why
17 Mr. Crews was placed on administrative leave?

18 A. I do not --

19 MR. TAYLOR: Objection. May call for
20 speculation.

21 You may answer, if you know.

22 THE WITNESS: I was going to say I do

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1 not know.

2 BY MR. MENDRO:

3 Q. What is your understanding?

4 A. Simply that the position serves at the
5 pleasure of the Director and the Director decided
6 that Mr. Crews no longer was able to discharge the
7 position in her, in the way that she felt it needed
8 to be carried out.

9 Q. And when you say the Director, you're
10 referring to the Director of DCRA, correct?

11 A. That's correct.

12 Q. Is that Linda Kay Argo?

13 A. Yes.

14 Q. Was it Mrs. Argo at the time that
15 Mr. Crews was placed on administrative leave?

16 A. Yes.

17 Q. And do you have any understanding as to
18 why Ms. Argo felt that he was unable to carry out
19 his duties?

20 A. No.

21 Q. Has anyone discussed that with you?

22 A. No, it was, it's been explained to me as

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1 a personnel matter. It was not a matter of, that

2 could be discussed.
3 Q. Did anybody, do you have any inkling --
4 A. I did not speculate.
5 Q. Do you have an opinion?
6 MR. TAYLOR: Objection for relevance to
7 the current matter.
8 BY MR. MENDRO:
9 Q. Do you, have you ever formed an opinion
10 about why Mr. Crews was put on hold?
11 A. No.
12 Q. I should say why Mr. Crews was put on
13 leave, to clarify?
14 A. The answer is still no.
15 Q. Okay. And your current title today?
16 A. Zoning Administrator.
17 Q. And that's the title that you acquired
18 in October of 2007?
19 A. That's correct.
20 Q. And please walk me through the
21 responsibilities that you have as Zoning
22 Administrator.
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1 A. Certainly. A Zoning Administrator is
2 charged with the administration, enforcement and
3 interpretation of the zoning regulations of the
4 District of Columbia. It is a position in an office
5 of approximately 10 individuals that are supervised
6 by the Zoning Administrator.
7 Q. What's the official name for that
8 office?
9 A. The Office of Zoning Administrator.
10 Q. And does the Office of Zoning, the
11 Zoning Administrator have any responsibility for
12 environmental review?
13 A. No.
14 Q. Okay. And I just want to be clear that
15 when I say environmental review, I'm talking about
16 the environmental discipline for reviewing permits.
17 Was that sufficiently clear when I asked
18 the question?
19 A. Yes.
20 Q. Okay. And the answer is still no?
21 A. Correct.
22 Q. Okay. And you say that the Zoning
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1 Administrator and the Office of Zoning
2 Administration is responsible for, for reviewing and
3 applying the zoning regulations, did I get that
4 correct?
5 A. Yes.
6 Q. And does that office also issue
7 approvals for permit applications?
8 A. Let me explain. Applications for
9 building permit applications -- or applications for
10 building permits, I should say, are subject to
11 review by the permitting and licensing division as
12 well as the Office of Zoning Administrator for
13 compliance with respective applicable regulations.
14 My office reviews building permit
15 applications to check compliance with the zoning
16 regulations. So any approval of applications are
17 approvals for compliance with the zoning
18 regulations.

19 Q. So your office would get a permit
20 application and then you or someone in your office
21 would review the application to determine whether
22 the application for a building permit is compliant

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1 with the zoning regulations?

2 A. That's correct.

3 Q. And when you make a determination that
4 something does comply with the zoning regulations,
5 what then does the office do?

6 A. The approval of the building permit
7 application is denoted both on paper and
8 electronically in a tracking system.

9 The paper sign-off includes a signature
10 on an application as well as a rubber stamp on a
11 page or pages of plats.

12 The electronic approval is in a tracking
13 system that is called file jobs and there's a space
14 in that system to denote the status of applications,
15 including an approval designation.

16 Q. And who in your office is responsible
17 for performing the written approvals?

18 A. The majority of approvals are the
19 responsibility of the zoning technicians.

20 Q. And you say that's the majority of the
21 approvals?

22 A. Yes.

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1 Q. Are other people responsible for certain
2 approvals?

3 A. Upon occasion the Zoning Administrator
4 or the Deputy Zoning Administrator may also review
5 and approve building permit applications.

6 Q. And how is it determined in which case
7 is a zoning technician going to review the
8 application versus the Zoning Administrator or the
9 Deputy Zoning Administrator?

10 A. It can happen in a variety of ways. On
11 some occasions there are applications which the
12 Zoning Administrator may pick up and review myself
13 due to either that application review being overdue
14 or be asked by the Director to look into a
15 particular review.

16 Q. So if I understand your answer, you
17 might look over a building permit application if
18 it's overdue or if the Director, Ms. Argo, asks you
19 to look it over.

20 Are there any other circumstances in
21 which you would look over an application instead of
22 having the technician do it?

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1 A. On occasion the Deputy Mayor may ask
2 that an application be looked into.

3 Q. Are there any other circumstances in
4 which you would review --

5 A. I cannot think of any at this point.

6 Q. And as a percentage, about how many of
7 the building permit applications do you review
8 rather than having a Zoning Administrator review?

9 A. Maybe 5 percent.

10 Q. And of that 5 percent, if you could
11 break it down for me, about how many of those are at
12 the request of the, at the request of the Deputy

13 Mayor?
14 A. Less than 1 percent for the Deputy
15 Mayor.
16 Q. And about what percent are at the
17 direction of the Director?
18 A. 2 percent.
19 Q. And the other 3 percent or so is
20 probably because they are overdue?
21 A. Overdue.
22 Q. And who are the zoning technicians that
0017 are in your office now?
1 A. Presently I have seven zoning
2 technician -- technicians that work in my office.
3 Q. And could you walk through their names?
4 A. Oh, yes. Let's see. We have Pam
5 Thornton, Ade Shittu, Xoan Mac, David Vollin,
6 Jeannette Anderson, Diana Reed and then Neil
7 Rubenstein.
8 Q. And I'm going to pause just for one
9 second to let you ask for spellings on any of those
10 names.
11 (Discussion off the record)
12 BY MR. MENDRO:
13 Q. Of these zoning technicians that we just
14 named --
15 A. Yes.
16 Q. -- are they at, do they have different
17 titles or are all they titled zoning technicians?
18 A. They are all, share the same title of
19 zoning technician.
20 Q. And presumably some are more senior than
21 others?
22
0018 A. Correct.
1 Q. Who is the senior most zoning
2 technician?
3 A. Xoan Mac.
4 Q. And how long has Xoan Mac worked in the
5 office of the Zoning Administrator?
6 A. I'm not sure, it might be 17 years.
7 Q. Surely over 10 years?
8 A. Yes.
9 Q. Probably over 15?
10 A. I believe so.
11 Q. Generally speaking, how long does it
12 take for a building permit application to be
13 completely reviewed?
14 A. It varies and it depends on several
15 factors, including the backlog of pending
16 applications.
17 MR. TAYLOR: Excuse me, if I may, are
18 you speaking of reviewed for the zoning discipline
19 or are you speaking of the entire review process?
20 MR. MENDRO: That's a very good
21 clarification.
22
0019 A. Right now I'm asking about the entire
1 process from the time that the application is
2 submitted to the time that there's a complete review
3 of all the disciplines and a decision up or down,
4 but I will follow up with the question.
5 MR. TAYLOR: Okay, if you know the
6

7 answer.

8 THE WITNESS: Thank you. Okay. I was
9 beginning to answer the question on the assumption
10 it was the zoning only, but thank you for the
11 clarification.

12 So the backlog factor that I mentioned
13 earlier does still, is involved. What's also
14 involved then is the complexity of the application
15 and then since it's involving multiple disciplines,
16 the -- or the coordination between the disciplines
17 as to getting all the reviews done and so the DCRA
18 has a goal of, for complex applications to have the
19 initial review done in 30 days.

20 BY MR. MENDRO:

21 Q. And to clarify, 30 days is a goal to
22 have all disciplines have reviewed an application?

0020 1 A. Conduct initial review.

2 Q. How about how often is that goal met, in
3 your experience?

4 A. Presently due to staffing levels, that
5 goal is probably met between 30 to 50 percent of the
6 time.

7 Q. And about how long have the staffing
8 levels been similar to what they are today such that
9 that percentage holds?

10 MR. TAYLOR: Calls for speculation.

11 You may answer, if you know.

12 THE WITNESS: Let me ask for a
13 clarification, are you talking about the present
14 staffing levels versus historically or, because
15 staffing levels have changed during my tenure?

16 BY MR. MENDRO:

17 Q. Right, let me rephrase the question this
18 way, you said that you're estimating that about 30
19 to 50 percent of building permit applications are
20 reviewed completely by DCRA in all disciplines
21 within 30 days, correct?

22 A. Correct.

0021 1 Q. And you said that that 30 to 50 percent
2 estimation relates to the current staffing levels;
3 is that also correct?

4 A. Yes.

5 Q. During your tenure here, have the
6 staffing levels been higher such that there's been,
7 such that the goal has been met more than 50 percent
8 of the time?

9 A. I'll answer it this way, in my tenure
10 the staffing levels have increased so that the
11 completion rate of meeting the 30-day goal has
12 improved.

13 I would say at this point in time,
14 again, 30 to 50 percent, but that's an improvement
15 over the past and our hopes are to improve that in
16 the future.

17 Q. And I'd like to ask the question that I
18 might have accidentally asked before, from the time
19 that the, that your office, the Office of the Zoning
20 Administrator, receives an application for your part
21 of the review, how long does it ordinarily take your
22 office to complete its review?

1 A. Let me answer it this way, the
2 applications physically are centralized so the
3 applications are not deposited in to the Office of
4 the Zoning Administrator, per se. They are as with
5 the other disciplines, technicians go to the central
6 file room to pull applications that are pending
7 review.

8 Given that the time frames I mentioned
9 earlier still apply in terms of a 30-day goal and a
10 30 to 50 percent completion meeting that goal 30 to
11 50 percent of the time.

12 Q. Okay. Let me make sure that I
13 understand, the applications are deposited in a
14 central location where they can be accessed by the
15 various DCRA disciplines simultaneously; is that
16 correct?

17 A. Correct.

18 Q. Could you describe the place where
19 they're deposited, I think you've said a file room?

20 A. Yes, we have a file room in which the
21 applications and associated plans are placed.

22 Q. Where is the file room located?

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1 A. On the second floor of this building.

2 Q. And when you say the plans, what are you
3 referring to?

4 A. The drawings associated with the
5 building permit application.

6 Q. And are those plans kept in the file
7 room in a hard copy?

8 A. Yes.

9 Q. Are those same plans available
10 electronically?

11 A. No.

12 Q. Can, do the various disciplines of DCRA
13 review the plans simultaneously?

14 A. No. Each discipline pulls the set of
15 plans and does a review and then returns them to the
16 file room.

17 Q. Is there a certain sequence in which the
18 various disciplines will review plans?

19 A. No.

20 Q. How does your office know when the plans
21 are there to be reviewed?

22 A. The file jobs tracking system I

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1 mentioned earlier has a reporting function that
2 lists out a list of pending applications. That
3 information coupled with inquiries by applicants for
4 building permit applications let's us know that
5 there's a pending, which applications are pending.

6 Excuse me a minute.

7 MR. MENDRO: Sure. We can go off the
8 record.

9 (Discussion off the record)

10 MR. MENDRO: Would you mark this
11 Exhibit 1, please.

12 (Deposition Exhibit No. 1
13 was marked for identification)

14 BY MR. MENDRO:

15 Q. I've just handed you a document that the
16 court reporter has marked for identification as
17 Exhibit 1.

18 Before we went off the record very
19 briefly, we were talking about a tracking system
20 that you called the file jobs system.

21 A. Yes.

22 Q. Is this Exhibit 1 a printout from the
0025 file jobs system?

1 A. I am not familiar with this document
2 and -- as have been produced by file jobs.

3 Q. So there's no way to tell from the
4 printout that I just gave you how this, where this
5 printout was generated from?

6 MR. TAYLOR: Objection as toward
7 foundation.

8 BY MR. MENDRO:

9 Q. Can, let me rephrase my question.
10 Can you tell where this printout was
11 generated from?

12 A. No.

13 Q. Okay. And before we went on the break,
14 I believe you said that the way that your office
15 becomes aware that there is a permits review is both
16 from inquiries and from the file job system; is that
17 correct?

18 A. That's correct.

19 Q. Is there someone who's responsible for
20 periodically checking the file job system?

21 A. Both myself -- let me rephrase that, the
22

0026 1 Zoning Administrator, the Deputy Zoning
2 Administrator and the zoning technicians,
3 themselves, monitor the pending applications in the
4 file jobs system to see what jobs are in need of
5 review.

6 Q. How often would you check the file job
7 system? would you check it every day?

8 A. I would maybe check it once a week.

9 Q. Once a week. And do you instruct your
10 staff to check the file job system, as well?

11 A. I do.

12 Q. And do you instruct them to check it at
13 a certain interval?

14 A. No.

15 Q. Do you, have you told them that they
16 should check it more than once a week?

17 A. What I tell them to do is to check as
18 needed so, for example, if they are reviewing
19 applications and complete their reviews and are
20 looking for additional applications to review, they
21 are to check the file job system to identify those
22 applications needing review.

0027 1 Q. And from the time that an application is
2 taken from the file room and looked at by the Office
3 of the Zoning Administrator, how long does it
4 generally take to complete the zoning review?

5 A. Again, that review would vary depending
6 upon the complexity of the job and in some cases
7 whether the job was the subject of a Board of Zoning
8 Adjustment review.

9 Q. What does the average run of the mill,
10 how long does the average review take; and again,
11 let me, let me state the full question because I was

12 unclear about this before, how long does the average
13 review just by the zoning discipline take?

14 A. I guess, again, to clarify, there is the
15 time spent by the technician, him or herself doing
16 the review as compared with the number of days that
17 that project or that application may be in the
18 possession of the technician because all these
19 reviews are typically juggled with maybe working on
20 an application review and stopping, seeking more
21 information, being interrupted and picking up
22 another review.

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1 So, I guess to try to distinguish what
2 you're seeking, an average review may, in terms of
3 the technician's time, take anywhere between one to
4 four hours of time, whereas the time that that
5 application may be in the technician's possession
6 may be a half of a day to a couple of weeks time.

7 Q. And what would distinguish an
8 application that is in an office for half of a day
9 versus a couple of weeks?

10 A. It would involve the size and complexity
11 of the building or use being proposed, the amount of
12 calculations that might be necessary in conducting a
13 review and, again, the presence of a Board of Zoning
14 Adjustment or Zoning Commission Order that might
15 apply to it.

16 Q. And how does an Order from the Board of
17 Zoning Adjustment affect the process?

18 A. In those cases which the Board of Zoning
19 Adjustment has approved an application that was
20 subject to a special exception or a variance, that
21 decision would set forth the parameters of the
22 elements that are to be taken into account during

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1 the review, including the specifications as to the
2 building volume, number of parking spaces, the
3 amount of gross square footage and on occasion may
4 specify certain conditions that apply to the review
5 or approval.

6 Q. So would an Order from the Board of
7 Zoning Adjustment about a given application's
8 compliance with the zoning rules speed up the
9 process of the zoning review or slow down the
10 process of the zoning review?

11 A. I would say it would slow down the
12 process as compared to an application not subject to
13 a BZA Order.

14 Q. And why, why would it slow it down?

15 A. The BZA Order often involves several
16 pages of material that must be reviewed, there's
17 often a set of plans that has been stamped by the
18 Office of Zoning that need to be obtained and then
19 compared to the application and plans submitted in
20 conjunction with the building permit application.

21 Q. Now the comparison of the plans to the
22 application is something that you would always do

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1 without a BZA Order, right?

2 A. In any event, the plans of a particular
3 application are reviewed and compared with the
4 development standards or parameters set forth in the
5 zoning regulations.

6 In the case of a Board of Zoning
7 Adjustment case, the Order and BZA approved plan set
8 become the standard of comparison as differentiated
9 from the zoning regulations.

10 I don't know if that is clear.

11 Q. Maybe, I don't think I have it quite
12 yet.

13 A. Okay.

14 Q. But I think, I think what I'm hearing
15 you say is that the Order is one more thing for you
16 to review in addition to the ordinary regulations;
17 is that correct?

18 A. Yes, it's an additional document or a
19 set of documents that must be reviewed in addition
20 to the zoning regulations.

21 Q. Right. But review of the plans and
22 review of the application is something that would be

0031 1 done in any application case, right, you would --

2 A. That's correct.

3 Q. Okay.

4 MR. TAYLOR: May we go off the record
5 for just a moment.

6 (Discussion off the record)

7 BY MR. MENDRO:

8 Q. You mentioned earlier that there is a
9 goal of 30 days at DCRA for review of an
10 application.

11 Does DCRA keep track of how that, how
12 often that goal is met?

13 A. There has been efforts to track that. I
14 do not know presently the state of that tracking
15 effort.

16 Q. How was the tracking done, to your
17 knowledge?

18 A. There is an analysis of the file jobs --
19 the date in file jobs to look at how often the
20 30-day goal is met.

21 Q. And when you go in to file jobs to look
22 at -- you know, review jobs that are out there, you

0032 1 can tell how long, when the application was
2 submitted from file jobs?

3 A. The file jobs systems includes an
4 application date.

5 Q. Do you have any applications that were
6 filed before February of 2006 that have not yet been
7 denied or granted, other than AppleTree's?

8 A. I'm -- I do not know.

9 Q. About how many applications are pending
10 for two years before they've been granted or denied?

11 A. Let me answer that in this way, there
12 are applications that on occasion are held for
13 correction. The held for correction label denotes
14 that there may be a variety of issues that prevent
15 my office from approving them.

16 There -- I'm aware of applications that
17 have been held for correction in which they, at
18 least over a year's time keep that status and on
19 occasion they continue to be held for correction
20 because the applicants have decided to no longer
21 pursue the project.

22 But I don't have a good system to

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1 differentiate those from others.

2 Q. What are the circumstances -- well let
3 me start by asking who designates an application as
4 held for correction?

5 A. As I mentioned earlier, the reviewers
6 in, whether they be a zoning technician, Deputy
7 Zoning Administrator or Zoning Administrator all
8 have the ability to review an application and that
9 can include holding an application for correction.

10 Q. And how is the decision that something
11 is held for correction evidenced? How is it -- or
12 are the people made aware?

13 A. In the file jobs system, a label is
14 placed and the status as HFC. Then there is a list
15 of comments enumerated that give the reasons why the
16 application's held for correction.

17 Q. And is marking something HFC is
18 something that any discipline can do or is that
19 internal to the zoning?

20 A. Any, any discipline.

21 Q. And what are the reasons that your
22 office would mark something held for correction?

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1 A. There's two major categories, one is to
2 denote further information's needed, the other is
3 that the application is not in compliance with
4 applicable zoning regulations.

5 Q. I want to ask a little bit more about
6 that second major category, that the application is
7 not in compliance with applicable zoning
8 regulations, why would an application that's in that
9 boat not be denied and instead be held for
10 correction?

11 A. Can you rephrase that?

12 Q. Sure. You said that there were two
13 major categories why the Office of the Zoning
14 Administrator would mark an application as held for
15 correction.

16 One of those categories is that further
17 information is needed; is that correct?

18 A. Correct.

19 Q. And the second category is that the
20 building permit application is not in compliance
21 with applicable zoning regulations; is that correct?

22 A. Correct.

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1 Q. So my question goes to the second of
2 those two categories, if a building permit
3 application seeks, seeks permission to do
4 construction that would not be in compliance with
5 applicable zoning regulations, why would the Office
6 of the Zoning Administrator place that permit
7 application on hold for review instead of simply
8 saying this doesn't comply, I deny this?

9 A. Just to clarify, it's not hold for
10 review, it's hold for correction, because on
11 occasion when informed that a particular aspect of a
12 building permit application is non-compliance with a
13 zoning regulation, an applicant may amend his or her
14 application to become compliant with the zoning
15 regulation and upon re-review, the office may
16 determine that the application is then in compliance

17 and may be approved.
18 Q. So would your office communicate with
19 the applicant and say there's, you have this problem
20 that needs to be corrected and if it's corrected,
21 we'll review this again and in the meantime this is
22 held for correction?

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1 A. Yes, that is the function of the hold
2 for correction status.
3 Q. And who communicates and how do they
4 communicate that an application is held for
5 correction?
6 A. In the file job system the comments that
7 I mentioned earlier list out those aspects that an
8 applicant may address and this is available
9 electronically and a hard copy is printed out and
10 placed with the application so the applicant is,
11 those comments are made available to the applicant
12 to understand the reasons for the hold for
13 correction status.
14 Q. And you said that the, the held for
15 correction status is available electronically?
16 A. Yes.
17 Q. Would the permit applicant be able to
18 access it electronically?
19 A. Yes.
20 Q. And the person who would print that
21 information and put it with the application, would
22 that be a zoning technician, ordinarily?

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1 A. Yes.
2 Q. And the held for correction status is a
3 status that an application would get before approval
4 was granted, correct?
5 A. Well, some applications upon review are
6 found to be compliant and may be approved in the
7 first review. Other applications may be held for
8 correction, changes are made or information is
9 supplied and so as to allow the technician to then
10 re-review the information and it may result in an
11 approval.
12 Q. I'm not entirely sure that I got it.
13 The, when the Office of the Zoning
14 Administrator receives an application and either
15 needs more information or determines that the
16 application as it currently is written doesn't
17 comply, the application may be held for correction,
18 right?
19 A. Correct.
20 Q. But that decision would be made before
21 the Office of Zoning Administration granted its
22 approval?

0038

1 A. Yes, if there is ultimate approval, that
2 step, intermediary hold for correction step may
3 occur.
4 Q. The hold for correction step may occur
5 after there's approval?
6 A. No.
7 Q. Only before, that's what I was --
8 A. Only before.
9 Q. Thank you, that's what I didn't
10 understand.

11 A. Okay.
12 Q. So the file job system could tell us if
13 there are other applications that have been pending
14 since February 2006, right?
15 A. Yes.
16 MR. MENDRO: Mr. Taylor, can we request
17 a printout that would identify any applications that
18 have been pending that long.
19 MR. TAYLOR: Yes, so we can discuss
20 that, parameters, off line.
21 MR. MENDRO: Okay, very well.
22 BY MR. MENDRO:

0039

1 Q. And I believe you said you're not aware
2 that any have been pending that long, you do not
3 know of any?
4 A. I do not know.
5 Q. Okay, and do you know of any that have
6 been pending for one year today?
7 A. Not specifically.
8 Q. When did the Office of the Zoning
9 Administrator begin reviewing AppleTree's
10 application? And actually let me just clarify
11 before we talk about AppleTree that we're talking
12 about AppleTree Institute for Education --
13 Innovation, are you familiar with AppleTree?
14 A. Yes.
15 Q. Okay. I'm going to show you a document
16 that we will mark for identification as Exhibit 2.
17 MR. TAYLOR: Excuse me, is there a
18 question pending?
19 MR. MENDRO: There is not.
20 I asked if he was familiar with
21 AppleTree, that was the answer, he said yes.
22 (Deposition Exhibit No. 2

0040

1 was marked for identification)
2 BY MR. MENDRO:
3 Q. I've just handed you a document, it's
4 marked for identification as Exhibit Number 2.
5 Have you had a chance to review it?
6 A. Give me a moment.
7 (Witness examining document).
8 Yes.
9 Q. Please explain what this document is.
10 A. This document appears to be a photocopy
11 of the building permit application for AppleTree for
12 its proposed site at 138 12th Street, Northeast, in
13 the District of Columbia.
14 Q. And my next series of questions
15 throughout this proceeding when I refer to the
16 permit, I'm referring to this permit; does that make
17 sense?
18 A. Sure.
19 Q. And when I refer to AppleTree, I'm
20 referring to the applicant on this permit, does that
21 make sense as well?
22 A. Yes.

0041

1 Q. If you ever need clarification, please
2 just let me know.
3 When did the Office of the Zoning
4 Administrator begin to review this permit

5 application?

6 MR. TAYLOR: Objection, may call for
7 speculation.

8 You may answer, if you know the answer.

9 THE WITNESS: I believe the Office of
10 Zoning Administrator began its review in April 2006,
11 but I'm not 100 percent sure.

12 BY MR. MENDRO:

13 Q. And what is the basis for that belief?

14 A. I have seen documents in the paper files
15 for this case that showed the review history.

16 Q. And you said in the paper files for this
17 case, are they stored in a Redweld or in an office
18 drawer? Where are those files stored?

19 A. Those, we have several manila folders of
20 papers that are in my office.

21 Q. And are those manila folders marked
22 AppleTree?

0042

1 A. Yes.

2 Q. And what are in those folders?

3 A. Documents related to this case.

4 Q. To the best of your recollect, what
5 specific items are in the folders?

6 A. There are copies of building permit
7 application, there's documents related to the BZA
8 case, there are notes from meetings that I have had
9 on this case.

10 Q. Is there any correspondence in those
11 AppleTree files?

12 A. Yes.

13 Q. Who is that correspondence from?

14 A. There's a variety of correspondence.
15 I'm not recalling all the particulars at this point.

16 Q. Can you remember any people that have
17 sent correspondence that would be, a copy of which
18 would be in those files?

19 A. Yes, I do recall a letter from an ANC
20 commissioner, David Holmes.

21 Q. Can you remember any other
22 correspondence in those files?

0043

1 A. Not at this time.

2 Q. Have you reviewed those files for --
3 well let me start by asking, are you aware that
4 there was a FOIA request by AppleTree served --

5 A. Yes.

6 Q. -- to DCRA?

7 Have you seen that FOIA request?

8 A. I have not seen it directly.

9 Q. Just for the sake of clarity, I'll show
10 you a copy of the FOIA request now.

11 (Deposition Exhibit No. 3
12 was marked for identification)

13 BY MR. MENDRO:

14 Q. I've just handed you a document dated
15 December 10th, 2007, that's been marked for
16 identification as Exhibit Number 3.

17 Can you confirm that you have not seen
18 this document?

19 A. Let me look over it for a moment.

20 (Witness examining document).

21 I believe that the addressee to the

22 letter, Ms. Robinson, has talked to me about this

0044

1 FOIA request.

2 Q. And in response to that conversation,
3 did you review the manila folders we just discussed
4 that are for the AppleTree case?

5 A. I have looked over those folders and
6 transmitted them to Ms. Robinson.

7 Q. Are there files concerning the AppleTree
8 application anywhere else but in those folders to
9 your knowledge?

10 A. Not to my knowledge.

11 Q. Do you have an E-mail folder --

12 A. Oh, yes, I do have an E-mail folder on
13 this case.

14 Q. An E-mail folder labeled AppleTree?

15 A. Yes.

16 Q. And what types of E-mails do you save in
17 that folder?

18 A. In that folder I've saved any E-mails
19 regarding this building permit application or this
20 address, 138 12th Street, Northeast.

21 Q. And did you send the contents of that
22 AppleTree E-mail folder to Ms. Robinson, as well?

0045

1 A. The contents are available to her
2 through the District's information -- Office of
3 Information Services.

4 Q. Okay.

5 A. My understanding from her is that she
6 would provide the contents of that E-mail folder --
7 she would obtain the contents of that E-mail folder
8 through working with our Office of Information
9 Systems.

10 Q. And when you say the Office of
11 Information Systems, are you referring to OCTO?

12 A. No.

13 Q. No.

14 A. Within the Department of Consumer and
15 Regulatory Affairs is our own computer or IT
16 division, which is known as the Office of
17 Information Systems.

18 Q. But she didn't physically copy anything
19 from your computer?

20 A. Not that I'm aware of.

21 Q. Okay. And you didn't physically E-mail
22 her any copies from that folder?

0046

1 A. Not that I recall.

2 Q. Okay. What, AppleTree's permit at least
3 at one time was reviewed -- well, strike that.

4 Approval by the Office of the Zoning
5 Administrator was granted to AppleTree's permit; is
6 that correct?

7 A. Yes.

8 Q. And do you know the date when that
9 approval occurred?

10 A. Yes, it was August 9th, 2007.

11 Q. And who approved AppleTree's -- who
12 granted zoning approval for AppleTree's building
13 permit application?

14 A. Xoan Mac, zoning technician.

15 Q. And I just want to do, want to point,

16 draw your attention to the third page of Exhibit 3
17 and I'd like to draw your attention to the upper
18 right-hand corner, there's a box that says, C, plans
19 and application approval; do you see that?

20 A. Yes.

21 Q. In that box there are some numbers and
22 number two says information center by, colon,

0047
1 there's a bunch of boxes under that, do you see the
2 area that I'm talking about?

3 A. Yes.

4 Q. And by the letter F there's a signature
5 that looks like it begins with an X, do you see that
6 signature?

7 MR. TAYLOR: Objection to
8 characterization of the location.

9 BY MR. MENDRO:

10 Q. Do you understand where I'm pointing
11 you?

12 A. I would say in box number 3.

13 Q. Right.

14 A. Zoning by, colon, there is a signature
15 on that line.

16 Q. Could you tell me whose signature that
17 is?

18 A. That is Xoan Mac's.

19 Q. Xoan Mac the zoning technician in your
20 office?

21 A. Correct.

22 Q. And the date there, it looks like it's

0048
1 August 7, 2007, right?

2 A. Correct.

3 Q. Does that refresh your recollection as
4 to when zoning approval was granted?

5 A. My recollection is that the file jobs
6 entry as to the approval date by Ms. Mac was dated
7 August 9th, 2007.

8 Q. Do you have any understanding why the
9 file jobs system would say August 9th when Ms. Mac's
10 signature is dated August 7?

11 A. I could only speculate.

12 Q. What is your hunch on this one?

13 MR. TAYLOR: Objection.

14 BY MR. MENDRO:

15 Q. You can answer if you have a hunch.

16 A. My hunch is that Ms. Mac signed the
17 paper application and then it took a couple of days
18 for her to enter it into the computer.

19 Q. Have you ever discussed with Ms. Mac
20 why -- have you ever discussed the date of her
21 approval in the computer with her?

22 A. No.

0049
1 Q. Have you ever discussed the date of her
2 signature with her?

3 A. No.

4 Q. And up at the top of that box C there's
5 another signature, it's at line one, it says
6 information counter by, can you tell me whose
7 signature that is?

8 A. I do not know.

9 Q. Now, other than this approval, this

10 zoning approval for AppleTree's permit application
11 that occurred in August of 2007, are you aware of
12 any other approvals of the, by the zoning discipline
13 being granted?

14 A. On August 23rd, 2007, upon my own
15 personal re-review of the application, I entered
16 into file jobs another approval entry.

17 Q. And you said this was in response to
18 your personal re-review?

19 A. Yes.

20 Q. Could I take that to mean that you've
21 reviewed it once before yourself, at least once
22 before yourself?

0050

1 A. Let me clarify, it was, perhaps the word
2 re-review is not referring to my own review, it was
3 re-review of the application by myself, I reviewed
4 it myself and entered an approval on August 23rd.

5 Q. And on August 7th, had you reviewed
6 AppleTree's permit application?

7 A. No.

8 Q. And on August 9th, had you reviewed
9 AppleTree's permit application?

10 A. No.

11 Q. And that's not very unusual, is it, that
12 Xoan would have reviewed it and you not have
13 reviewed it?

14 A. You're right, that is not unusual.

15 Q. Is it unusual for you to re-review a
16 permit application that Xoan has already reviewed?

17 A. I would not use the word unusual. On
18 occasion I will go back and look at particular
19 reviews.

20 Q. About how frequent does that -- how
21 often does that happen as a percentage of all
22 applications?

0051

1 A. I don't know the percentage, but I may
2 have done it a half a dozen times, in a calendar
3 year's time, six.

4 Q. About how many zoning -- or how many
5 building permit applications do you, does your
6 office review in a year?

7 A. Give me a moment. I would say 800 to
8 1,000.

9 Q. So in one year, approximately 800 to
10 1,000 applications are reviewed by the Office of the
11 Zoning Administrator?

12 A. Yes.

13 Q. And out of that 800 to 1,000, there are
14 approximately six that you would re-review after one
15 of your zoning technicians reviewed it?

16 A. Yes.

17 Q. What are the circumstances in which you
18 would re-review an application that a zoning
19 technician has already reviewed?

20 A. If there was a complicating factor such
21 as a Board of Zoning Adjustment Order or a Zoning
22 Commission pending regulation or if there was a

0052

1 legitimate issue raised by a community member about
2 a review, I may take it upon myself to re-review a
3 zoning technician's work.

4 Q. Are there any other reasons why you
5 would re-review a zoning technician's work?
6 A. Not that I'm aware of at this point.
7 MR. TAYLOR: Okay, are we close to the
8 time to take the initial break?
9 MR. MENDRO: If you would like to take a
10 break, certainly.
11 MR. TAYLOR: All right.
12 THE WITNESS: Sure.
13 MR. MENDRO: Do you want to do it now or
14 do you want to go a few more minutes?
15 THE WITNESS: Let's take a break.
16 MR. MENDRO: Okay.
17 (Discussion off the record)
18 BY MR. MENDRO:
19 Q. When, before we took the break we were
20 discussing approvals, zoning approvals for
21 AppleTree's building permit application and you had
22 said that you re-reviewed the application after
0053
1 zoning technician Xoan Mac had also reviewed and
2 approved AppleTree's application; is that correct?
3 A. Yes.
4 Q. And when did you start the process of
5 re-reviewing AppleTree's application?
6 A. I believe it was around August 21st.
7 Q. And if you could, walk me through the
8 steps of how you conducted your review?
9 A. I looked over the review that Ms. Mac
10 had done. I also looked over the Board of Zoning
11 Adjustment Order. I had received information about
12 pending Zoning Commission Orders and concluded that
13 the application could be approved as in compliance
14 with the regulations in effect at the time.
15 Q. And upon reaching that conclusion, what
16 did you do?
17 A. I entered an approval into the status
18 step in file jobs August 23rd.
19 MR. MENDRO: And, for the record, a
20 printout of that approval is something that we would
21 also like and have not received yet.
22 BY MR. MENDRO:
0054
1 Q. And when you say that you entered an
2 approval into file jobs, what physically does that
3 mean that you have to do?
4 A. In the status step for the zoning
5 discipline one enters a -- adds a step and can
6 choose between, for example, hold for correction,
7 approval or denial and in this case I chose the
8 approval as the status step and then keyed that into
9 the computer program.
10 Q. And keying, does that consist of doing
11 like a drop-down window where you select one of
12 three choices?
13 A. That's correct.
14 Q. And in the course of your re-review
15 beginning around August 21st, did you look at
16 AppleTree's plans?
17 A. Yes.
18 Q. And in the course of that re-review, did
19 you look at plats?
20 A. Yes, I looked at a plat.

21 Q. In the course of AppleTree's
22 applications, are you aware that the, that the plat
0055

1 ever changed?

2 A. No, I'm not.

3 Q. Do you know that it didn't?

4 A. I'm not sure if it had in the course of
5 its review.

6 Q. Okay. Since the time that you first
7 looked at AppleTree's application, has there been
8 any change on the plat?

9 A. No, not that I'm aware of.

10 Q. And since the time that you first looked
11 at AppleTree's application, has there been any
12 change to the drawings?

13 A. No.

14 Q. And for the record, could you explain
15 what the drawings are?

16 A. The drawings showed the, the floor plans
17 and the elevations of the proposed conversion of the
18 existing building into a public charter school.

19 Q. And could you explain what the plat is,
20 for the record?

21 A. The plat is a depiction of the building
22 as cited, cited on a lot of land so you can compare
0056

1 it with the property lines.

2 Q. And other than Ms. Mac's review, the BZA
3 Order, the plans, drawing and plat, is there
4 anything else that you reviewed for purposes of your
5 personal review of AppleTree's permit application?

6 A. You did mention BZA Order, correct?

7 Q. Correct.

8 A. No, that was the information I reviewed.

9 Q. This is, this is going to be a little
10 awkward, but I want to show you a very large set of
11 documents as an exhibit.

12 MR. MENDRO: We're up to Exhibit 4.

13 (Deposition Exhibit No. 4

14 was marked for identification)

15 MR. TAYLOR: Brought enough for
16 everybody?

17 MR. MENDRO: Unfortunately not.

18 BY MR. MENDRO:

19 Q. I've just handed you a document that's
20 been marked for identification as Exhibit Number 4.
21 It's a very large printout consisting of several
22 pages.
0057

1 Could you explain for the record what
2 this document is?

3 A. Give me a moment to look through them.

4 Q. Please take your time.

5 A. (Witness examining document).

6 Okay.

7 Q. Have you had an opportunity to review
8 Exhibit Number 4?

9 A. Yes.

10 Q. Could you explain for the record what
11 this document or set of documents is?

12 A. This appears to be a photocopy of the
13 plans associated with the AppleTree building permit.

14 Q. And these are, this is a copy of the

15 plans that you reviewed, correct?
16 A. Yes.
17 Q. And is there a stamp on these plans that
18 indicates approval by the Office of the Zoning
19 Administrator?
20 A. There is.
21 Q. Can you explain for the record where
22 that stamp appears?

0058

1 A. There is a stamp on drawing A1. Yes,
2 the zoning stamp appears on drawing A1.
3 Q. And who placed that stamp?
4 A. Ms. Xoan Mac.
5 Q. And after you re-reviewed the plans, you
6 didn't place another stamp on the drawings?
7 A. No, I did not.
8 Q. And earlier I believe you said that
9 another step in the approval process would be a
10 signature on the building -- the permit application;
11 is that correct?
12 A. Yes.
13 Q. Is that the signature that we discussed
14 earlier on Exhibit Number 2?
15 A. Yes.
16 Q. And those are the two written components
17 of the approval from the Office of the Zoning --
18 from the Office of the Zoning Administrator; is that
19 correct?
20 A. Yes.
21 Q. And the, you also said that there's an
22 electronic step in the approval process that occurs

0059

1 in the file jobs system.
2 Did Ms. Mac's, did Ms. Mac enter an
3 electronic approval in file jobs?
4 A. Yes.
5 Q. And when you re-reviewed, did you enter
6 another one?
7 A. Yes.
8 Q. And did you provide any sort of written
9 confirmation of your approval after you re-reviewed
10 the plans?
11 A. I simply entered the approval into the
12 file jobs system.
13 Q. Now before your review in August of
14 2007, had you reviewed AppleTree's application
15 before?
16 A. No.
17 Q. And did you review AppleTree's
18 application after August?
19 A. Yes.
20 Q. Okay. If you don't mind, I think I'll
21 just set these aside just because they're
22 cumbersome.

0060

1 Earlier we were talking about reasons
2 why you would re-review a permit application that
3 had already been reviewed by a zoning technician and
4 you also testified that AppleTree's case was one in
5 which you conducted such a re-review.
6 What were the reasons for you
7 re-reviewing AppleTree's application for a building
8 permit?

9 A. I became aware that there were pending
10 Zoning Commission regulations that might impact this
11 case and I wanted to ensure that Ms. Mac's review
12 was, in fact, a correct review consistent with the
13 zoning regulations in effect at the time and
14 consistent with the applicable BZA Order.

15 Q. And what is your opinion of Ms. Mac's
16 reviews in terms of reliability?

17 A. As compared to what?
18 MR. TAYLOR: I'm going to object for
19 calling for speculation.

20 BY MR. MENDRO:
21 Q. Would you say that she is good -- well
22 let me put it this way, have you reversed her

0061 1 decisions ever after she's granted approval?

2 A. Yes.

3 Q. And was that in AppleTree's case?

4 A. No.

5 Q. And how many times have you reversed
6 Ms. Mac's decisions?

7 A. Once.

8 Q. And by comparison to the other zoning
9 technicians, how does she stack up in terms of the
10 quality of her reviews?

11 A. Her reviews are average as compared to
12 other zoning technicians.

13 Q. Her experience is above average, though,
14 compared to the other technicians; is that correct?

15 A. Her experience is above average.

16 Q. You said that you became aware that
17 there were pending changes in the zoning
18 regulations, how did you become aware of those
19 pending changes?

20 A. I was informed by communications from
21 members of the community about Zoning Commission
22 Orders that were pending.

0062 1 Q. And who were these members of the
2 community that informed you?

3 A. ANC Commissioner David Holmes was one
4 and I'm not sure of the names of the others at this
5 point.

6 Q. About how many others were there?

7 A. Maybe one or two others.

8 Q. Were these other members of the
9 community also part of ANC?

10 A. I don't remember.

11 Q. Do you remember if they were men or
12 women?

13 A. I believe they were possibly men.

14 Q. Do you remember if they worked for the
15 D.C. Government?

16 A. Which individuals?

17 Q. The other two that we're talking about.

18 A. No, I don't believe they were working
19 for D.C. Government.

20 Q. Now were there other individuals in
21 addition to these one or two and Mr. Holmes that
22 spoke to you about AppleTree's application?

0063 1 A. No.

2 Q. And what did Mr. Holmes say to you about

3 AppleTree's application?

4 A. He informed me that there were pending
5 Zoning Commission Orders that had the effect of
6 making this application not to be approvable as of
7 right but subject to requirements that would require
8 BZA relief.

9 Q. And what did the other one or two
10 individuals say to you?

11 A. I believe it was the same.

12 Q. Did they approach you at the same time
13 that Mr. Holmes communicated with you?

14 A. In that general time frame, yes.

15 Q. But they didn't call you together or
16 come to your office together?

17 A. No.

18 Q. And how did Mr. Holmes contact you?

19 A. I believe it was, I can't recall if it
20 was an E-mail or a letter followed up with a phone
21 conversation.

22 Q. And the communications from the other

0064 1 individuals, how did they communicate with you?

2 A. I believe it was through phone calls.

3 Q. How common is it for members of the
4 community to contact you about somebody else's
5 permit application?

6 A. It happens I would say weekly.

7 Q. So in your experience it's not unusual?

8 A. That's correct.

9 MR. MENDRO: Are we up to 5?

10 (Deposition Exhibit No. 5
11 was marked for identification)

12 BY MR. MENDRO:

13 Q. I'd like to show you a document that we
14 have marked for identification as Exhibit Number 5.
15 Have you seen this document before?

16 A. Let me look over it for a moment.

17 (Witness examining document).

18 Yes.

19 Q. And could you just explain for the
20 record what this document is?

21 A. This is an E-mail I sent to David Holmes
22 dated December 11th, 2007.

0065 1 Q. And further down on this document
2 there's also an E-mail from David Holmes to you,
3 correct?

4 A. Correct.

5 Q. And this isn't David Holmes' first
6 communication to you, correct?

7 A. Correct.

8 Q. Because he would have spoken to you
9 before you did your re-review in August of 2007?

10 A. Yes.

11 Q. Do you have copies of Mr. Holmes' other
12 correspondence with you?

13 A. Not with me.

14 Q. Do you have a copy of them in your
15 files?

16 A. I believe so, yes.

17 MR. MENDRO: And, Mr. Taylor, that's
18 another document that we would like to request.

19 BY MR. MENDRO:

20 Q. Were there several other communications
21 with Mr. Holmes or just one?

22 A. I believe there was more than one,
0066

1 perhaps two or three total in terms of E-mails and
2 correspondence.

3 Q. And the other correspondence would have
4 been by letter?

5 A. Yes.

6 MR. MENDRO: So, Mr. Taylor, to be
7 clear, we would want all the correspondence between
8 Mr. Le Grant and Mr. Holmes and the other
9 individuals subject to our ability to identify who
10 they are.

11 BY MR. MENDRO:

12 Q. Would you have kept copies of the
13 communications with the other individuals in your
14 file as well, Mr. Le Grant?

15 A. Yes, any correspondence I received,
16 whether it's E-mail or a hard copy, a letter, I
17 would have retained.

18 Q. So we could figure out who they are by
19 looking at your file?

20 A. I believe so.

21 Q. So you conducted the review because you
22 were contacted by members of the community.

0067

1 Were you asked by the Director to
2 re-review AppleTree's permit?

3 A. No.

4 Q. Were you asked by the Deputy Mayor to
5 re-review AppleTree's permit?

6 A. No.

7 Q. Were you asked by anybody else other
8 than the three, two or three individuals we talked
9 about to re-review AppleTree's permit?

10 A. No, not, not that I recall.

11 Q. I want to show you another document
12 which we will mark for exhibit, or mark for
13 identification as Exhibit 6.

14 (Deposition Exhibit No. 6
15 was marked for identification)

16 BY MR. MENDRO:

17 Q. Please just let me know when you've had
18 a chance to review Exhibit 6.

19 A. (Witness examining document).

20 Okay.

21 Q. For the record, can you explain what
22 Exhibit Number 6 is?

0068

1 A. Exhibit 6 appears to me to be a printout
2 that applicants can obtain from DCRA's Website on
3 the status of their building permit applications.

4 Q. And is, does this chart show the status
5 of the zoning discipline?

6 A. It does.

7 Q. And what does this chart indicate about
8 the status of the zoning discipline?

9 A. This chart says zoning approved.

10 Q. And what is the status date entered for
11 approval?

12 A. October 26th, 2007.

13 Q. Now, do you know why that box wouldn't

say August 9th when Xoan Mac approved?

A. My understanding of what occurred was this, following my approval -- or the steps are Ms. Mac approved the application on August 9th. I confirmed her approval on August 23rd. I held the application for correction, placed a hold on it on September 18th.

On or about October 26th, I understand that the, this hold for correction was overridden by

another individual at DCRA and changed to approved.

Q. So you did not re-review and approve in October, around October 26th?

A. Correct, I did not.

Q. Now a moment ago you said that you reviewed AppleTree's permit application again after you approved on or about August 23rd, correct?

A. Let me explain. On September 14th, the office of zoning issued Zoning Commission Orders that revised regulations applicable to this application, so as I mentioned earlier, on September 18th I held the application for a review changing it from approval to hold for correction pending review of these new Zoning Commission regulations.

Q. And then on, I just want to make sure that I understand, you say that on September 18th you issued a hold for correction?

A. Yes.

Q. At that time the permit application had been approved twice by the Office of the Zoning Administrator, correct?

A. That's correct.

Q. Is it unusual for there to be a hold following two approvals by the Office of the Zoning Administrator?

A. Yes, except in this instance the regulations had been changed and so it's an unusual occurrence, but it was justified given that the regulations changed applicable to this situation.

Q. Have you ever in your experience in D.C. Government been aware of an instance in which a hold for correction was issued following two approvals by the Office of the Zoning Administrator of a permit application?

A. I know of instances where a hold for correction has been issued after an approval but not instances of two, two approval steps, no.

Q. And I think that you've already said this but I just want to be clear, your opinion is that on August 23rd, AppleTree's application satisfied all of the zoning regulations that were in effect at that time?

A. Correct.

Q. Is it also your opinion that AppleTree's application satisfied all the zoning regulations that were in effect up until September 14th?

A. Yes.

Q. So approval by the zoning discipline was correctly granted on August 7th or 9th when Xoan granted approval; is that correct?

8 A. That's correct.
9 Q. And zoning approval was also correctly
10 granted on August 23rd or thereabouts when you
11 re-reviewed AppleTree's application and granted
12 approval again?

13 A. Yes.
14 Q. Now you said that the new zoning
15 regulations took effect on September 14th, but that
16 the hold was issued on September 18th?

17 A. Yes.
18 Q. Is there a reason for the lag between
19 the 14th and the 18th?

20 A. That's when I actually received the
21 paper Orders.

22 Q. The paper Orders referring to?

0072

1 A. The Zoning Commission Orders that were
2 issued the 14th is when I received -- and became
3 aware of them is on September 18th.

4 Q. When did Mr. Holmes tell you that such
5 regulations were pending, such changes in
6 regulations were pending?

7 A. I believe it was in August 2007.

8 Q. Do you know which day in August 2007?

9 A. No.

10 Q. But you might be able to tell that by
11 looking at the correspondence in your file?

12 A. I may be able to, yes.

13 Q. Have you ever spoken with Mr. Holmes
14 about AppleTree before August of 2007?

15 A. No.

16 Q. And the other members of the community
17 that contacted you about AppleTree's permit
18 application, did they also contact you in August of
19 2007?

20 A. I, I'm not sure of the date, if it was
21 August 2007 or thereafter.

22 Q. But those members of the community did

0073

1 not contact you about AppleTree before August of
2 2007?

3 A. Not that I recall.

4 MR. MENDRO: If you bear with me one
5 second, I'd like to show you another document. I
6 believe we're up to Exhibit Number 7.

7 (Deposition Exhibit No. 7
8 was marked for identification)

9 BY MR. MENDRO:

10 Q. Mr. Le Grant, I've just handed you a
11 document that has been marked for identification as
12 Exhibit Number 7.

13 Please review the document and let me
14 know when you've had a chance to review it.

15 A. Thank you.

16 (Witness examining document).

17 Yes, I'm ready.

18 Q. Okay. Could you please describe what
19 Exhibit Number 7 is?

20 A. Exhibit Number 7 appears to be a
21 printout of DCRA's Permit Intake Validation Service
22 program which summarizes information about a

0074

1 particular address.

2 Q. Does this printout come from the file
3 jobs system that we've talked about?
4 A. No, it's a separate computer program.
5 Q. Do you use this program in the course of
6 your work?
7 A. I do.
8 Q. And it's just, is it a different
9 software system?
10 A. It's my understanding such as it is of
11 computer programs that it is a separate program that
12 pulls information from a variety of databases and
13 summarizes it in one place.
14 Q. I want to, I want to try to understand
15 this document a little bit better so I'm going to
16 ask you a series of questions about what this
17 information means.
18 And I'd like to start by drawing your
19 attention to about the middle of the page beneath
20 the box that has the word attention in it and
21 specifically there's a line that says administrative
22 holds.

0075

1 A. Yes.
2 Q. And under that line it says hold by --
3 or type of hold and then the next line down says
4 zoning hold by admin?
5 A. Yes.
6 Q. In this area there's a column that says
7 created by and beneath that column are the letters
8 M., then it looks like Le Grant.
9 Does this refer to you?
10 A. Yes.
11 Q. And did you enter this hold into the
12 Permit Intake Validation Service system?
13 A. Yes, I did.
14 Q. And you did that yourself, manually?
15 A. Yes.
16 Q. And the column that says create date,
17 explain if you can what that column shows?
18 A. Create date shows the date of
19 August 10th, 2007, as the date in which I placed the
20 hold into this system for this particular address.
21 Q. And why is it that you placed the hold
22 on August 10th of 2007 on AppleTree's -- on your

0076

1 review of AppleTree's application?
2 A. In response to my then knowledge of the
3 controversy regarding this application, the fact
4 that there were, it was subject to a BZA Order and
5 that there were possibly pending Zoning Commission
6 Orders, I placed the hold with the purpose that I
7 would have an opportunity to review the permit
8 application prior to its issuance.
9 Q. And, in fact, you did review the permit
10 application after you put this hold on and prior to
11 the permit's issuance, correct?
12 A. Yes.
13 Q. There's a column that says status and
14 that column says active, what does that mean?
15 A. That means that the hold is in effect,
16 it's active, means it's in effect.
17 Q. And when, when does the hold become
18 inactive or removed?

19 A. If I go back and modify that hold, I can
20 change it to inactive.

21 Q. Okay. And in the ordinary course, when
22 would you change it to inactive?

0077

1 A. When the issue requiring placement of
2 the hold is either changed or no longer applies,
3 then it can be changed to inactive.

4 Q. Now did you mark this hold inactive on
5 August 23rd?

6 A. I did not.

7 Q. Did you mark it inactive on August 24th?

8 A. No.

9 Q. But you had reviewed the application at
10 that time?

11 A. I did.

12 Q. Why didn't you mark it inactive?

13 A. The hold refers to a building permit
14 issuance, not simply zoning approval and at that
15 point in time the building permit had not been
16 issued.

17 Q. The, in the detail section I believe it
18 says that no building permit issuance unless
19 approved by Z.A.

20 A. Yes.

21 Q. Does Z.A. mean the Zoning
22 Administrator?

0078

1 A. It does.

2 Q. And you were the Zoning Administrator at
3 this time, correct?

4 A. Yes, I was acting Zoning Administrator.

5 Q. So DCRA couldn't issue the permit until
6 this hold became inactive; is that correct, or --

7 A. I would say the building permit should
8 not be issued unless I signed off and approved it.

9 Q. And the reason why you put this hold on
10 was because you wanted to approve the application
11 yourself?

12 A. Yes.

13 Q. But you did approve the application
14 yourself and this hold remained as to people outside
15 of the Office of Zoning, correct?

16 A. Will you rephrase that.

17 Q. Well, what I'm trying to understand is
18 if I understand your testimony, you placed the hold
19 so that you would have an opportunity yourself
20 personally to review AppleTree's permit application,
21 correct?

22 A. Yes.

0079

1 Q. And you did review AppleTree's permit
2 application on or about August 21, 22 and 23,
3 correct?

4 A. Yes.

5 Q. And on August 23, 2007, you determined
6 in your judgment that AppleTree's permit application
7 complied with all zoning regulations effective at
8 that time, correct?

9 A. Yes.

10 Q. But you did not at that time change the
11 status to inactive; is that correct?

12 A. I did not.

13 Q. And the question that I have is why did
14 you not change the status to inactive when the
15 purpose of the hold had been fulfilled?

16 A. My normal use of this hold mechanisms is
17 not to modify or change the hold to inactive until
18 such time that the permit is either issued or the
19 permit -- or the reason leading to the establishment
20 of the hold is changed.

21 Q. Now didn't the reason for the hold
22 actually change, though, in this case?

0080

1 A. Twice it did.

2 Q. So I just want to make sure that I'm
3 understanding, please bear with me, but the purpose
4 of the hold was for you to review and you did
5 review?

6 A. Yes.

7 Q. So the purpose was met, correct?

8 A. Initially, yes.

9 Q. But initially you didn't change the
10 status of it --

11 A. I did not.

12 Q. Okay, and I think that the other thing
13 you said that is a little difficult for me to
14 understand is that you may not change the status
15 until the permit issues; did I hear you correctly?

16 A. Until the permit is issued, right.

17 Q. But what -- the effect of the hold is to
18 prevent the permit from issuing; is that also
19 correct?

20 A. No, the purpose of the hold is to ensure
21 that the application's reviewed by the Zoning
22 Administrator, not to prevent issuance, not to

0081

1 prevent issuance.

2 Q. This message that says no building
3 permit issuance unless approved by Z.A. doesn't
4 mean, does that not mean that the permit -- my
5 understanding of -- let me strike what I've said
6 before --

7 A. Okay.

8 Q. -- and try to come back at this a little
9 more eloquently.

10 I believe you stated before that it was
11 your opinion that the permit should not issue until
12 you changed the hold; is that correct?

13 A. The permit should not be issued until I
14 either review the application or the reason for the
15 hold is such to remove the hold.

16 Q. And if you could elaborate on that
17 second comment.

18 A. If a circumstance -- if the
19 circumstances that created the necessity for the
20 hold changed so that the hold was no longer needed
21 to apply, then that would be a reason to change the
22 hold from inactive -- from active to inactive.

0082

1 Q. And were there reasons for keeping the
2 hold after you reviewed AppleTree's permit yourself
3 and decided that it met with -- that it complied
4 with all the regulations in effect?

5 A. In this case, yes.

6 Q. And what were the reasons for keeping

7 the hold?

8 A. The, the regulations that were in effect
9 at the time that the permit was signed off both on
10 August 9th and on August 23rd allowed my office to
11 approve the application; however, when -- at that
12 point when there were pending Zoning Commission
13 regulations that were yet -- not yet published, they
14 would go into effect for any building permit
15 application not yet issued.

16 On August 23rd, the building permit had
17 not yet been issued, therefore I wanted to ensure
18 that at the time of the building permit issuance
19 that the applicable regulations that applied were,
20 in fact, being followed.

21 Q. Let's, could you tell me what the
22 pending regulations refer to?

0083

1 A. There's at least two Zoning Commission
2 orders that would -- that affect the -- will affect
3 this case.

4 Q. Do you recall the numbers of those
5 orders?

6 A. Oh, my. I'm not 100 percent sure, I
7 believe one is 0633 and the other one may be 722,
8 but I'm not, I'm not 100 percent sure of the numbers
9 of those Orders.

10 Q. And do you know how those Orders would
11 change the zoning regulations that were in effect at
12 the time that you reviewed AppleTree's permit?

13 A. They're, they raise -- they change the
14 regulations that could affect both the, I believe
15 the parking requirements and the lot size applicable
16 to the proposed use.

17 Q. And how do they change those things?

18 A. Because I've not conducted an analysis
19 of this application vis-a-vis those regulations
20 in -- completely, I cannot tell you.

21 Q. Okay. And in your opinion, is it an
22 error for the permit to be issued when there is

0084

1 still a hold by you?

2 A. Yes.

3 Q. Okay. So the permit could not have
4 issued without error until you lifted this hold; is
5 that correct?

6 A. Correct.

7 Q. But you didn't lift the hold after you
8 decided that the regulations applicable at the time
9 that you reviewed AppleTree's permit --

10 MR. TAYLOR: Asked and answered.

11 MR. MENDRO: Let me, I got interrupted
12 there.

13 BY MR. MENDRO:

14 Q. You did not, we've established that you
15 did not lift the hold.

16 My question is this: why did you not
17 lift the hold?

18 I don't, I think the question has been
19 asked, I'm not clear that it has been answered.

20 A. I felt I answered it previously.

21 MR. TAYLOR: My objection stands.

22 BY MR. MENDRO:

0085

1 Q. So, please, proceed.
2 Do you want, should I re-ask the
3 question?

4 A. Please.

5 Q. I think we've established that the
6 regulations in effect on August 23rd, zoning
7 regulations were zoning regulations that AppleTree's
8 application satisfied, correct?

9 A. Yes.

10 Q. And we're not clear, you're not clear
11 yet because you haven't conducted your review
12 whether AppleTree's application would satisfy the
13 regulations that became effective later; is that
14 correct?

15 A. Correct.

16 Q. And by later we're talking about
17 sometime around September 14th, 2007; is that
18 correct?

19 A. That's correct.

20 Q. So the effect of your hold was to
21 prevent AppleTree's permit from issuing before the
22 new regulations became effective; is that correct?

0086

1 A. No.

2 Q. And explain your answer, please.

3 A. Again, the effect of the hold is not to
4 prevent permit issuance. The effect of the hold is
5 to ensure that in this case that no building permit
6 be issued unless I reviewed the application.
7 Although I reviewed the application in October -- I
8 mean in August 2007, the permit had not been issued.

9 I wanted to ensure that at the time of
10 building permit issuance, that the regulations in
11 effect at that point in time were being followed.

12 Q. But you've also said that it would be
13 error for the permit to be granted before you lifted
14 the hold, so --

15 A. Yes.

16 Q. So until you lifted the hold, the
17 permit -- until you lifted the hold, AppleTree is
18 susceptible to changes in the law; is that correct?

19 A. Any application that -- any application
20 subject to the regulations in effect at the time of
21 building permit issuance, so AppleTree's application
22 would be included in that class.

0087

1 Q. And if you left the hold on until next
2 year and the zoning regulations changed between now
3 and next year, your opinion is that AppleTree would
4 be subject to any of the regulations that became
5 effective in that time?

6 MR. TAYLOR: Objection to form.

7 BY MR. MENDRO:

8 Q. Do you understand the question?

9 A. I do, however in the subject case there
10 were pending regulations I was aware of.

11 In the scenario you've floated it would
12 be, to me, speculative if for some unknown
13 regulation to be proposed that's -- or no, no
14 actually proposed regulation.

15 Q. But, nevertheless, your opinion is that
16 if it remained on hold until next year and new
17 regulations were passed between now and then, that

18 AppleTree's permit would be subject to the new
19 regulations; is that correct?

20 A. I'm not sure if I would agree with that
21 statement.

22 Q. But you do agree in this case that

0088
1 AppleTree is subject to the new regulations that
2 were, that became effective on September 14th?

3 A. That, I would agree with that.

4 Q. And why is it that your opinion would
5 differ between the example that I just gave you and
6 AppleTree's example?

7 MR. TAYLOR: I would note, again, asked
8 and answered.

9 THE WITNESS: Yeah, I felt I've answered
10 that question.

11 BY MR. MENDRO:

12 Q. I don't feel that I've understood the
13 answer, is it because you knew that there were
14 regulations pending; is that the difference?

15 A. I was aware of specific regulations that
16 were pending.

17 Q. And is that what the difference is
18 between the hypothetical --

19 A. I would guess, yeah, the scenario you
20 floated, yeah, that's the difference.

21 Q. So your opinion is that if the Zoning
22 Administrator is aware that new regulations are

0089
1 pending and the Zoning Administrator issues a hold
2 until those regulations become effective, that the
3 new regulations will be applied to the pending
4 permit, correct?

5 MR. TAYLOR: Objection to form.

6 THE WITNESS: Let me answer it in this
7 way, the -- the unfortunate choice of words in the
8 system talk about hold. I interpret that really to
9 be a flag that and the details prescribe a
10 particular course of action; in this case, no
11 building permit issuance unless approved by the
12 Zoning Administrator, so it's not a hold more than
13 it is a flag to ensure that at the time of building
14 permit issuance that the applications are referred
15 to me for my review.

16 BY MR. MENDRO:

17 Q. But you've said that the building permit
18 can't issue until the hold is lifted, so what do you
19 mean by the time of issuance?

20 A. The time of issuance is when all other
21 disciplines' reviews have been completed and
22 reviewed -- and approved by all of the disciplines.

0090
1 Q. And were you -- when did that occur in
2 AppleTree's case?

3 MR. TAYLOR: Calls for speculation.

4 THE WITNESS: Yeah, I do not know when
5 the other disciplines' reviews were completed. I
6 can -- I know about the review for the zoning
7 discipline, but not, I would not keep track of the
8 other disciplines' reviews.

9 BY MR. MENDRO:

10 Q. You check once a week on pending
11 applications, correct?

12 A. Yes.
13 Q. So once a week you would know whether
14 the other disciplines had approved AppleTree's
15 permit?
16 A. No, I look -- the lists I look at are
17 basically a list of application number of
18 outstanding review status, namely, pending
19 applications.
20 I do not go into the other
21 disciplines -- in fact, I cannot even access the
22 other disciplines' status pages. It's none of my

0091
1 concern. My concern is for the, those applications
2 pending before the zoning discipline.

3 Q. At the time -- now I think before you
4 said that you issued a hold on September 14th --

5 A. 18th.

6 Q. -- or September 18th, 2007.

7 Is that a different hold than the one
8 that's reflected in this exhibit?

9 A. Yes.

10 Q. And is there a document that shows that
11 hold?

12 A. I believe so in my files.

13 MR. MENDRO: All right, and I'll say to
14 Mr. Taylor that that's another document that we
15 would like to see.

16 BY MR. MENDRO:

17 Q. And so if I understand correctly, you
18 never removed the hold that's, that's shown in
19 Exhibit 7 and you issued another hold on or about
20 September 14th, 2007; is that correct?

21 A. On September 18th, that's correct.

22 Q. September 18th, thank you.

0092

1 Have you ever issued two holds on a
2 single application before?

3 A. Yes.

4 Q. Are there other applications pending now
5 that have two holds on them?

6 A. Yes.

7 Q. What are the reasons generally for
8 issuing holds on permits?

9 A. Which holds are you referring to?

10 Q. Well holds on the zoning review?

11 MR. TAYLOR: Still -- you still need to
12 clarify that question, I believe.

13 BY MR. MENDRO:

14 Q. Do you understand?

15 MR. TAYLOR: You can answer if you
16 understand his question.

17 THE WITNESS: Restate it.

18 BY MR. MENDRO:

19 Q. Well let me ask you this: How common is
20 it to place a hold on an issuance -- how common is
21 it for your office to place a hold on the issuance
22 of a permit?

0093

1 A. The hold that was referred to in the
2 Exhibit 7 is a hold that's placed on a particular
3 address or for -- I should say for a particular
4 property and that type of hold I, weekly I will
5 place a hold on, a similar hold on a particular

6 property that might be pending an enforcement action
7 or some other issue that I become aware of that I
8 wish to see those applications.

9 Q. And how many holds has your office
10 placed on applications this year?

11 A. Of the type that's illustrated in
12 Exhibit 7, I'd say between 25 to 40.

13 Q. Okay. And when we say 25 to 40, that's
14 25 to 40 holds on different applications?

15 A. On different properties.

16 Q. Okay. And is there a way to search the
17 system to see all the holds that are in effect at a
18 given time?

19 A. I'm not sure. I do not know.

20 Q. Were your reasons for issuing a hold on
21 September 18th different than the reasons for
22 issuing the hold that's shown in Exhibit 7 on

0094
1 August 10th?

2 A. In part. On August 10th because I, as I
3 stated earlier, I was aware of that there was a
4 recent Board of Zoning Adjustment Order pending,
5 Zoning Commissioner Orders, as well as it's been
6 communicated by members of the community controversy
7 over the application was the reason I put the hold
8 in on Exhibit 7.

9 On September the 18th I held the
10 application for the building permit, specific in
11 this case held for correction because of the
12 publication of the Zoning Commission Orders that
13 changed the applicable zoning regulations -- that
14 possibly changed the applicable zoning regulations
15 effective, applicable to the application.

16 Q. So on September 18th it was because the
17 regulations had changed, on August 10th it was
18 because of controversy raised by members of the
19 community?

20 A. As I stated before, it was a recently
21 issued BZA Order, there were pending Zoning
22 Commissioner Orders and there was controversy as

0095
1 evidenced by communications by members of the
2 community.

3 Q. And what was the controversy that they
4 raised?

5 A. Well there were members of the community
6 that opposed the establishment of this use.

7 Q. And did those members of the community
8 tell you why they opposed the establishment of
9 AppleTree's use?

10 A. Yes.

11 Q. And what did they tell you?

12 A. As I recall, there were concerns about
13 the suitability of this location for a school.

14 Q. Okay. And starting with Mr. Holmes,
15 what did Mr. Holmes say about the suitability of the
16 property for a school?

17 A. As I recall, Mr. Holmes' communications
18 were not so much the substance of his concerns but
19 more that communicating to me to ensure my awareness
20 of the applicable Board of Zoning Adjustment and
21 Zoning Commission actions that might impact the
22 case.

0096

1 Q. And did the other individuals express
2 different concerns?

3 A. No, similar concerns.

4 Q. Okay. So at the end of the day, the
5 controversy that the members of the community,
6 including Mr. Holmes, raised were the very same
7 regulations that took effect on September 14th?

8 A. Well, because of the history of the case
9 that it was subject to my predecessor Bill Crews'
10 determination denying the application, the
11 subsequent appeal to the Board of Zoning
12 Adjustments, the zoning adjustments' decision
13 overturning Mr. Crews' determination and then
14 changes to the regulations as enacted by the Zoning
15 Commission, the aspects of this case were quite
16 complex and members of the community felt the need
17 to avail me their views on various aspects of that
18 controversy and that history and there were -- I,
19 they felt they needed to make sure I was aware of
20 different aspects of those various bodies' actions.

21 Q. Now, did any of them tell you that you
22 should place the application on hold?

0097

1 A. No.

2 Q. Whose decision was that?

3 A. To place on hold?

4 Q. Correct.

5 A. It was mine.

6 Q. And did you discuss that decision with
7 anyone else?

8 A. I informed other members of this
9 Department of my decision.

10 MR. TAYLOR: Excuse me, Mr. Mendro,
11 you're speaking still in regard to Exhibit 7?

12 MR. MENDRO: I'm speaking in regard to
13 both of the holds, the one evidenced in Exhibit 7
14 and the one that we've discussed but have not
15 received any documents to evidence that occurred on
16 or about September 18th.

17 BY MR. MENDRO:

18 Q. Let me just turn back to Exhibit 7 for
19 just a moment, though.

20 A. Okay.

21 Q. There's, underneath the hold that you
22 testified that you placed there's another, there's

0098

1 another entry of a hold there.

2 Can you explain what that entry means?

3 A. Under the heading required review holds,
4 property DB look-up?

5 Q. Right.

6 A. Okay. That is a, the label is Historic
7 preservation which means this is in an area subject
8 to review by the Office of Historic Preservation in
9 the Office of Planning, the purpose of which is to
10 ensure that applications are referred to the Office
11 of Historic Preservation for their review.

12 Q. And in the created by column for that
13 entry there's the letters, it looks like it says
14 MILARDM?

15 A. Yes.

16 Q. Do you know who that refers to?

17 A. No, I do not.
18 Q. And do you know the status of this
19 particular hold?
20 A. It says active.
21 Q. It says active on this document?
22 A. Yes.

0099
1 Q. Do you know anything else about this
2 particular hold?
3 A. No.
4 Q. Okay.
5 Are you aware of any other holds that
6 have been placed on AppleTree's permit application.
7 A. Not that I'm aware of.
8 Q. When you placed this hold on
9 August 10th, 2007, on AppleTree's application, did
10 you communicate with any representatives of
11 AppleTree to inform them of that hold?
12 A. I do not recall if I did.
13 Q. And when you subsequently placed another
14 hold on AppleTree's application on September 18th,
15 2007, did you do anything to communicate to
16 AppleTree the fact that you had placed that hold?
17 A. I'm not sure. I believe I may have
18 either called or E-mailed the applicant informing
19 them of that change in status.
20 Q. But when you say you may have, you don't
21 remember that you did?
22 A. I don't remember.

0100
1 Q. And did you ever meet with Russ Williams
2 concerning the status of AppleTree's application?
3 A. No. I believe I spoke to him on the
4 telephone.
5 Q. Do you recall when about you spoke with
6 Mr. Williams?
7 A. No, I do not recall the date, I'm sorry.
8 Q. Do you think you spoke with Mr. Williams
9 on one occasion or more than one occasion?
10 A. It may have been one or two occasions.
11 Q. You don't think it was as many as five?
12 A. No, I don't believe it was.
13 Q. And do you recall the content of your
14 discussion with Mr. Williams?
15 A. No. No, I do not.
16 Q. Do you understand Mr. Williams to be a
17 representative of AppleTree?
18 A. Yes.
19 Q. In terms of timing, I know that you've
20 said that you don't remember the exact date, do you
21 think you spoke with him before August of 2007?
22 A. No, I did not.

0101
1 Q. Do you think it was after November of
2 2007?
3 A. I really do not recall.
4 Q. But sometime in August or thereafter?
5 A. Most likely sometime August or
6 thereafter.
7 Q. In a correspondence that we've looked at
8 between you and Mr. Holmes, I believe it's Exhibit
9 Number 5 --
10 A. Uh-huh.

11 Q. -- you've said, this correspondence from
12 you to Mr. Holmes states that the zoning approval
13 for AppleTree's permit application was superseded by
14 a September 18th directive that the approval was no
15 longer valid; do you see that statement?

16 A. Are we talking about the third
17 paragraph?

18 Q. Correct.

19 A. Let me re-read it.

20 (Witness examining document).

21 Yes. What is your question about the
22 third paragraph?

0102

1 Q. Is the directive described in this
2 E-mail, the September 18th directive, the same
3 September 18th hold that we've been discussing?

4 A. Yes.

5 Q. It also says in here that you crossed
6 the approval stamp and signature off -- well the
7 document speaks for itself, did you ever cross an
8 approval stamp or signature pending review of
9 AppleTree's plans?

10 A. I, I believe I did. If I stated here I
11 did, I believe I did, but I do not have specific
12 recollection at this point in time.

13 Q. But at the time you had done that you
14 still had not reviewed the new regulations to
15 determine whether they actually --

16 A. Correct, I had not.

17 Q. Just let me finish the question so that
18 we have a clear record.

19 But at the time of this E-mail
20 indicating that you had crossed off the approval
21 stamp and signature pending re-review of AppleTree's
22 plans, you had then not assessed whether the new

0103

1 regulations that came into effect on September 14th
2 changed AppleTree's ability to comply with the
3 zoning regulations -- let me restate that again.
4 That went on for too long.

5 I will strike the last question.

6 At the time of your E-mail when you
7 indicate that you have crossed off the approval
8 stamp and signature on AppleTree's application and
9 plans, you had not yet reviewed whether AppleTree
10 complied with the new regulations that had become
11 effective on September 14th, is that --

12 A. That's correct.

13 MR. MENDRO: Is that better?

14 MR. TAYLOR: That's better.

15 BY MR. MENDRO:

16 Q. When Bill Crews left his position, did
17 he give you a file regarding the AppleTree
18 application?

19 A. Upon Mr. Crews' exiting of his office, I
20 went through the files in his office and located the
21 files associated with the AppleTree application.

22 Q. So he never handed you a folder and said

0104

1 this is concerning AppleTree?

2 A. No, he did not.

3 Q. And what did you do with the files that
4 you located?

5 A. I put them in one place, I, there were
6 several manila folders and I assembled them in one
7 location.

8 Q. And are those the same manila folders we
9 discussed earlier --

10 A. Yes.

11 Q. -- that were your AppleTree file?

12 A. Yes.

13 Q. Have you heard that DCRA has made an
14 attempt to revoke AppleTree's permit?

15 A. I'm aware that DCRA embarked on revoking
16 the building permit application that was issued in
17 error.

18 Q. How did you become aware that the
19 building permit application was granted?

20 A. I believe that I was informed by
21 Mr. Lenny Douglas, L-E-N-N-Y, Douglas.

22 Q. Who is Mr. Douglas?

0105

1 A. Mr. Douglas is the Deputy Director of
2 licensing and permitting.

3 Q. And is licensing and permitting a
4 separate entity, so to speak, separate from the
5 Office of the Zoning Administrator?

6 A. It is.

7 Q. And what is the role of the, you said --
8 I'm sorry, licensing and what?

9 A. Permitting.

10 Q. Licensing and permitting, what is their
11 role in the permit process?

12 A. They both administer the building permit
13 application process as well as perform plan reviews
14 for applicable building codes.

15 Q. And this is going to be a very obvious
16 question, but if you could just for the record
17 contrast the building codes to the zoning
18 regulations?

19 MR. TAYLOR: Objection, overly broad.

20 THE WITNESS: You may want to restate
21 the question.

22 BY MR. MENDRO:

0106

1 Q. I'm just looking for clarification on
2 the difference between the role that his office
3 plays and the role that the Office of the Zoning
4 Administrator plays in the permit application
5 process.

6 A. Well as I stated earlier, the, his
7 division is responsible for, in part, reviewing
8 applications for compliance with the building code
9 and then my office is responsible for reviewing
10 applications inconsistency with the zoning
11 regulations.

12 Q. And why would Mr. Douglas be telling you
13 that the permit had issued?

14 A. The --

15 MR. TAYLOR: Objection, calls for
16 speculation.

17 You may answer if you have knowledge.

18 THE WITNESS: Yes, the issuance function
19 of the permit center is part of the licensing and
20 permitting division.

21 BY MR. MENDRO:

22 Q. So just to make sure that I understand,
0107

1 the last stop before issuance is Mr. Douglas'
2 department?

3 A. With, within DCRA, Mr. Douglas' division
4 must -- it's my understanding must complete reviews
5 prior to building permit issuance.

6 Q. And when those reviews are completed in
7 the ordinary course, the permit actually issues?

8 A. That's my understanding.

9 Q. And what did Mr. Douglas say to you when
10 he came to speak with you about AppleTree's permit?

11 A. That the building permit had been issued
12 contrary to the hold for correction that I had
13 placed on the application.

14 Q. And did he distinguish between the hold
15 that you placed on August 10th and the hold that you
16 placed on September 18th?

17 A. No, I believe he was referring to the
18 hold I placed on September 18th.

19 Q. And why do you believe that?

20 A. Because that was the, the hold that had
21 revoked the zoning approval and there was no zoning
22 approval for that application in effect at that

0108
1 point.

2 Q. Did Mr. Douglas tell you anything else
3 at that time?

4 A. No, other than that the application had
5 been -- or that the permit had been issued.

6 Q. And when did you have this conversation
7 with Mr. Douglas about AppleTree's permit?

8 A. I believe it was at the end of October
9 2007.

10 Q. Do you remember a specific date?

11 A. No.

12 Q. Do you know if you had any written
13 correspondence with Mr. Douglas about this issue?

14 A. There may have been some E-mails, but I
15 don't recall specifically.

16 MR. MENDRO: And, Mr. Taylor, AppleTree
17 would request those E-mails, as well.

18 BY MR. MENDRO:

19 Q. And did Mr. Douglas express an opinion
20 to you about whether the permit should have issued?

21 A. Yes.

22 Q. And what opinion did he express?

0109
1 A. That the permit should not have been
2 issued.

3 Q. And did he explain that position?

4 A. Yes.

5 Q. And please, if you could tell me what
6 his explanation was?

7 A. That a permit clerk errored in issuing
8 the permit and that it should not have been issued.

9 Q. And did he tell you how the permit clerk
10 errored?

11 A. No.

12 Q. Did he say anything about why it was an
13 error?

14 A. At that point in time he did not know,
15 he was going to look into the matter further.

16 Q. And did he tell you that he looked into
17 that further at some later time?

18 A. My understanding was that he did look
19 into it later, but we've not had -- we've not had
20 further discussions about the reasons for its
21 incorrect issuance. It's a matter between he and
22 his staff.

0110

1 Q. Is the name of the permit clerk, is that
2 Tyrone Thomas?

3 A. I believe it was Mr. Thomas.

4 Q. Okay. And do you, have you formed an
5 opinion about why it was issued in error?

6 A. No.

7 Q. Why AppleTree's permit --

8 A. No.

9 Q. Do you believe that AppleTree's permit
10 was issued in error?

11 A. Yes.

12 Q. But you don't have an opinion as to why
13 that's your belief?

14 A. Well, other than Mr. Douglas informing
15 me that the permit was issued, it should not have
16 been issued, it was contrary to my hold of
17 September 18th.

18 Q. Now since September 18th, have you
19 reviewed AppleTree's permit application?

20 A. No.

21 Q. And why have you not?

22 A. The plans have at times been deposited

0111

1 in my office and then removed from my office, so I
2 have not had the opportunity to complete my review.

3 Q. Who is taking the plans in and out of
4 your office?

5 A. Mr. Douglas at one point -- Mr. Douglas
6 had removed the plans from my office.

7 Q. Did other people remove the plans from
8 your office?

9 A. I believe maybe another individual, I
10 can't recall specifically who may have removed the
11 plans from my office.

12 Q. Can you remember from which Department
13 that other individual --

14 A. It was in DCRA.

15 Q. And how long have the plans physically
16 been in your office taking out the times when other
17 people have had them --

18 A. Oh.

19 Q. -- since September 18th?

20 A. I would say maybe four or five weeks.

21 Q. And at no time since September 18th have
22 you analyzed the new zoning regulations?

0112

1 A. I've looked at the zoning regulations in
2 part but not completely.

3 Q. And those zoning regulations are
4 something that is at your disposal and that you can
5 access without the plan, AppleTree's plans being in
6 your office?

7 A. Yes.

8 Q. How many permits have been revoked in
9 the last year after being issued?

10 MR. TAYLOR: Calls for speculation.
11 THE WITNESS: Yeah, I don't know the
12 number. I don't know.
13 BY MR. MENDRO:
14 Q. Is that information something that can
15 be determined from the computer system we've
16 discussed?
17 A. Perhaps, I am not sure.
18 Q. Did anybody discuss revoking AppleTree's
19 permit with you?
20 A. I -- yes. I was present in discussions
21 with Mr. Douglas and others who upon the permit
22 being issued that was discussed that the permit
0113 would be revoked.
2 Q. Who else was party to those discussions?
3 A. I believe it was my counsel and Director
4 Argo and chief of staff Carol Washington.
5 MR. TAYLOR: Just a quick note to
6 Mr. Le Grant to be careful not to reveal any
7 opinions expressed --
8 THE WITNESS: Okay.
9 MR. TAYLOR: -- by counsel that would be
10 privileged or questions to counsel requesting legal
11 advice.
12 THE WITNESS: Thank you.
13 BY MR. MENDRO:
14 Q. So apart from legal advice, what was
15 discussed at the meetings about revoking AppleTree's
16 permit?
17 A. Well as I recall, it was that it was
18 knowledge that the permit was issued in error, that
19 DCRA would first ask that the permit be surrendered
20 and that if not surrendered, it, that the department
21 would embark on seeking revocation.
22 Q. And whose decision was it to embark on
0114 seeking revocation?
2 A. I believe the decision ultimately was
3 Mr. Douglas.
4 Q. Were you asked for an opinion about that
5 decision?
6 A. No.
7 Q. Is it within the scope of your authority
8 to make that decision?
9 A. No.
10 Q. Do you have an understanding about why
11 Mr. Douglas decided to embark on the revocation of
12 AppleTree's permit?
13 MR. TAYLOR: Objection, calls for
14 speculation. Answer if you have specific knowledge.
15 THE WITNESS: Well as I've stated
16 earlier, the permit was issued, my understanding is
17 that since the permit was issued in error, it's not
18 a valid permit and, therefore, Mr. Douglas in his
19 authority can revoke an invalid permit.
20 That's my general understanding of the
21 building permit revocation process.
22 MR. MENDRO: All right, I think at this
0115 point I'd like to take another break to use the
2 restroom again here and reconvene in just a few
3 minutes.

4 THE WITNESS: Okay.
5 MR. MENDRO: And we'll try to wrap this
6 up.
7 (Discussion off the record)
8 BY MR. MENDRO:
9 Q. We're back on the record after a break.
10 I want to follow up about the sort of
11 the process for holds and one question I had for you
12 is is there any sort of written policy statements
13 concerning holds?
14 A. No.
15 Q. Are there any procedures about when to
16 issue holds?
17 A. There are, I'm not aware of written
18 procedures on holds. Let me clarify, are you
19 referring to the holds specific to applications or
20 the holds for properties that are like illustrated
21 in example Exhibit 7?
22 Q. I probably should get a little more
0116 clarification on the difference between those two
1 things.
2 I, let's get Exhibit 7 back out. So
3 there were two holds listed on Exhibit 7, correct?
4 A. Yes.
5 Q. And are these both holds on property?
6 A. Yes.
7 Q. And so these holds are not specific to a
8 particular application?
9 A. Correct.
10 Q. Now was the hold that you issued on
11 September 18th different in that regard?
12 A. The hold I placed on September 18th was
13 on an application, so it is different than the ones
14 illustrated in Exhibit 7.
15 Q. So I will ask, I will try to be more
16 clear with my question.
17 With regard to holds placed on property,
18 are there any written procedures or policies?
19 A. Not that I'm aware of.
20 Q. And with regard to holds placed on
21 applications, are there any written procedures or
22 policies?
0117 1 policies?
2 A. I'm not aware of those policies being in
3 writing.
4 Q. Where do those policies exist?
5 A. Prior to my employment with -- or upon
6 my employment with the District, it was explained to
7 me as staff practice as to what constitute -- what
8 constitutes a hold for correction on a particular
9 application.
10 Q. And who explained this staff practice to
11 you?
12 A. This was explained to me at the time by
13 the then lead zoning technician, a woman named Faye
14 Oguneeye. She's no longer employed with the
15 District.
16 Q. And other than the --
17 MR. TAYLOR: Excuse me, I think this
18 would be an excellent time for spelling.
19 THE WITNESS: Oh, boy, I'm trying to
20 remember it. Faye is F-A-Y-E, Oguneeye, because she

21 doesn't work here any more I haven't, it may be
22 O-G-G-O-N-Y-E. Might have to check that.

0118

1 MR. TAYLOR: If you have a card, I can
2 E-mail it to you.

3 BY MR. MENDRO:

4 Q. And what is the difference between --
5 well, what is the reason for issuing a property hold
6 as opposed to an application hold?

7 A. A property hold is placed in the
8 property holds computer program as a flag either
9 specifying certain requirements or reviews
10 applicable to either all applications associated
11 with that property or a class of applications
12 associated with that property, while an application
13 hold is specific to that building permit
14 application.

15 Q. So in August of 2007, the intent of your
16 hold was to prevent any type of application being
17 issued with regard to this property that is
18 AppleTree's property?

19 A. My intention was to ensure that all
20 applications -- all building permit applications
21 associated with the property be subject to Zoning
22 Administrator review.

0119

1 Q. I see. And then on September 18th, that
2 hold was directed at this specific application that
3 we've been discussing?

4 A. That's correct.

5 Q. All right. Were there any other holds
6 of any kind placed either on AppleTree's property or
7 on AppleTree's application other than the two that
8 we have discussed?

9 MR. TAYLOR: Calls for speculation.
10 Answer if you have knowledge.

11 THE WITNESS: Not that I'm aware of.

12 BY MR. MENDRO:

13 Q. And were there any holds of any kind on
14 the property or the application that you're aware
15 of -- well did your office, that is, the Office of
16 the Zoning Administrator, issue any holds other than
17 the two we've been discussing?

18 A. No.

19 Q. And when you issued the August 10th hold
20 on AppleTree's property, there was a pending
21 application at that time, correct?

22 A. Yes.

0120

1 Q. And what other reviews had to be
2 completed at the time that you issued that hold?

3 MR. TAYLOR: Calls for speculation.

4 Answer if you have the answer.

5 THE WITNESS: I do not know which other
6 disciplines at that point had completed or not
7 completed their reviews.

8 BY MR. MENDRO:

9 Q. But you would have been able to obtain
10 that information, correct?

11 A. I could have obtained that information
12 from the file jobs system.

13 Q. And at the time you issued the August 10
14 hold, were you aware, did you have knowledge that

15 any reviews remained to be completed?

16 A. I recall that there were some other
17 disciplines' reviews that had not been completed.

18 Q. But today you don't recall which those
19 were?

20 A. I don't recall which ones. I didn't pay
21 attention to which ones were, but I recall that
22 there were other -- other disciplines' reviews that

0121
1 had not yet been completed.

2 Q. And could those reviews go forward and
3 be completed while your hold was still in place?

4 A. Yes.

5 Q. And did you take any steps to check the
6 status of those other disciplines?

7 A. No.

8 Q. And just to be a little more specific,
9 you didn't take any steps between the time that you
10 issued that hold on August 10th and between
11 September 18th when the second hold was placed on
12 the application, itself; is that correct?

13 A. Well as I previously mentioned, on
14 August 23rd I had reviewed the application
15 confirming the approval and entering my own approval
16 in the file jobs program, but otherwise I did not
17 check or track the other disciplines' reviews.

18 Q. Okay. So in August 23rd, did you know
19 that other disciplines were still reviewing
20 AppleTree's permit?

21 A. Yes, I -- my recollection is that there
22 was still other disciplines still doing their

0122
1 reviews of AppleTree's permit.

2 Q. And today can you remember which --

3 A. No, I don't recall which ones.

4 Q. So on August 23rd, you still had
5 knowledge that -- well to the best of your knowledge
6 you had knowledge that there were other reviews
7 ongoing.

8 Did you do anything to check the status
9 of those reviews after August 23rd?

10 A. No.

11 Q. And you didn't do anything to check even
12 up through September 18th; is that correct?

13 A. Correct. I don't -- I did not go in to
14 check the status of other discipline reviews.

15 Q. Did you ask anyone on your staff to
16 check the status of other discipline reviews?

17 A. No.

18 Q. This is changing gears a bit, but just
19 to clarify, the Office of the Zoning Administrator
20 doesn't have any responsibility for ensuring charter
21 school licensing; is that correct?

22 A. That is correct.

0123
1 Q. And did you ask -- well was Xoan
2 assigned to AppleTree to be its reviewer?

3 A. I believe going back through the files
4 that Xoan may have been assigned by my predecessor,
5 Mr. Crews, although I did not assign her, nor do I
6 have specific knowledge of how she became designated
7 to be the reviewer of the application.

8 Q. But you do have knowledge that she did

9 become designated to be the reviewer of the
10 application?

11 A. Yes.

12 Q. And did you ever have communications
13 with Xoan Mac about when it would be appropriate for
14 her to proceed with her review?

15 A. No.

16 Q. And to be a little more specific, did
17 you ever tell Ms. Mac that she should not complete
18 her review until after the BZA Order became
19 effective?

20 A. I did not.

21 Q. And I just want, just for the sake of
22 being very clear, I'd just like to show you the BZA

0124 1 Order, we've discussed it several times today.

2 A. Okay.

3 MR. MENDRO: And we are up to Exhibit 8.
4 (Deposition Exhibit No. 8
5 was marked for identification)

6 BY MR. MENDRO:

7 Q. So the document that I just handed to
8 you is an Order, at the top it says appeal number
9 17532.

10 It also says in bold hearing date
11 November 21, 2006, decision date, January 9th, 2007.
12 Have you seen this Order before?

13 A. Yes.

14 Q. And could you just briefly explain what
15 it is?

16 A. This is the, the Order of the Board of
17 Zoning Adjustment on its review and decision of the
18 appeal of the Zoning Administrator's denial,
19 previous denial of the AppleTree building permit
20 application.

21 Q. And has anyone ever spoken with you
22 about the correctness of this Order?

0125 1 A. What do you mean by correctness?

2 Q. Well, for example, has anyone ever
3 expressed an opinion to you that this Order is
4 incorrect?

5 A. I don't recall somebody, anybody
6 speaking to me about whether this Order was correct
7 or not. There's been communications to me about the
8 matter of opinion as to whether the zoning admin --
9 the Board of Zoning Adjustment rightly decided this
10 case, but that's just a matter of opinion. I've not
11 heard a specific concern expressed to me about
12 whether the Order faithfully reflected the decision
13 of the Board of Zoning Adjustment.

14 Q. And who expressed opinions to you about
15 this BZA Order?

16 A. I believe it was the same individuals I
17 mentioned earlier, possibly Commissioner Holmes and
18 the other individuals, the other two individuals
19 whose names I cannot recall, they may have
20 speculated about well BZA decided this, we didn't,
21 they didn't agree with that decision, but they maybe
22 offered an opinion to me about the BZA decision.

0126 1 Q. And apart from not agreeing with it, do
2 you remember anything else about their opinions

3 about the BZA decision?

4 A. No, not, not about this.

5 Q. Have you formed your own opinion about
6 the BZA decision?

7 A. I accept it as it is, that's -- the
8 decision of the Board of Zoning Adjustments is a
9 decision I am prescribed to follow.

10 Q. And to clarify, you view it as your
11 responsibility to follow the decisions --

12 A. Yes.

13 Q. -- of the BZA?

14 I paused because we were talking between
15 each other just a little bit.

16 A. Oh, that's true.

17 Q. And so now that I think you understood
18 what I was asking before, but this Exhibit Number 8
19 is what I meant when I said the BZA Order and if I
20 understand your testimony correctly, you've never
21 asked Xoan Mac to wait to complete her review until
22 after this BZA Order became effective?

0127

1 A. I did not.

2 Q. And are you aware that anyone else might
3 have instructed her to do that?

4 A. No, I'm not aware of anybody.

5 Q. Has she ever discussed the timing of her
6 review with you at all?

7 A. Yes.

8 Q. And what has she told you about the
9 timing of her review?

10 A. It was her understanding that she could
11 sign off and approve the application upon
12 publication of the BZA Order.

13 Q. Was it her understanding that she
14 couldn't do it any sooner than that?

15 A. I do not know.

16 Q. Did she ever talk to you about whether
17 she could do it before the publication of the Order?

18 A. It was presented to me like after the
19 fact, well now that the BZA Order has been published
20 and the 10 days period following that is passed, I
21 can, talking to herself, she said I could sign off
22 on the building permit application.

0128

1 Q. When is the first time that you became
2 aware of this decision?

3 A. It was in either July or August 2007.

4 Q. And how did you become aware of the
5 BZA's decision?

6 A. I don't recall specifically, but it may
7 have been through a communication by a member of the
8 public, one of the individuals I mentioned earlier
9 that this publication, the Order -- publication was
10 either imminent or had just occurred, right around
11 that time frame either July or August of 2007.

12 Q. Did you ever hear that other, other
13 employees of the D.C. Government were interested in
14 AppleTree's permit application?

15 A. Could you clarify your question.

16 Q. Well, have you heard that employees of
17 the D.C. Government outside of your office and
18 outside of DCRA were interested in whether
19 AppleTree's permit was granted or denied?

20 A. Yes.
21 Q. And what have you heard along those
22 lines?
0129
1 A. Well, when you say D.C. Government
2 employees or D.C. Government officials --
3 Q. I meant to include both elected
4 officials, appointed officials and staff and
5 employees.
6 A. Oh, yeah, what I recall is, again, the
7 appointed officials in the form of the ANC
8 Commissioners communicating to me their, their
9 interests or information about the BZA Order.
10 Q. And have you heard about anybody else
11 being interested, any officials or employees of the
12 D.C. Government apart from the ANC Commissioners?
13 A. I did receive a communication from
14 Council Member on this.
15 Q. A D.C. Council Member?
16 A. Yes.
17 Q. Which D.C. Council Member communicated
18 with you --
19 A. Tommy Wells.
20 Q. And this is just for the sake of Monica,
21 if I could just finish the question before you
22 answer, even though it will be easy to anticipate
0130
1 what I'm going to say. Tommy Wells communicated
2 with you.
3 And what was the substance of Mr. Wells'
4 communication?
5 A. Mr. Wells phoned me inquiring about the
6 status of the application and I, and I do not recall
7 exactly when he called me and then I informed him
8 basically of the status of the application at that
9 point in time, but I don't recall if it was in
10 August or September of 2007.
11 Q. Did Mr. Wells indicate why he was
12 interested in the status of AppleTree's application?
13 A. That the AppleTree application had been
14 a matter of controversy and he wanted to know for
15 his own information or for his ability to explain to
16 members of his constituents as to what was happening
17 with the review.
18 Q. Did he express an opinion to you about
19 whether the permit should be granted --
20 A. No.
21 Q. -- or denied?
22 A. No.
0131
1 Q. Are there any other members of the D.C.
2 Government?
3 A. Not that I recall, no.
4 Q. Do you recall hearing that the City
5 Administrator has any interest in Apple --
6 A. I did not.
7 Q. If I can just complete the question.
8 I'm sorry, I know it's tedious and it's
9 been going on for a while, but --
10 A. Okay.
11 Q. Have you heard or formed an opinion that
12 the City Administrator has any interest in whether
13 AppleTree's permit is granted or denied?

14 A. I have not.

15 Q. For the time being, we are finished with
16 all of our questions. Hopefully we can get home
17 before the snow really comes down, although it's
18 starting now.

19 As Mr. Taylor and I have discussed,
20 there is still an issue of some outstanding
21 documents that we've been looking for and that we've
22 requested in December and that we hope to have the

0132
1 benefit of at this proceeding and at the proceeding
2 that will occur tomorrow and Friday.

3 So, we do reserve the right to reopen
4 the deposition to the extent that it's necessary to
5 ask further questions about documents that we
6 receive belatedly.

7 That's my position for the record.

8 MR. TAYLOR: I understood you, I
9 understand your position and, and I'm sure you will
10 keep me apprised of your conversations with our FOIA
11 officer.

12 MR. MENDRO: I certainly will.

13 MR. TAYLOR: Have you completed your
14 questions?

15 MR. MENDRO: I've, I'm finished with our
16 questions for today.

17 I do want to discuss with you while
18 we're on the record a number of documents that came
19 up in the course of this conversation that we would
20 like to request.

21 MR. TAYLOR: Okay. Maybe it would be
22 appropriate for me to ask a couple of small

0133
1 questions before we get to that.

2 MR. MENDRO: Absolutely.

3 EXAMINATION BY COUNSEL FOR RESPONDENT

4 BY MR. TAYLOR:

5 Q. Mr. Le Grant, do you have any hesitation
6 at all in enforcing BZA Order 17532?

7 A. No.

8 Q. Have you received any pressure from
9 anyone to disregard BZA Order 17532?

10 A. No.

11 Q. Turning to Exhibit 7, when you placed
12 the hold on on August 10th, was that with the
13 intention of denying a permit?

14 A. No.

15 Q. Did you have a plan of action designed
16 should you receive word that a permit was ready to
17 issue?

18 A. No, other than once a permit was ready
19 to issue, at that time ensuring that it was issued
20 and consistent with all applicable regulations in
21 effect at the time.

22 Q. If you had been notified that the only

0134
1 thing between -- the only thing preventing issuance
2 of a permit was your hold in the PIV system, the
3 Exhibit 7 system, and the date was August 27, 2007,
4 would that have required any re-review of the
5 application on your part?

6 A. No.

7 Q. Why not?

8 A. Because at that point in time the
9 operable applicable authority for reviewing the
10 application was BZA Order 17532.

11 Q. Let's skip ahead, if the date in
12 question was September 7th, 2007, and you received
13 the same information about other reviews being
14 completed and the only thing between issuance or the
15 only thing holding up issuance was your hold, would
16 that have required any further review on your part?

17 A. No.

18 Q. If, and assume the same situation, now
19 the date is September 20th of 2007, would that have
20 required any further review on your part?

21 A. Yes.

22 Q. Did you ever receive word that the

0135

1 permit was ready to issue but for the hold that you
2 placed in PIVS?

3 A. No.

4 MR. TAYLOR: I have no further
5 questions.

6 MR. MENDRO: And we don't have any
7 additional questions, so we can proceed to documents
8 if you're --

9 MR. TAYLOR: Okay, and I'm glad you
10 brought that up. I was going to do it myself
11 because I don't think at this point the City can
12 afford to avail itself of a transcript and I am not
13 sure that I would want to trust my notes, so if you
14 would tell me what documents you have put down in
15 your notes as requesting, I will make a list and see
16 what can be made available to you.

17 MR. MENDRO: Thank you very much and let
18 me also repeat my thanks for your time today,
19 Mr. Le Grant, we appreciate it.

20 THE WITNESS: Okay.

21 MR. MENDRO: We are going to get the
22 transcript and we're going to review it and I'll let

0136

1 you know if I miss anything now, but let me tell you
2 the list.

3 MR. TAYLOR: I'm sure you will.

4 MR. MENDRO: I'll tell you the list I've
5 assembled as we went along. We've mentioned two
6 different computer systems, the PIV system as you've
7 just described it and also the file job system.

8 We would like printouts from both of
9 those systems and any others that would demonstrate
10 any changes in the AppleTree permit application
11 process. By way of example, we would like any
12 printouts that reflect the 8/9 or 8/7 approval by
13 Mrs. Xoan Mac, also the 8/23 approval that
14 Mr. Le Grant testified to.

15 Also, the 9/18 hold that Mr. Le Grant
16 testified to and we do have this PIV printout
17 showing the 8/10 hold, but if there's a printout
18 from file job or another system that we should see,
19 we'd like to see that, as well.

20 Just waiting for you to catch up.

21 MR. TAYLOR: Thank you. Okay.

22 MR. MENDRO: We'd like a printout from

0137

1 file job or whatever the appropriate system is that

would show how many applications have been pending for over a year and another for over two years.

MR. TAYLOR: Similar situations vis-a-vis legal review to this case?

MR. MENDRO: I'm sorry?

MR. TAYLOR: Are you inquiring as to any application that has been pending for that length of time for any reason or are you looking for cases that would be consistent with the posture of this case?

MR. MENDRO: We'd like for any reason. I suspect that it's not going to be a voluminous number. If it is, we can talk about that, but Friday's deposition will be a deposition concerning the knowledge of DCRA as an entity.

MR. TAYLOR: Uh-huh.

MR. MENDRO: And DCRA ought to be able to testify about which of those situations are different than the situation here so we should be able to learn if -- your search turns out that there are thousands of permit applications that have been

on hold for two years and that they are all distinguishable, that's information we should be able to glean on Friday.

MR. TAYLOR: Given that, okay, Wednesday is just about over.

MR. MENDRO: Right.

MR. TAYLOR: And we have deposition tomorrow and then depositions all day Friday, I cannot guarantee production of this by Friday.

MR. MENDRO: Okay. Understood. I'll, I trust that you'll make your best efforts given the time constraints we have and for now the answer to your question is all applications that have been on hold for one year and all that have been on for two, if that makes sense.

In addition we'd like the correspondence -- everything that's in Mr. Le Grant's file for AppleTree. He discussed several manila folders that concern AppleTree's case and also the E-mails in his AppleTree E-mail folder.

And we discussed during the deposition a number of items of correspondence such as

correspondence between you and Mr. Williams and you and Mr. -- you is referring now to Mr. Le Grant, but Mr. Le Grant and Mr. Douglas, Mr. Le Grant and Mr. Holmes, Mr. Le Grant and Mr. Williams.

I think I understood that all that correspondence to the extent that you have it printed is in those manila folders, but to the extent that it exists elsewhere, we would want to get it from those other locations.

And that's everything that I can remember.

MR. TAYLOR: Okay.

MR. MENDRO: Thank you for your time.

(Whereupon, at 3:53 p.m., the deposition of MATTHEW LE GRANT was concluded.)

* * * * *

Dear Mr. Taylor:

This letter is to advise you that the original transcript of MATTHEW LE GRANT, taken in the above matter will be available in our office, Capital Reporting Company, located at 1821 Jefferson Place, Northwest, Washington, D.C., for signature.

Pursuant to the rules, the transcript will be available for 30 days beginning Monday, March 3, 2008.

If you have any questions, please do not hesitate to call. Thank you.

Yours,
Monica A. Voorhees
Reporter, Notary
cc: Mr. Mendro, Esq.

0143

Capital Reporting Company
1821 Jefferson Place, N.W.
Third Floor
Washington, D.C. 20036
(202) 857-3376

E R R A T A S H E E T

Case Name: Appletree vs DCRA
Witness Name: MATTHEW LE GRANT
Deposition Date: 2/20/08
Page No. Line No. Change/Reason for Change

Signature

Date

D TAB 38

0001

1 IN THE DISTRICT OF COLUMBIA
2 OFFICE OF ADMINISTRATIVE HEARINGS
3 -----X
4 APPLETREE INSTITUTE FOR EDUCATION :
5 INNOVATION, :
6 Petitioner :
7 vs. : Case No.
8 DISTRICT OF COLUMBIA DEPARTMENT : CR-C-07-100087
9 OF CONSUMER AND REGULATORY :
10 AFFAIRS, :
11 Respondent :
12 -----X

10

Washington, D.C.

11

Friday, February 22, 2008

12

13

Deposition of:

14

LENNOX DOUGLAS

15

called for oral examination by counsel for
16 Petitioner, pursuant to notice, at Office of the
17 Attorney General, 941 N. Capitol Street, N.E.,
18 Suite 9500, before Monica A. Voorhees, of Capital
19 Reporting, RPR/CSR, a Notary Public in and for the
20 District of Columbia, beginning at 10:15 a.m., when
21 were present on behalf of the respective parties:
22

0002

1 A P P E A R A N C E S

2 On behalf of Petitioner:

3 Jason J. Mendro, Esquire
4 Ajay Sutaria
5 Gibson, Dunn & Crutcher, LLP
6 1050 Connecticut Avenue, N.W.
7 Washington, D.C. 20036-3726
8 (202) 887-3726

9 On behalf of Respondent:

10

Dennis M. Taylor, Esquire
11 Assistant Attorney General
12 Office of the Attorney General
13 For the District of Columbia
14 941 N. Capitol Street, N.W.
15 Suite 9500
16 Washington, D.C. 20002
17 (202) 442-8199
18
19
20
21

22

0003

1 C O N T E N T S

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18	(*Exhibits attached to transcript.)	
19		
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21		

0004

1 P R O C E E D I N G S
2 WHEREUPON,
3 LENNOX DOUGLAS,
4 called as a witness, and having been first duly
5 sworn, was examined and testified as follows:
6 EXAMINATION BY COUNSEL FOR PETITIONER
7 BY MR. MENDRO:
8 Q. Good morning, my name is Jason Mendro.
9 I work for the law firm of Gibson, Dunn and Crutcher
10 and we represent AppleTree.
11 MR. SUTARIA: I'm Ajay Sutaria, also
12 from Gibson, Dunn and Crutcher.
13 MR. TAYLOR: Dennis Taylor, DCRA.
14 THE WITNESS: Lennox Douglas, Deputy
15 Director for Permitting.
16 MR. MENDRO: Before we proceed with the
17 deposition, I just wanted to get on the record some
18 events that occurred this morning.
19 Approximately 45 minutes before this
20 deposition was scheduled to begin at 10 a.m., I
21 received an E-mail from Mr. Taylor indicating that
22 the Director of DCRA, Ms. Linda Argo, would not be

0005

1 appearing for this deposition.
2 In prior communications I think
3 beginning on February 13th, more than a week ago, we
4 were informed that Ms. Argo would be designated to
5 testify on DCRA's behalf and the first news I
6 received to the contrary was just this morning.
7 I just want to say for the record that

8 this late notice is, is not conventional and it's
9 not sufficient. It's disruptive to the preparations
10 that we have been trying to make for this proceeding
11 over the last week and a half.

12 So for that reason, although we are
13 going to proceed with the deposition today through
14 Mr. Douglas, we are not going to conclude the
15 deposition at the end of today's questions. We're
16 going to leave the deposition open and reserve the
17 right to recall DCRA to have Ms. Argo testify as
18 indicated previously.

19 MR. TAYLOR: And, pardon me, and from
20 DCRA's standpoint, we understand and apologize for
21 the late notice.

22 When dealing with Government executives,

0006

1 there are often many things that arise and Ms. Argo
2 is not even in the building today.

3 I must point out that while what
4 Mr. Mendro said is quite correct, they've also been
5 aware since February 13th that Mr. Douglas was also
6 going to be designated to speak on behalf of the
7 Agency today and as indicated to Mr. Mendro this
8 morning, to the extent that there are questions that
9 Mr. Douglas does not have the knowledge to answer,
10 DCRA is committed to working with AppleTree to
11 identify someone who has the requested knowledge.

12 MR. MENDRO: Okay. Well without further
13 ado, let's begin with Mr. Douglas.

14 BY MR. MENDRO:

15 Q. Mr. Douglas, thank you very much for
16 your time today.

17 A. Most welcome.

18 Q. Just by way of formality, could you
19 please state your full name for the record?

20 A. First name Lennox, L-E-N-N-O-X, last
21 name Douglas, D-O-U-G-L-A-S.

22 Q. And, Mr. Douglas, what is your title?

0007

1 A. My -- Acting Deputy Director for
2 permitting.

3 Q. How long have you held that title?

4 A. As of April 2007.

5 Q. Have you testified in a deposition
6 before?

7 A. Yes.

8 Q. Have you testified in a 30(b)(6)
9 deposition, does that word mean anything to you?

10 A. No.

11 Q. What's going to happen in this
12 proceeding today is I'll ask questions, you'll be
13 given an opportunity to give answers. Our court
14 reporter will write down everything we say.

15 A. Okay.

16 Q. Because this is all being transcribed,
17 it will be very helpful if we try to wait for each
18 other to finish speaking just to make the record
19 clear.

20 When I say that today is a 30(b)(6)
21 deposition, what that means is that your testimony
22 will be on behalf of DCRA as an entity, so that when

0008

1 you answer a question, it's the same as DCRA

2 answering the question.
3 Do you understand that?
4 A. Understand fully.
5 Q. Now on occasion I may say Mr. Douglas or
6 I'm asking you personally and on those occasions I'm
7 asking you to testify based on your own knowledge;
8 do you understand?
9 A. I do understand.
10 Q. If that ever gets confusing, please just
11 let me know and I'll be happy to clarify.
12 A. Will do.
13 Q. Is there any reason why you cannot
14 testify fully and accurately today?
15 A. No.
16 Q. I want to show you a document that we
17 will mark as Exhibit 13.
18 (Deposition Exhibit No. 13
19 was marked for identification)
20 BY MR. MENDRO:
21 Q. And you'll have to forgive me, I didn't
22 bring copies of this document, but the document I
0009 just handed to you is a deposition notice.
1 Have you seen this document before,
2 Mr. Douglas?
3 A. I may have.
4 Q. Do you specifically recall having seen
5 this document before?
6 A. This one specifically, no, I can't, I
7 can't recall specifically seeing this.
8 Q. I'd like to ask you to turn to the third
9 page of this document --
10 A. Okay.
11 Q. -- and there you'll find Schedule A with
12 a list of topics.
13 A. Certainly.
14 Q. Have you seen this Schedule A before?
15 A. Yes.
16 Q. Have you taken reasonable steps to
17 become informed on each of the topics listed in
18 Schedule A?
19 A. No, no, I have not.
20 Q. You said a moment ago that you were the
21 Acting Deputy Director of Permitting?
22
0010 A. That's correct.
1 Q. What, is there a non-Acting Director or
2 are you the only person who is in this position
3 right now?
4 A. I'm the only person in the position.
5 Q. And what does the designation Acting
6 mean?
7 A. The person who was previously in the
8 position left the position and I just, I was asked
9 to act in that position.
10 Q. And when did the previous person leave?
11 A. I think it was April of, somewhere
12 around April, March, April of 2007.
13 Q. Who is the person who left?
14 A. Monica Lamboy.
15 Q. Do you have an understanding as to why
16 Monica left?
17 A. Oh, no.
18

19 Q. Explain to me what the role of the
20 Acting Deputy Director of Permitting is.
21 A. The role of the Acting Deputy Director
22 or the role of the -- the Deputy Director for
0011
1 Permitting is management of the entire
2 administration of permit operations, more
3 administrative role than anything else.
4 Q. And what responsibilities do you have
5 personally as the Acting Director?
6 A. My responsibility is to formulate policy
7 procedures, budget questions, budget items and I
8 have about four or five direct reports.
9 Q. Who do you report to?
10 A. The Director.
11 Q. Is that Mrs. Linda Argo?
12 A. Mrs. Linda Argo, that's correct.
13 Q. And who are your direct reports?
14 A. My direct reports are the fire
15 protection engineer, the chief of the fire
16 protection engineers, the mechanical and plumbing
17 chief, the structural chief and the electrical chief
18 and the permit center manager, sorry.
19 Q. I want to make sure I got my list right,
20 I have fire, mechanical and plumbing, electric,
21 permit center and did I miss one?
22 A. Structural.
0012
1 Q. Does the D.C. Government have an
2 environmental department as well, right?
3 A. The D.C. Government does not have an
4 environmental department, no.
5 Q. Is there a department called DDOE?
6 A. Not in -- yes, in the D.C. Government,
7 yes, I'm sorry, yes. I'm thinking DCRA.
8 Q. And what is DDOE?
9 A. The District Department of Environment.
10 Q. And because the District Department of
11 Environment is not part of DCRA, nobody in that
12 department reports to you; is that correct?
13 A. That's correct.
14 Q. Do you have any supervisory authority
15 over anyone in DDOE?
16 A. No.
17 Q. Do you have any responsibility for
18 ensuring compliance with DDOE's regulations?
19 A. No.
20 Q. Does DCRA have any responsibility for
21 ensuring compliance with DDOE's regulations?
22 A. The answer to that is, is, it's no.
0013
1 Yeah, the answer to that is no.
2 Q. What is the role of DCRA in reviewing
3 and granting applications for building permits?
4 A. DCRA's role is to ensure the health and
5 safety of the citizens of the District of Columbia
6 and to ensure that the regulations, the building
7 code regulations and the zoning regulations and any
8 other applicable regulations is complied with prior
9 to the granting of a permit.
10 Q. So you said building code regulations
11 and zoning regulations?
12 A. Yes.

13 Q. What other regulations does DCRA have
14 responsibility for ensuring compliance with?

15 A. Well I don't think DCRA has the
16 required, the requirement of compliance, but they
17 have to make sure that all of the requirements on
18 any given application is complied with, whether it's
19 DCRA's responsibility or another agency's
20 responsibility.

21 Q. And what is the process if you could
22 just give me a general overview of applying for a

0014

1 permit from the beginning to the end when it's
2 granted or denied?

3 A. When an application comes in, it's first
4 intaked by an intake clerk, it's routed to our, what
5 is called our plan review coordinator, PRC. They
6 make a determination as to the path the application
7 needs to take and those entities or disciplines that
8 are required to review those applications. Upon
9 completion of those reviews and approval of those
10 reviews, the application then is proceeded to
11 progress to the permit issuance and where it's
12 issued.

13 Q. Does DCRA have a goal for how long that
14 entire process should take from beginning to end?

15 A. DCRA does have a performance goal,
16 there's a one-day process, there's a 14-day process
17 and there's a 30-day initial review time, time
18 process.

19 Q. Let's go one by one through those
20 processes.

21 A. Okay.

22 Q. You mentioned the one-day process?

0015

1 A. Sure.

2 Q. Please explain that.

3 A. One-day process is those applications
4 that are classified as a walk-through. They are
5 very small projects and the PRC will make an
6 identification as to, based on the scope of work
7 identified, it can be reviewed in one day.

8 Q. And the 14-day process?

9 A. 14 days is of a similar nature but just
10 of a higher scope of work.

11 Q. What are some reasons why an application
12 would be in the 14-day process category instead of
13 the one-day?

14 A. The one-day process would be something
15 like you're repairing your front steps or you're
16 replacing roof framing or something of a very minor
17 construction issue.

18 14-day process you're building a deck or
19 you're renovating your basement and so those are the
20 variations in a nutshell.

21 Q. And you also mentioned a 30-day process?

22 A. 30 days are the large projects, those

0016

1 things that don't fall in the one day and the 14 day
2 falls in the 30 day.

3 Q. Is there any other process besides the
4 one day, 14 day and 30 day?

5 A. In time frames?

6 Q. Correct.

7 A. No.
8 Q. So there isn't a one-year process for
9 super --
10 A. Some thing's take one year or more.
11 Q. But DCRA does not have a process
12 designated for things to take that long?
13 A. No.
14 Q. How many 30-day process applications did
15 DCRA receive in 2007, approximately?
16 A. Oh, I can't answer, I, I can't tell. I
17 don't know. I don't know.
18 Q. Would it be more than 10?
19 A. Oh, yes.
20 Q. Would it be more than 500?
21 A. I would, I would, I would say so. I
22 would say so.

0017

1 Q. Is 1,000 in the ball park?
2 A. Or more than 1,000.
3 Q. Would it be as many as 2,000?
4 A. It could be. It could be.
5 Q. I'm just going to try to --
6 A. Yeah, yeah, it could be.
7 Q. -- catch the ceiling here.
8 A. All right.
9 Q. Do we think it could be as many as 3,000
10 in 2007?
11 A. In applications, I would say it range
12 between 2,500 and 3,500.
13 Q. And the 2,500 and 3,500 refers to 30-day
14 process applications?
15 A. I'm talking about all applications in
16 the entire scope of applications submitted.
17 The 30 day I can't say.
18 Q. I'd like to go back through and just
19 sort of try to get the ball park for how many of --
20 A. For 30.
21 Q. -- of those are the 30 day. Maybe we
22 can try it by percentage.

0018

1 A. Okay.
2 Q. About what percentage of projects,
3 project applications that you see fall in that third
4 30-day category?
5 A. Okay, let me give it to you this way, I
6 would say approximately 65 to 70 percent of the
7 applications submitted are walk-through jobs and the
8 other 35 percent would be file jobs. Anything that
9 is a 14 and a 30 day, it's a file job.
10 Q. And by file job, I've heard a little bit
11 about this before but I'd like to get your
12 explanation for what that means?
13 A. File job means that it falls within the
14 category of 14 days and the reviewers have that time
15 frame to complete the initial review. So a file job
16 for 14 days means that the review will be completed
17 in 14 days. A file job that is classified as a
18 30-day review will be completed, the initial review
19 will be completed in 30 days.
20 MR. MENDRO: I would like to show you a
21 document that we will mark for identification as
22 Exhibit Number 14.

0019

1 THE WITNESS: Okay.
2 (Deposition Exhibit No. 14
3 was marked for identification)
4 BY MR. MENDRO:
5 Q. And just take a moment to review that
6 document and let me know when you've had a chance.
7 A. (Witness examining document).
8 Okay.
9 Q. Could you explain for the record what
10 Exhibit 14 is?
11 A. This is an issued building permit by
12 DCRA.
13 Q. And who is this permit issued to?
14 A. AppleTree Institute.
15 Q. Are you familiar with AppleTree, have
16 you heard that name before today?
17 A. Yes, I did.
18 Q. And the address of the project is
19 138 12th Street, Northeast; is that correct?
20 A. That is correct.
21 Q. Have you seen this building permit
22 before today?
0020 A. I don't think I've seen the building
1 permit, no.
2 Q. Have you heard about this building
3 permit before today?
4 A. Yes.
5 Q. What have you heard about this building
6 permit?
7 A. Well I, I initially, this building
8 permit, what I heard about it -- it's not what I
9 heard, I mean it's that I, this building permit was
10 issued, the date that it was issued I was notified
11 about it.
12 Q. And just to be clear, this permit was
13 issued on October 26th, 2007; is that correct?
14 A. That's what the record states.
15 Q. And you said you were notified about
16 this building permit on the day that it issued.
17 Are you usually notified when building
18 permits get issued?
19 A. No.
20 Q. In 2007, how many times has someone come
21 to tell you that a building permit got issued on the
0021 day that it got issued?
1 A. I would say in 2007, about a couple
2 times, three or four or five times. I mean I just
3 can't pinpoint.
4 Q. Sure.
5 A. There are varying reasons why a person
6 would bring an application or a notice to me about a
7 permit being issued.
8 Q. But it's not half the time --
9 A. No.
10 Q. It's not even 1 percent of the time,
11 correct?
12 A. That is correct.
13 Q. Who notified you on October 26th, 2007,
14 that AppleTree's building permit in Exhibit 14 had
15 been issued?
16 A. Actually the expediter that processed
17

18 this application.
19 Q. And who is the expediter?
20 A. It was a young lady, bear with me here.
21 Jessica, started with a B, last name with a B.
22 Q. Did Jessica, do you know if Jessica
0022 worked for Rapid Permit Service?
2 A. No, I don't know who she worked for, no.
3 Q. Did you tell Jessica to notify you if
4 this permit got issued?
5 A. No.
6 Q. What did she say when she notified you?
7 A. Well I was looking for it. I was
8 looking for the application and the plans.
9 Q. Why were you looking for the application
10 and the plans?
11 A. Because I was expecting it to be
12 returned from the District Department of Environment
13 and I contacted the District Department of
14 Environment and they said they had returned it, so I
15 was looking for it.
16 Q. Did you tell Jessica that you were
17 looking for the plans?
18 A. No, I didn't tell Jessica, I was asking
19 a staff person, my, you know, the permitting staff
20 and they indicated to me that, you know, it was just
21 retrieved by the lady over there, you know, so I
22 proceeded to ask her, you know, where it is and, you
0023 know, she said well, you know, I just gave it to the
2 owners. I mean that's, that's how I knew about it,
3 you know.
4 Q. And I want to be clear, I think I
5 understand you, but I want the record to be clear.
6 A. Okay.
7 Q. The, when you said you were looking for
8 it and the person that you talked to said that she
9 returned it to the owners, it refers to the drawings
10 and plans?
11 A. That is correct.
12 Q. Who is the person, the staff person that
13 you talked to about that?
14 MR. TAYLOR: Objection to the last
15 question. I believe it mischaracterizes the
16 witness' statement.
17 BY MR. MENDRO:
18 Q. Would you like to clarify your answer to
19 my question?
20 A. Which one of the questions?
21 Q. The question that I just asked.
22 A. Who was, who was the staff person I
0024 asked?
2 MR. MENDRO: Is that the question that
3 you're objecting to?
4 MR. TAYLOR: No, the definition of it,
5 which may have changed somewhere in the middle of
6 the answer.
7 BY MR. MENDRO:
8 Q. I'm a little confused about the
9 objection, but I do care about making this very
10 clear.
11 A. Okay.

12 Q. So what I -- I will ask again.
13 A. Good.
14 Q. We were discussing that you went to a
15 staff person --
16 A. That is correct.
17 Q. -- and you asked the person where it
18 went or where it is?
19 A. The application and the plans and to be
20 correct, I asked several staff persons, not one
21 staff person. I was, I was searching for the plans
22 and application.
0025
1 Q. And the day that you were searching, was
2 that October 26th, 2007, or another day?
3 A. It was, I think it was the -- I think it
4 was that, that same day. If October the 26th was a
5 Monday morning, yes, it was.
6 Q. And were you looking for the plans and
7 application before then?
8 A. Well I was -- I was notified that it was
9 returned on the Friday before then. I think it was
10 like on the Friday afternoon and I made a
11 concentrated effort in trying to retrieve it because
12 I thought it would be somewhere in our offices. I
13 didn't want it to get misplaced.
14 Q. When people apply for a building permit,
15 do you usually personally, and I'm asking you
16 personally now --
17 A. Okay.
18 Q. -- review the application and plans?
19 A. Only if I'm asked.
20 Q. Did someone ask you to review
21 AppleTree's application?
22 A. No.
0026
1 Q. So this is fairly unusual because no one
2 asked you and otherwise you wouldn't usually do
3 that, right?
4 A. I didn't review the application and
5 plans.
6 Q. But you did say you were looking for the
7 application and plans?
8 A. Uh-huh, yes.
9 Q. Why were you looking for them if you
10 weren't going to review them?
11 A. Because I sent them over to DDOE for an
12 additional review and DDOE had it for quite some
13 time and there was a zoning review required and so
14 zoning was requesting the application and plans
15 back. So I contacted DDOE to return it so I was
16 looking for it. I didn't want it to get misplaced.
17 Q. And you were looking for it because you
18 wanted to give it to zoning?
19 A. That is correct.
20 Q. And who in zoning was looking for this?
21 A. Mr. Le Grant.
22 Q. Is Mr. Le Grant the Zoning
0027
1 Administrator?
2 A. That is correct.
3 Q. Does Mr. Le Grant often ask you to help
4 him find plans and applications?
5 A. No, Mr. Le Grant didn't ask me to help

6 him find the plans. Mr. Le Grant requested, because
7 he knew that I had sent it over to DDOE, so he
8 requested it from me and asked me where it is, if
9 they had brought it back and so I said no. So I
10 queried DDOE and asked them to return it.

11 Q. On Exhibit 14 in the bottom left-hand
12 corner --

13 A. Okay.

14 Q. -- it says Acting Director and the name
15 Linda Argo is there.

16 A. Okay.

17 Q. Does Linda Argo sign these applications
18 or is that a stamp?

19 A. That's a stamp.

20 Q. Who in DCRA applies that stamp?

21 A. It's in the system, it's in the computer
22 system.

0028

1 Q. So does that signature get placed on in
2 the issuing process?

3 A. That is correct.

4 Q. So on October 26th, 2007, you were
5 looking for the plans, you asked several people
6 where they might be and at some point Jessica came
7 and told you that the permit has issued; is that
8 right?

9 A. That is correct.

10 Q. But you don't know personally why
11 Jessica would come tell you that?

12 A. No, I -- Jessica was in the permit
13 center. I was asking the staff if they had seen
14 these plans because what DDOE brought to my
15 attention that they had returned it and gave it to
16 someone in, in the permit center.

17 So I'm now running all over the permit
18 center asking everyone. One of the staff persons
19 says, you know, we just issued that permit to the
20 young lady standing over there. So I went over to
21 her to ask her, I said listen, that was in error, I
22 need that back. She said I'm sorry, the owners

0029

1 already took it and left. That was it.

2 Q. Did you ask her how she received the
3 plans and application?

4 A. Yes, I did.

5 Q. What did she say?

6 A. She said she saw it sitting by one of
7 the receptionist's station, we had some special mark
8 on it where she recognized it was one of the
9 applications she was processing and she took it to
10 the file room and file room gave it back to her to
11 be processed. You know, yeah, that's what she
12 explained to me.

13 Q. And the file room, what is the file
14 room?

15 A. The file room is where all file jobs are
16 housed.

17 Q. DCRA owns the file room?

18 A. DCRA owns the file room, correct.

19 Q. So somebody at DCRA gave Jessica, the
20 permit expediter, the plans?

21 A. I -- well, yes, yes.

22 Q. You said that you sent the plans and

0030

1 application to DDOE for an additional review; is
2 that correct?

3 A. Yes.

4 Q. So that means that DDOE had completed at
5 least one review before?

6 A. DDOE had done a review before.

7 Q. Had it done more than one review before?

8 A. I don't know, the application indicated
9 that DDOE had done a review.

10 Q. In the ordinary course, do you
11 personally send plans to DDOE or does someone else
12 in DCRA do that?

13 A. If my Director gives me that
14 instructions to do so, I will.

15 Q. Does the Director often give you that
16 instruction?

17 A. Not often, no.

18 Q. Has it ever happened before?

19 A. Yeah, the Director has, has, had asked
20 me to, you know, to route certain things to, you
21 know, whether historic or fine arts or to take a
22 second look at something, yeah.

0031

1 Q. Did the Director ask you to send
2 AppleTree's information to DDOE?

3 A. The Director -- the Director informed me
4 that there was a complaint of some concern on this
5 application and it needs to go, go to DDOE for a
6 review, so I just retrieved it and sent it to DDOE.

7 Q. And how many times since April 2007 when
8 you started in this role have you been asked to do
9 that for any permit application?

10 A. I can't, I can't recall. I can't recall
11 any other. Maybe, it may be one or two others, you
12 know, you know, but I can't, I can't recall. I mean
13 the permitting office is a very hectic place.

14 Q. So you don't specifically recall any
15 occasion --

16 A. I --

17 Q. -- other, let me just finish the
18 question.

19 You don't specifically recall any
20 occasion other than with regard to AppleTree's
21 application where the Director asked you to send
22 plans to DDOE or an application to DDOE?

0032

1 A. I don't think the Director specifically
2 asked for DDOE, I don't think the Director have
3 asked me to send plans or applications to DDOE. The
4 Director have conversed with me on several occasions
5 on additional reviews or upgraded reviews on other
6 applications of a similar nature to other agencies,
7 but not to DDOE, if that's your question.

8 Q. And you said that the Director said that
9 there was a complaint or concern --

10 A. Yes.

11 Q. -- on AppleTree's application?

12 A. Yes.

13 Q. What did she tell you the complaint or
14 concern was?

15 A. I didn't ask.

16 Q. Did she say anything at all about it?

17 A. I think it was something that -- soil
18 contamination issue.

19 Q. Why do you think it was a soil
20 contamination issue?

21 A. Oh, I, I don't think, I mean you asked
22 me what she brought to my attention and that's what

0033
1 she brought to my attention. I didn't -- that
2 wasn't my determination.

3 Q. Did she say that there were any other
4 issues or concerns about AppleTree's application?

5 A. No, the Director didn't -- at that time,
6 no, she didn't tell me about anything else, at that
7 time.

8 Q. Did she tell you anything else at
9 another time?

10 A. I think that the application and plans
11 were requested to be returned from DDOE after they
12 had it for some period of time for a zoning review.

13 Q. I want to show you an exhibit that we
14 have already marked as Exhibit 2.

15 Please let me know when you've had a
16 chance to review Exhibit 2?

17 A. (Witness examining document)

18 Okay, anything in particular I'm looking
19 for?

20 Q. If you could just get re-familiarized
21 with it, if you've seen it before?

22 A. Okay.

0034
1 Q. And look especially at page 3.
2 A. Okay.

3 Q. Page 3 is a list of signatures that
4 indicate approvals by the various disciplines that
5 reviewed the application; is that correct?

6 A. That's correct.

7 Q. And box number 3 is the line for zoning
8 approval; is that correct?

9 A. That is correct.

10 Q. And that line is signed and dated
11 August 7, 2007; is that correct?

12 A. That is correct.

13 Q. So zoning had already approved this
14 application; am I correct?

15 A. Based upon this application.

16 Q. There's a box that says B, clearance to
17 file plans?

18 A. Okay.

19 Q. And number four in that box says ERA
20 erosion control?

21 A. That is correct.

22 Q. Is that done by the Department of

0035
1 Environment?

2 A. That is correct.

3 Q. And that signature is dated May 30,
4 2006, right?

5 A. That is correct.

6 Q. And then if you moved one box over to
7 the right back to box C, line number 6, it says
8 environmental regulation administration and there's
9 another signature under there; is that correct?

10 A. That is correct.

11 Q. And that signature is dated August 24,
12 2007; am I right?
13 A. That is correct.
14 Q. So this application shows that the
15 Department of Environment has reviewed and approved
16 AppleTree's application at least twice; is that
17 right?
18 A. No, that's not correct.
19 Q. Please explain.
20 A. In box B where it says clear to file,
21 that's the initial submission of the application and
22 they are now indicating that they have received this
0036 application and routing it for the review of the
1 application.
2
3 The other box where you see number 6 is
4 when that review has been completed and the action
5 taken on that application.
6 Q. So Exhibit Number 2 on page 3 shows --
7 A. Exhibit Number 2? Oh.
8 Q. That's the application we're looking at.
9 A. Oh, okay, okay.
10 Q. Exhibit Number 2, AppleTree's
11 application --
12 A. Okay, okay.
13 Q. -- shows that DDOE has approved
14 AppleTree's application at least once; is that
15 correct?
16 A. That is correct.
17 MR. MENDRO: I'd like to show you an
18 exhibit that we will mark for identification as
19 Exhibit Number 15.
20 (Deposition Exhibit No. 15
21 was marked for identification)
22 BY MR. MENDRO:
0037
1 Q. When you've had a chance to look at
2 Exhibit Number 15, please describe for me what it
3 is?
4 A. (Witness examining document).
5 I think this is the report that comes
6 out on the online status of a building application
7 when it's submitted for our review.
8 Q. And does this building plan review
9 status show whether the disciplines have reviewed an
10 application?
11 A. Yes, it does.
12 Q. And does it also show whether those
13 disciplines have approved or not approved an
14 application?
15 A. That is correct.
16 Q. And does this indicate that the
17 Department of Environment reviewed and approved
18 AppleTree's application on August 10th, 2007?
19 A. That's what it states.
20 Q. So Exhibit 15 shows that there was a
21 review completed and approved on August 10th and
22 Exhibit Number 2, the application, shows that there
0038 was a review and approval on August 24th?
1 A. What it shows, it shows an initial
2 review has been, been reviewed -- has been done and
3 an approval was granted on that initial review.
4

5 Q. Does getting a permit approved require
6 anything more than initial review, are there several
7 layers of reviews?

8 A. Well on several occasions even though
9 the review has been conducted and approved, if there
10 is an issue on that application or a reason for a
11 re-review of this application, because like I said
12 early on, there's a number of applications comes in
13 where it's been approved and there is a complaint or
14 a concern, whether it's zoning wise or otherwise,
15 asking DCRA to take a look at that application for a
16 second time and sometimes these approvals gets
17 reversed.

18 Q. Has DDOE's approval been reversed?

19 A. Not that I know of. I don't think
20 DDOE's finished with doing their reviews.

21 Q. Why do you, why do you think that's the
22 case?

0039

1 A. Because I, I think they had, when they
2 sent the application and plans back to us, when I
3 requested for zoning, they had not completed the
4 review that was requested of DDOE.

5 Q. How do you know that they hadn't
6 completed the review that was requested?

7 A. Because I didn't see any markings on the
8 application, you know, after it was returned.

9 Q. Have you asked anyone at DDOE if they've
10 finished the review?

11 A. No, I did not.

12 Q. Since you've become the Acting Deputy
13 Director of permitting, how many permits have been
14 issued and then subsequently revoked by DCRA?

15 A. Oh, I could think about one right now,
16 I'm trying to think about how many have -- one or
17 two, one or two.

18 Q. And of that one or two --

19 A. Uh-huh.

20 Q. -- is one AppleTree?

21 A. No.

22 Q. So since April 2007 when you became the

0040

1 Acting Deputy Director, only two issued permits
2 other than AppleTree's have been revoked by DCRA, to
3 your knowledge; is that correct?

4 MR. TAYLOR: Objection, mischaracterizes
5 the previous answer.

6 BY MR. MENDRO:

7 Q. Do you understand my question?

8 A. Could you repeat it, I'm sorry.
9 (Whereupon, the reporter read the
10 record as requested.)

11 MR. TAYLOR: Would you please repeat his
12 previous answer, as well.

13 (Whereupon, the reporter read the
14 record as requested.)

15 BY MR. MENDRO:

16 Q. So did you understand the question
17 that's pending?

18 A. You asked me if, if it's only two
19 permits have been revoked since I became the Acting
20 Deputy Director; is that the question?

21 Q. Other than AppleTree's, are you aware of

22 any permits that have been issued then later revoked

0041

1 since you became acting Deputy Director?

2 A. Just about two.

3 Q. Did you work at DCRA before April 2007?

4 A. Yes.

5 Q. What was your job before April 2007?

6 A. I was the division chief for permit
7 operations.

8 Q. And when did you begin that job?

9 A. My best guesstimate would be about
10 February 2005.

11 Q. Did you work at DCRA before that?

12 A. Yeah.

13 Q. What was the job before that one?

14 A. Job before that was the permit center
15 manager.

16 Q. And about when did you become permit
17 center manager?

18 A. I would have to say probably about '93,
19 1993.

20 Q. Did you work at DCRA before 1993?

21 A. Uh-huh.

22 Q. This is a long and distinguished career.

0042

1 what did you do for DCRA before 1993?

2 A. I was the structural engineer.

3 Q. Since 1993 when you were the permit
4 center manager, so this is about 15 years; am I
5 right?

6 A. 15 years.

7 Q. So in that 15-year period since you
8 became permit center manager, how many occasions can
9 you remember when a permit was issued by DCRA and
10 then later revoked?

11 A. I don't know, I, that is not something
12 that fell under my purview as a permit center
13 manager.

14 Q. Is it something that would have fallen
15 under your purview as a division chief of permit
16 operations beginning in February of 2005?

17 A. Yeah.

18 Q. So let's go to February 2005, now we're
19 down to about three years.

20 A. Okay.

21 Q. Since February 2005, how many, on how
22 many -- let me strike the question.

0043

1 Since February 2005 when you became
2 division chief of permit operations and revocation
3 became an issue that is under your purview, how many
4 permits that have been issued by DCRA were later
5 revoked by DCRA?

6 A. I can think of one.

7 Q. Now a moment ago you said that there
8 might have been one or two since April 2007 and I
9 think just now you said you can think of one, that's
10 because there's only one you can specifically
11 remember?

12 A. That's correct.

13 MR. MENDRO: I'd like to show you a
14 document that we will mark for identification as
15 Exhibit 16.

16 (Deposition Exhibit No. 16
17 was marked for identification)
18 BY MR. MENDRO:
19 Q. Please let me know when you've had a
20 chance to review Exhibit Number 16?
21 A. (Witness examining document).
22 Okay. Okay.

0044

1 Q. Could you explain for the record what
2 Exhibit Number 16 is?
3 A. It's a notice, a notice of revocation of
4 building permit number 89587.
5 Q. Do you understand building permit
6 number 89587 to correspond to AppleTree's building
7 permit application?
8 A. Yes.
9 Q. Have you seen this notice before?
10 A. Yes.
11 Q. What is the effect of this notice?
12 A. The effect?
13 Q. Well tell me what the notice is for?
14 A. This notice is to give -- is a
15 notification to the applicant that the permit issued
16 to the applicant is, is revoked.
17 Q. Did you draft this notice?
18 A. No.
19 Q. Do you know who did?
20 A. No.
21 Q. Did you review this notice before it was
22 sent?

0045

1 A. No.
2 Q. When did you see the notice before?
3 A. When I saw this notice prior to now?
4 Q. Right.
5 A. Probably about last week.
6 Q. Other than legal counsel for DCRA, has
7 anyone showed this notice to you?
8 A. No.
9 Q. Okay. I'd like to walk through the
10 notice.
11 A. Sure.
12 Q. And I want to start by bringing your
13 attention to the third paragraph on the first page.
14 Strike that.
15 Let me ask why is DCRA, why did DCRA
16 send this notice?
17 A. It is my understanding DCRA sent this
18 notice because the permit was issued in error and to
19 give the applicant an understanding that the current
20 permit that they have in hand is no longer valid.
21 Q. So the basis for the revocation is that
22 the permit was issued in error; is that correct?

0046

1 A. That's my understanding, yes.
2 Q. Is there any other basis for the
3 revocation of AppleTree's permit?
4 A. Not according to this notice.
5 Q. According to DCRA?
6 A. Not that I know of.
7 Q. I want to be clear that I'm asking you
8 this question as the designated deponent for DCRA,
9 so I'm asking about DCRA's position on this

10 question.

11 A. Okay.

12 Q. And I'll ask the question one more time,
13 just to be clear for the record.

14 Does DCRA assert any basis for revoking
15 AppleTree's permit other than its assertion that the
16 permit was issued in error?

17 A. I don't know the answer to that
18 question.

19 Q. And what is DCRA's position about why
20 the permit was issued in error?

21 A. DCRA's assertion is, is that the reviews
22 that are required by DCRA or the additional reviews

0047

1 that are required by DCRA has not been completed.

2 Q. And you mean was not completed at the
3 time that the permit was issued; is that correct?

4 A. That is correct.

5 Q. And when you said reviews or additional
6 reviews, what did you mean by additional reviews?

7 A. Well there was an initial review that
8 was done where it shows that the application was
9 approved; however based on the concerns of DCRA, A,
10 the review that was being requested by DDOE and,
11 secondly, the reviews that has been requested from
12 the zoning office, that those reviews have not been
13 completed and a decision has not been made on those
14 reviews.

15 Q. And just to flip back to Exhibit 15,
16 this building plan status review --

17 A. Okay, uh-huh. Okay, I got it.

18 Q. This shows that initial reviews for all
19 the required disciplines other than historic were
20 completed by August 31, 2007; is that correct?

21 A. That is correct.

22 Q. Does DCRA contend that there was any

0048

1 clerical error in granting the permit and let me
2 explain what I mean by that, does DCRA contend that
3 anybody accidentally put the permit in the grant
4 pile instead of the don't grant pile?

5 MR. TAYLOR: Objection, the document
6 speaks for itself.

7 THE WITNESS: Yes.

8 BY MR. MENDRO:

9 Q. And explain the clerical error?

10 A. There was a hold placed on the
11 application, after the, these reviews that you're
12 looking at indicated it has been approved and the
13 hold stopped the issuance, or should have stopped
14 the issuance of the permit because that's what it's
15 there for; however, there is an employee who removed
16 that hold allowing the issuance of that permit.

17 Q. Does DCRA contend that anyone was
18 confused about the permit number when this was
19 decided to issue?

20 A. The permit number?

21 MR. TAYLOR: Objection, document speaks
22 for itself.

0049

1 THE WITNESS: The permit number.

2 BY MR. MENDRO:

3 Q. I also just want to clarify that I'm not

4 asking you about this document, I'm asking you about
5 DCRA's contentions, whether they are this document
6 or not; is that clear?

7 A. No, it's not clear to me --

8 Q. Okay.

9 A. -- the question you were asking me.

10 Q. What I'm asking you now are what DCRA's
11 contentions and positions are with regard to its
12 attempt to revoke AppleTree's permit.

13 A. Okay.

14 Q. And I appreciate that this letter
15 contains some suggestions, I would like to know what
16 all of DCRA's assertions and contentions are, so
17 when I ask you these questions I'm not asking you
18 specifically about this document, I'm asking you
19 about every position that DCRA has.

20 A. Okay.

21 Q. Is that clear?

22 A. It is clear and I don't know every, all

0050

1 of DCRA's positions on the, on this, on this, on the
2 revocation of this permit.

3 Q. In preparation for this deposition
4 today, did you make efforts to become aware of all
5 of DCRA's positions?

6 A. No.

7 Q. You didn't make efforts to become aware
8 of all of DCRA's positions on the reasons for
9 revoking AppleTree's permit; is that right?

10 A. No, I did not.

11 Q. To your knowledge, does DCRA contend
12 that the permit clerk was confused about whose
13 application was being granted when it was being
14 granted or simply that a hold was erroneously
15 removed?

16 A. I think DCRA's position was that a hold
17 was erroneously removed.

18 Q. But there is no contention to your
19 knowledge that there was a mistake about whether
20 this application was AppleTree's application?

21 A. No, I don't think so, no.

22 Q. To your knowledge, there's no contention

0051

1 by DCRA that somebody who intended to deny
2 AppleTree's permit accidentally hit the grant permit
3 button?

4 A. No, no.

5 Q. Nothing like that type of clerical
6 error?

7 A. No.

8 Q. So the only type of error that DCRA is
9 claiming is that a hold was placed on the
10 application that should not have been removed but
11 was removed?

12 A. That is correct.

13 Q. Does DCRA have any other basis at all
14 for saying that there was an error in the issuance
15 of AppleTree's permit?

16 A. Not that I know of.

17 Q. I want to point you back to Exhibit 16.

18 A. Okay.

19 Q. And now I want to draw your attention to
20 that third paragraph.

21 A. Okay.

22 Q. The first sentence in the third

0052

1 paragraph on page 1 says that "at least two
2 disciplines, environmental and zoning, still needed
3 to clear the application for grant"; do you see that
4 sentence?

5 A. I see that sentence.

6 Q. Does at least mean that there might have
7 been other disciplines?

8 A. That's what it means, that's what it
9 says, at least two disciplines, at least, at a bear
10 minimum, two disciplines, environmental and zoning,
11 still needed to clear the application for grant.

12 Q. What I want to ask you today is does
13 DCRA contend that there were any other disciplines
14 other than environmental and zoning that still
15 needed to clear the application for grant?

16 A. Okay. DCRA cannot state that there's
17 any other at this point in time; however, at the end
18 of the review period by the environmental and zoning
19 disciplines, there may be some additional reviews
20 required after those reviews are completed.

21 Q. And this notice that we're looking at,
22 Exhibit 10 (sic), is dated November 15, 2007, right?

0053

1 A. Exhibit 10?

2 Q. Exhibit 16.

3 A. Oh, okay. It's dated November 15th,
4 2007, that's correct.

5 Q. Does DCRA contend that on November 15,
6 2007, when it issued this notice of revocation that
7 there were any more disciplines other than
8 environmental and zoning that still needed to clear
9 for the application to be granted?

10 A. As I stated earlier on, at the time of
11 issuance, these were the only two known that are --
12 is required.

13 Q. And today, on today --

14 A. Right.

15 Q. -- that's still true; is that right?

16 A. As far as I know, yes.

17 Q. The very next sentence --

18 A. Okay.

19 Q. -- talks about a hold on granting the
20 application that had to be cleared by two senior
21 managers. It says that one is a Zoning
22 Administrator and one is the Acting Deputy Director

0054

1 of permit operations; do you see that sentence?

2 A. That is correct, I see the sentence.

3 Q. Does this sentence refer to Mr. Matthew
4 Le Grant and to you?

5 A. That is correct.

6 Q. Is there anybody else who needed to
7 clear the application in order for it to be granted?

8 A. It's not clearing the application,
9 clearing the hold.

10 Q. Thank you for that clarification.
11 Other than you and Mr. Le Grant, is
12 there anybody else who needed to clear the hold
13 before AppleTree's permit could be granted?

14 A. Not that I know of.

15 Q. And why did you personally have to clear
16 the application?

17 A. When, when there's something of that
18 nature stated, it means me or my designee. It's
19 coming under the auspices of me in the clearance of
20 the hold.

21 Q. Why did you or your designee have to
22 clear the hold for AppleTree's permit to be granted?

0055

1 A. Okay, this is not about AppleTree's
2 permit, it's about any hold that is being placed.
3 There is a, there's a policy that if there's a hold
4 placed on the application, the supervisor of record
5 must be clearing that hold. I mean the staff
6 persons don't arbitrarily go into and remove a hold
7 off of an application.

8 Q. So it's your testimony that any hold has
9 to be approved by you or your designee?

10 A. That is correct.

11 Q. Did you place the hold on AppleTree's
12 application?

13 A. I think I did place a hold on
14 AppleTree's --

15 MR. TAYLOR: Objection to the question
16 assuming facts that are contrary to evidence in that
17 you said placed the hold on AppleTree's application
18 and I believe the evidence shows that there is more
19 than one hold on the application.

20 BY MR. MENDRO:

21 Q. Oddly the document says a hold, which is
22 singular, but we'll proceed with the questions.

0056

1 Did you place a hold on AppleTree's
2 application?

3 A. Yes, I think I did.

4 Q. I don't want to try to test your
5 memory --

6 A. No, that's all right, that's all right.

7 Q. So I will show you a document that will
8 help.

9 A. Okay.

10 Q. This document has been previously marked
11 for identification as Exhibit Number 10.

12 Let me know when you've had a chance to
13 review Exhibit Number 10.

14 A. (Witness examining document).

15 Okay, I have.

16 Q. Does this document, do you know when you
17 placed the hold on AppleTree's application?

18 A. The date here says September the 12th,
19 2007.

20 Q. And is that date consistent with your
21 recollection?

22 A. I'm bad with dates, so I would have to

0057

1 go on the record by what this is saying. This is
2 probably accurate.

3 Q. And why did you place this hold on
4 September 12th, 2007?

5 A. When, when the application was brought
6 to my attention to be sent over to DDOE and I
7 observed that all of the approvals have been
8 granted, I wanted to make sure that that permit will

9 not be issued before all of the required reviews
10 have been conducted.

11 Q. And who brought this to your attention?

12 A. My supervisor.

13 Q. Ms. Argo?

14 A. Yes, uh-huh.

15 Q. Did anybody else bring this issue to
16 your attention?

17 A. No.

18 Q. Help me to understand what Ms. Argo
19 said, the conversation that you had that led you to
20 believe that you should put this hold on AppleTree's
21 application?

22 A. Ms. Argo didn't say anything to me that

0058

1 gave me the understanding that I need to put a hold.

2 I know for a, you know, when I
3 reviewed -- when I got the call and said there was a
4 concern on this application and I pulled the
5 application and I reviewed it, I noticed that all of
6 the signatures were on there and they were already
7 approved.

8 So, just in case, to stop anything
9 happening to this application going out the door,
10 that's when I placed this hold. I made a decision
11 to place the hold just to give the DDOE an
12 opportunity to review the application.

13 Q. Did Ms. Argo tell you that DDOE needed
14 an opportunity to review the application?

15 A. No, she told me that there was an
16 environmental issue on this application and so I
17 knew that DDOE handles environmental issues.

18 Q. Did Ms. Argo tell you anything else
19 about the application?

20 A. I don't recall having any other
21 conversation with Ms. Argo about the application,
22 no.

0059

1 Q. Is there a written policy for when it's
2 appropriate to place a hold on an application?

3 A. I don't know. I don't, I don't recall
4 seeing one. I don't know. I would have to confer
5 with the permit center manager now.

6 Q. Have you placed a hold on an application
7 before?

8 A. Oh, yes, oh, yes.

9 Q. And how often does that happen?

10 A. I would say probably about two or three
11 times a month, yeah -- or requests for a hold to be
12 placed on an application.

13 Q. And you said that you put the hold on
14 this permit --

15 A. Uh-huh.

16 Q. -- after noticing that all of the
17 approvals had been granted, that's correct, right?

18 A. That is correct.

19 Q. How often have you placed a hold on a
20 permit where all the signatures and approvals are on
21 the application?

22 A. Not many.

0060

1 Q. Have you ever done that before?

2 A. Placed a hold on an application -- on,

3 when all the approvals have been granted. I can't
4 recall ever seeing all of the approvals being
5 granted and, you know, where I have to put a hold on
6 an application, I can't think about any outside of
7 this one.

8 Q. So to the best of your recollection
9 today, you have never put a hold on an application
10 that's been completely approved like AppleTree's?

11 A. That is correct.

12 Q. Is there a policy for how long holds
13 stay on an application?

14 A. No.

15 Q. And I think I know the answer but before
16 you talked about your designees, in this instance,
17 was it you personally who placed the hold or one of
18 your designees?

19 A. This seems like I did.

20 Q. And the two to three times per month
21 when a hold gets issued, is that two to three times
22 per month when you personally put a hold on or

0061 1 when --

2 A. No, no.

3 Q. Okay, what I was going to say --

4 A. I'm sorry.

5 Q. -- the two to three times per month.

6 I know that we understand each other --

7 A. Right.

8 Q. -- and that's what makes this hard --

9 A. Right, right.

10 Q. -- because in a conversation it would be
11 very easy to do this.

12 A. Right.

13 Q. But just so that we have a nice

14 record --

15 A. Okay.

16 Q. -- the question is you mentioned about
17 two to three times per month a hold is issued and my
18 question to you was is that the number of times that
19 you personally issue a hold on an application?

20 A. No.

21 Q. Who issues the holds the other times
22 when you don't?

0062 1 A. The permit center manager, I would
2 instruct the permit center to put a hold on it.

3 Q. Is there anybody other than the permit
4 center manager?

5 A. The Zoning Administrator have, also have
6 the authority to put a hold on an application and I
7 think some of the chiefs of the different
8 disciplines can put a hold on an application.

9 Q. Now how often do you personally place a
10 hold on a permit application like you've done with
11 AppleTree's?

12 A. How often. Not very often, not, not
13 very often.

14 Q. Is it less than once a month?

15 A. Yes. I would say about one -- less than
16 once a month, yes.

17 Q. Has it happened more than 10 times to
18 your memory?

19 A. Within what period of time?

20 Q. Well let me ask you how long have you
21 been authorized to issue holds, only since
22 April 2007?

0063

1 A. No.
2 Q. Since when?
3 A. How long I have been authorized to issue
4 a hold? From the time the hold database has been
5 created and then, I can't remember how long ago that
6 was. That had to be about two, two, three years.

7 Q. Since you've become the Acting Deputy
8 Director --

9 A. Uh-huh.
10 Q. -- how many times have you personally
11 issued a hold as opposed to directing one of your
12 subordinates to do so?

13 A. I think about three or four times, three
14 or four times.

15 Q. But most of the time you would ask
16 someone else to do it?

17 A. That is correct.

18 Q. Why did you personally issue the hold on
19 AppleTree's application instead of asking someone
20 else to do it?

21 A. Because the Director called me and asked
22 me to personally route this application, make sure

0064

1 this application gets over to DDOE.
2 I was in close proximity to the file
3 room so I retrieved it, myself, and, you know, I
4 decided to take a look at it and as I looked at it I
5 saw it was all approved and so that's when I, you
6 know, I just put it on, you know. There was no
7 other reason.

8 Q. And since you became Acting Deputy
9 Director in April of 2007, how many times has
10 Ms. Argo asked you to personally route any
11 application?

12 A. Probably about one, once or, once or
13 twice.

14 Q. Once or twice other than the AppleTree?

15 A. The AppleTree, yes.
16 And this is in general now, this is not
17 to the DDOE.

18 Q. Thank you for that clarification.

19 A. Okay. Okay.

20 Q. I want to go back to my favorite
21 exhibit, Exhibit Number 16, which is --

22 A. 16.

0065

1 Q. -- the notice of revocation?

2 A. Okay. This is your favorite.

3 Q. It's my very favorite.

4 There is, so we looked, we were just
5 looking at the sentence that talks about the two
6 senior managers.

7 A. Uh-huh.

8 Q. I want to go to the next sentence that
9 says that, "The application status was noted in
10 three internal tracking databases maintained by
11 DCRA"; do you see that sentence?

12 A. I do see that sentence.

13 Q. What does the sentence mean when it says

14 the application status?

15 A. The application status is if you look on
16 Exhibit 15, yes, do you see review status, that's
17 the status.

18 Q. And here when it says this application's
19 status, is it referring to the status of AppleTree's
20 application being placed on a hold?

21 A. The sentence says this application
22 status was noted in three internal tracking

0066
1 databases maintained by DCRA in connection with the
2 construction permit processing.

3 The status was just noted, I mean
4 whatever the status was, it was noted. I don't
5 think it was specifically talking about a hold here.

6 Q. So reading this sentence with the
7 sentence that comes before it --

8 A. Uh-huh.

9 Q. -- what is, is this, what is this notice
10 trying to convey that someone could figure out by
11 looking at those three internal tracking databases?

12 A. My best, and I didn't write this here,
13 but my, my best guess is that --

14 MR. TAYLOR: Objection. The witness is
15 here to answer factual questions, not to speculate.

16 BY MR. MENDRO:

17 Q. You were answering the question.

18 A. Yeah. My best guesstimate is that this
19 application is within three different databases that
20 should reflect the status and the hold status
21 probably identified in that application status.

22 Q. Can the hold status be determined from

0067
1 each of these three internal tracking databases?

2 A. I know specifically of two. I don't
3 know about the third, but at least two.

4 Q. And with regard to the third, are you
5 testifying that you're not aware of there being a
6 third tracking database at all or that you're not
7 aware that there's a third tracking database that
8 would show hold status?

9 A. I don't think that the third tracking
10 database would show the hold status. I think
11 there's, there's one that would not.

12 Q. Please describe for me in turn each of
13 the three internal tracking databases.

14 A. Okay. One is a property holds database
15 which will show the holds. There is what is called
16 a PIVS, that would show the hold. And the third one
17 will be the file job database that may not show that
18 hold. If I remember correctly, it wouldn't show the
19 hold.

20 Q. I'll show you a document that we have
21 previously marked for identification as Exhibit
22 Number 7.

0068
1 MR. TAYLOR: Would this be a good time
2 to take a short break, we've been going here for
3 about an hour 15, an hour and 20 minutes?

4 MR. MENDRO: Do you need a break? I
5 don't need one, but if you need one --

6 MR. TAYLOR: I would prefer a short
7 break.

8 MR. MENDRO: We can take a short break.
9 THE WITNESS: Okay.

10 (Discussion off the record)

11 BY MR. MENDRO:

12 Q. We are back on the record after a short
13 break and just to sort of get us back on track, we
14 were discussing the three internal tracking
15 databases maintained by DCRA that are mentioned in
16 the notice of revocation.

17 And you had just explained to me that
18 there's a property holds database that would show a
19 hold; is that correct?

20 A. That is correct.

21 Q. There's also a PIVS database that would
22 show a hold; is that also correct?

0069

1 A. That is correct.

2 Q. And the third database is file jobs and
3 to the best of your knowledge, that would not show a
4 hold; is that also correct?

5 A. That is correct.

6 Q. And I was just about to show you a
7 document that has been marked for identification as
8 Exhibit Number 7 -- did I actually hand that
9 document to you already?

10 A. Not yet.

11 Q. Here it is. Is document number 7 a
12 printout from one of those three databases?

13 A. Yes.

14 Q. Which of the three?

15 A. I think this came out of the PIVS
16 database.

17 Q. And a few moments ago I showed you a
18 document that shows that you had placed a hold on
19 AppleTree's application, that document was Exhibit
20 Number 10?

21 A. Uh-huh.

22 Q. Is Exhibit Number 10 a printout from one

0070

1 of the three databases we've been discussing?

2 A. Yes.

3 Q. And which database is this?

4 A. This is a file jobs database.

5 MR. MENDRO: And at this time I would
6 like to say to Mr. Taylor that we don't have any
7 documents at all showing printouts from another
8 database and to the extent that there is a third
9 property holds database as Mr. Douglas has testified
10 for DCRA, we would expect that DCRA would provide us
11 with copies of printouts relative to AppleTree and
12 its application.

13 MR. TAYLOR: Okay.

14 BY MR. MENDRO:

15 Q. To return to the questioning --

16 A. Well let me make a correction so that
17 you can be clear.

18 Q. Please do.

19 A. The property holds database and the PIVS
20 database possibly is one in the same database. The
21 PIVS pulls from the property holds database so
22 whatever you find in PIVS you would probably find in

0071

1 the property holds database.

2 Q. Thank you for that clarification.
3 Does that mean that Exhibit 7 could be a
4 printout from the property holds database or is it
5 still PIVS?

6 A. This is specifically, I think this is
7 from the PIVS.

8 Q. To return to Exhibit Number 16, the
9 notice of revocation, we're still on paragraph
10 three, there's a statement that, "A DCRA employee
11 exceeded his authority by removing the hold on the
12 application"; do you see that statement?

13 A. That is correct.

14 Q. Explain to me what that sentence is
15 about.

16 A. When the, when the applicant, which is
17 the permit expeditor, took the application to the
18 issuance clerk for a permit to be issued, the hold
19 was identified at that point in time because the
20 permit cannot be issued with a hold against that
21 address.

22 The applicant took the application to

0072
1 the PRC, or the plan review coordinator, and
2 indicated that this application has already been
3 completed as approval and without question and
4 without consultation with anyone, he removed that
5 hold allowing that permit to be issued and I think
6 that's what is being depicted here.

7 Q. And who is the PRC that you're referring
8 to?

9 A. Mr. --

10 Q. Is it Tyrone Thomas?

11 A. Mr. Thomas, yes, yes.

12 Q. And as a PRC, does Mr. Thomas have any
13 access to the PIVS database shown in Exhibit 7?

14 A. Yes.

15 Q. And does Mr. Thomas have access to the
16 property holds database that we don't have an
17 exhibit for, but it's the first one you described?

18 A. Yes, he should have, yes, as far as I
19 know.

20 Q. And how did Mr. Thomas go about removing
21 the hold?

22 A. I don't know. The only thing I do know

0073
1 is that it was removed and the system indicated that
2 he was the person who removed it.

3 Q. Can you point to one of the exhibits and
4 show how you know that from the system?

5 A. Well none of, none of the, I don't think
6 any of the, the, these printouts that you have here
7 will show that. I think in the research of our IT
8 folk when they went back into the database, because
9 I think behind the scenes they can identify who have
10 activity in the system, they're probably -- they
11 identified probably Tyrone Thomas.

12 Q. Let me try to help by pointing to
13 Exhibit 10 again.

14 A. Okay.

15 Q. Item number 6 in the bottom box on
16 Exhibit 10 --

17 A. Uh-huh.

18 Q. -- has the date 10/26/2007 and it says

19 T. Thomas?

20 A. Right.

21 Q. Is this showing that Tyrone Thomas
22 removed the hold?

0074

1 A. This shows Tyrone Thomas changed the
2 status of the application. I don't know what was,
3 what was there before and I don't know if,
4 because -- I don't know. The answer to that is that
5 I don't know. This is just showing a status.

6 Now, you know, on 6 -- on 10/26, it
7 shows activity, so apparently on the date the permit
8 was issued is the same time that he removed this
9 hold, yeah, probably so.

10 Q. And DCRA's position is that PRC's don't
11 have the authority to remove a hold; is that
12 correct?

13 A. That is not correct.

14 Q. Explain, please clarify.

15 A. Yeah. The PRC's don't have an authority
16 to remove the hold without authorization from their
17 supervisor. They don't have the authority to,
18 without, without conferring with their supervisor,
19 remove any hold or the discipline that placed that
20 hold there.

21 Q. So what should Mr. Thomas have done when
22 he was presented with AppleTree's signed permit

0075

1 application? What is DCRA's position on that?

2 A. What Mr. Thomas should have done was --
3 well, he was, he was presented with AppleTree's
4 application because the issuance clerk notified the
5 applicant that there's a hold placed and the person
6 went to Mr. Tyrone Thomas, so he should have
7 immediately consulted with his supervisor saying
8 there's a hold up here, you know, and this is what
9 it says, what should I do with it or can I remove
10 this or I mean there should, there should be some,
11 some conversation taking place based on the hold
12 that was in place.

13 Q. And DCRA's position is that that
14 conversation never occurred?

15 A. Not to my knowledge, no.

16 Q. Not to DCRA's knowledge?

17 A. Not to DCRA's knowledge.

18 Q. And Mr. Thomas' supervisor, is that

19 Mr. Matt Le Grant?

20 A. No.

21 Q. Who is his supervisor?

22 A. His supervisor is Ms. Cheryl Randall

0076

1 Thomas, Cheryl Randall Thomas.

2 Q. So now that I have the name to be clear,
3 Mr. Thomas should have contacted Cheryl Randall
4 Thomas --

5 A. Right.

6 Q. -- before removing the hold?

7 A. He should have contacted her or

8 Mr. Le Grant.

9 Q. And to DCRA's knowledge, Mr. Thomas
10 didn't contact either of those individuals?

11 A. That is correct.

12 Q. Has DCRA asked both Ms. Thomas and

13 Mr. Le Grant whether that communication occurred?

14 A. I think upon my investigation that was
15 conveyed to me, because I'm the one who investigated
16 after finding out that the permit was issued, I went
17 and further investigated how this got, you know,
18 issued, and I think that was conveyed to me, yes.

19 Q. Did you talk to Mr. Thomas about this
20 issue?

21 A. Yes.

22 Q. When did you talk to Mr. Thomas?

0077

1 A. Subsequent after the permit got issued,
2 I think I spoke to his supervisor, also, about it.

3 Q. Would you estimate that you talked to
4 him within a few days of finding out that the permit
5 issued?

6 A. I think it was even closer than a few
7 days. I think I, if I remember correctly, it was
8 just about the same day that the permit got issued
9 or I think he wasn't in at work that day and it was
10 the next day. But let me, let me say this, a lot of
11 time didn't expire before I spoke to Mr. Thomas.

12 Q. And what did you say to Mr. Thomas when
13 you spoke to him about this?

14 A. First of all, I wanted to understand
15 clearly what authority he, you know, he used to
16 issue this permit and why it is, I needed some
17 justification for him for removing this hold and
18 allowing this permit to be issued. I mean that's
19 basically the extent of my conversation, not like
20 that, but that was it.

21 Q. Did you tell him it shouldn't have been
22 issued?

0078

1 A. I didn't tell him that it shouldn't have
2 been issued, I told him it was not ready to be
3 issued. I explained to him that, you know, if you,
4 you know, and I explained the parameters of a hold
5 and the impact of removing a hold without
6 authorization. But I didn't speak to him
7 specifically about that permit or, you know, I spoke
8 to him about his actions.

9 Q. Did you discipline Mr. Thomas?

10 A. No, I didn't. When you use the word
11 discipline, are you talking about -- what are you
12 talking about?

13 Q. Well, was there any employment action at
14 all taken?

15 A. No, no, I, I haven't taken any
16 employment, no, no personnel action against
17 Mr. Thomas.

18 Q. Did DCRA take any action against
19 Mr. Thomas?

20 A. Not yet.

21 Q. Is DCRA considering taking?

22 A. There's always a consideration.

0079

1 Q. What did Mr. Thomas say to you when you
2 asked about his authority?

3 A. I can't remember his exact words, but
4 there was some degree of an apology and I think he
5 said it was an oversight on his behalf. I think he
6 went on to explain after he saw that the application

7 was completely approved, he felt that it was ready
8 to be issued. I mean it was a judgment call and it
9 was a judgment call in error, as I pointed out to
10 him.

11 Q. Did he talk to you about other instances
12 in which he was presented with an application that
13 had been fully approved by the signatures but still
14 had a hold on it?

15 A. We, no, we didn't have any other
16 discussion with any, with anything else, no, we were
17 speaking specifically about that application and at
18 that moment.

19 Q. Did you talk about the practice of
20 removing holds in the ordinary course?

21 A. I didn't talk about the practice. I
22 thought -- I spoke about the impact on the decisions

0080

1 and, you know, where it leads to. I talked, I spoke
2 about the impact on the Agency when, you know,
3 employees, you know, take matters into their own
4 hands without, you know, understanding clearly there
5 are roles and responsibilities and, you know, I
6 pointed out to him if he understood clearly, you
7 know, what a hold meant and, you know, that's, that
8 was the extent of my conversation.

9 Q. Did Mr. Thomas or any of the other
10 RPC's -- or PRCs -- strike that.

11 A. PRCs.

12 Q. Did Mr. Thomas or any of the PRCs tell
13 you that they are frequently asked to remove holds?

14 A. I can't -- it's a possibility, I mean I
15 have, you know, I do have conversations with the
16 PRCs and the staff in general periodically and, you
17 know, they share a number of things with me and I
18 would give them my input. But I can't remember
19 specifically they coming up to me and requesting a
20 meeting for us to discuss the removal of holds on
21 applications, I can't recall that.

22
0081

1 PRCs where they discussed changing their practices
2 with regard to how holds are treated by them?

3 A. They may have and somewhere in the deep
4 recess of my mind I think there's something
5 mentioned. I don't think it was a meeting, I think
6 it was something that was brought to my attention
7 and, but I, I don't think there was any meeting of
8 that nature, no.

9 Q. Did the PRCs at any time after October,
10 after, say, the beginning of October 2007 tell you
11 that they wanted to propose a new practice about
12 what happens when they are presented with a hold?

13 A. No, I can't recall that, no, not that I
14 can recall.

15 Q. Are there any written instructions or
16 policies or memos that discuss what a PRC is
17 supposed to do when he or she is presented with a
18 hold?

19 A. I would have to revisit what was, what
20 is given to the PRC. I did have a training class
21 and I had a training document where I provided to
22 the PRCs, but I can't remember the extent of

0082

1 everything that's in it.
2 Q. Do you have that training document in
3 your files?
4 A. I've got it somewhere in my computer,
5 probably.
6 MR. MENDRO: I guess we'd like to see
7 the training document, Mr. Taylor, if you can locate
8 it.
9 BY MR. MENDRO:
10 Q. So going back to Exhibit 16, the notice.
11 A. All right.
12 Q. I want to draw your attention to the
13 sentence, the last sentence on the first page of the
14 notice that goes on to the second page.
15 A. Okay.
16 Q. And I want to focus on the part of the
17 sentence that says that the employee authorized the
18 granting of the permit in direct contravention of
19 his superior's directives; do you see where I'm
20 pointing at? I paraphrased a little.
21 A. "DCRA has determined that the DCRA
22 employee erred in authorizing the granting of the
0083 permit prior to the application receiving the
1 required approvals and in direct contravention of
2 his superiors' directives."
3 Q. I want to focus on the words in direct
4 contravention of his superior's directives, what are
5 the directives that those words refer to?
6 A. Well I don't know about the -- this is
7 based on an investigation. If I look on the -- I
8 would, I would have, I would think that this would
9 mean that the supervisor has on different occasions,
10 you know, indicated to the PRCs that they should not
11 clear holds or -- I'm not familiar with this, I am
12 not.
13 Q. So you don't know what directives were
14 given to Mr. Thomas?
15 A. With regards to?
16 Q. With regards to this notice?
17 A. No.
18 Q. You don't know which directives
19 Mr. Thomas acted in direct contravention of?
20 A. Not offhand right now, no.
21 Q. The next sentence, which is the next
0084 full paragraph on page 2 --
1 A. Uh-huh.
2 Q. -- talks about why the permit is being
3 revoked and that sentence says that it's so that
4 DCRA can complete the required reviews; do you see
5 that sentence?
6 A. Yes, I do.
7 Q. Is DCRA completing the required reviews
8 now?
9 A. As far as I know right now the
10 application -- the application -- yes, I think that
11 the application and plans are being reviewed as
12 we -- you know, at DDOE as we speak.
13 Q. So the plans are currently physically at
14 DDOE?
15 A. Yes.
16 Q. When were the plans sent to DDOE?
17

18 A. I think approximately two weeks ago.
19 Q. And before that time, two weeks ago,
20 about, where were the plans?

21 A. At DCRA.
22 Q. And who was the person at DCRA who sent

0085
1 the plans to DDOE about two weeks ago?

2 A. I did.
3 Q. Were you reviewing the plans before you
4 sent them to DDOE?

5 A. No.
6 Q. How long were the plans in your custody
7 before you sent them?

8 MR. TAYLOR: Objection. Can you ask
9 with more specificity of what your starting date is
10 for that count?

11 BY MR. MENDRO:
12 Q. Do you understand my question?

13 A. How long the plans were in my custody
14 before. No more than probably four, five hours.

15 Q. And how did you get the plans?

16 A. I requested them from the file room.

17 Q. Why did you request them from the file
18 room?

19 A. Because it, the, I was instructed to
20 have them returned to DDOE to conduct their reviews.

21 Q. Who gave you that instruction?

22 A. The Director.

0086
1 Q. How long were the plans in the file room
2 before you requested them?

3 A. I guess from the time it was issued,
4 October 26th.

5 Q. So just to be sure that we have a clear
6 record, DCRA's position is that AppleTree's plans
7 were in the file room from about October 26th when
8 AppleTree's permit issued until about two weeks ago
9 when you requested them?

10 A. That would be my position, that's,
11 that's normally when permits get issued where the
12 plans go.

13 Q. And when the plans were in the file
14 room, can DCRA be completing its reviews of them?

15 A. Yes, they can.

16 Q. And explain how DCRA can complete its
17 reviews while the plans are sitting in the file
18 room?

19 A. You asked me -- now the question you
20 asked me is if while the plans are in the file room
21 if DCRA can conduct their reviews, the answer is
22 yes, because it's here at DCRA.

0087
1 Now if the plans are gone somewhere
2 else, we can't conduct that review.

3 So, while it was there, from
4 October 26th to the time it was sent two weeks ago
5 to DDOE, it could have been reviewed by DCRA.

6 Q. Did anyone, in fact, review the plans
7 from October 26th until the time that you requested
8 them?

9 A. I don't know. I don't know.

10 Q. Did you personally review them at any
11 time between October and when you requested them?

12 A. No.
13 Q. Do you know of anybody else at DCRA who
14 reviewed them between October and the time that you
15 requested them?
16 A. No, I don't know.
17 Q. And do you know of anybody in the
18 D.C. Government outside of DCRA who reviewed the
19 plans in any way between October and the time that
20 you requested them?
21 A. No, I don't.
22 Q. The next sentence of the notice talks
0088
1 about issues that the Zoning Administrator has to
2 consider.
3 Please explain those issues to me.
4 MR. TAYLOR: Objection. The Zoning
5 Administrator has already testified by deposition as
6 to what he considers.
7 THE WITNESS: I don't know.
8 BY MR. MENDRO:
9 Q. Does DCRA have no position about what
10 issues the Zoning Administrator has to consider?
11 A. I think DCRA has a position, but I would
12 say DCRA doesn't have a position because the
13 zoning -- the zoning discipline is a part of DCRA.
14 Q. I think I just got tripped up just a
15 little bit, but is it DCRA's position that the
16 Zoning Administrator needs to consider the plans?
17 A. I think there's a required review by the
18 Zoning Administrator of these plans, yes.
19 Q. Why do you think that?
20 A. I, I mean I -- that's what I, you know,
21 I was, I was told by the Zoning Administrator.
22 Q. And when did he tell you that?
0089
1 A. Oh, I don't know, probably a couple
2 months ago, at least by the time when the
3 application, when the permit got issued, that was
4 brought to bear by the zoning administration.
5 Q. And what did the Zoning Administrator
6 tell you about what he needs to consider?
7 A. He didn't tell me what he needed to
8 consider.
9 Q. If I understand the process correctly, a
10 permit applicant has several different disciplines
11 with different specialties reviewing their
12 application; is that correct?
13 A. An application is required to be
14 reviewed by several different disciplines, yes.
15 Q. And they are each in charge of some
16 specific issue or set of regulations; is that
17 generally correct?
18 A. That's correct.
19 Q. Is there a certain order in which those
20 disciplines have to review an application?
21 A. No.
22 Q. So, for example, does DDOE have to
0090
1 always come before structural?
2 A. No.
3 Q. Nor structural before DDOE?
4 A. That is correct.
5 Q. And does zoning have to come at a

6 certain point in the process?

7 A. No. It used to be that way.

8 Q. How would it used to be?

9 A. Years ago when it was a manual process,
10 it had to go through zoning first because they
11 didn't normally identify it as a use and then it
12 goes through different reviews. It became an
13 electronic process, we know that whoever, whoever
14 reviews these applications would not get issued as
15 long as all of the required reviews have not been
16 completed.

17 Q. And when was the process for zoning to
18 review first before the other disciplines?

19 A. About 1988, somewhere around there.

20 Q. And around 1988 the way that it worked
21 is --

22 A. It was a manual process.

0091

1 Q. And so the plans and plat and
2 application would go to zoning, they would conduct
3 their review and if they approved, they would send
4 it to somebody else?

5 A. Yes.

6 Q. And was there any order for who zoning
7 then had to send it to?

8 A. Not that I know of.

9 Q. When that process changed, was there
10 written explanation for the change?

11 A. I don't know, you know, that was, I
12 wasn't in policy making at the time, at that time, I
13 don't know.

14 Q. How do you know that the policy changed?

15 A. I was given instructions by my
16 supervisor.

17 Q. And what were those instructions?

18 A. That structural will be the last person
19 to review and approve.

20 Q. Beginning in 1988, about, the rule was
21 that structural should be the last discipline to
22 approve?

0092

1 A. No, I'm talking 19, 1980s something.

2 Q. You're right, I misspoke, I misspoke.

3 A. '80s something.

4 Q. Beginning around 1988, your supervisor
5 said that structural shall be the last discipline --

6 A. Is the last one, right.

7 Q. -- to approve?

8 A. Uh-huh, yes.

9 Q. And at that time did your supervisor
10 tell you that there was any other mandatory
11 sequence?

12 A. Excuse me?

13 No.

14 Q. Did your supervisor tell you that the
15 rule that zoning goes first has been changed?

16 A. I don't -- no, my supervisor, at that
17 point in time I was a structural reviewer and all my
18 concentration was on structural reviews.

19 Q. And at any time were you told that the
20 rule that zoning goes first has been changed?

21 A. No, not that I know of.

22 Q. So before 1988 you know that the rule

0093

1 was that zoning reviews first and sometime around
2 1988 you were told that structural goes last?
3 A. Right.
4 Q. But you've never been told that the rule
5 that zoning goes first has changed?
6 A. That is correct.
7 Q. To turn back to Exhibit 16, again the
8 notice of revocation, on page 2, I want to point you
9 to a sentence that says, "The zoning review could
10 not be completed until the District Department of
11 the Environment returned the permit application and
12 plans to DCRA."
13 A. Uh-huh.
14 Q. Do you agree with that sentence?
15 A. That sentence is speaking of a factual
16 act where the application and plans were sent to
17 DDOE and zoning could not act upon it because it's
18 over at DDOE. It is not stating that zoning is
19 waiting on DDOE to do their review before they can
20 do theirs, that's not what this has meant.
21 Q. So zoning could have done its review
22 before the plans left DCRA to go to DDOE; is that

0094

1 correct?
2 A. That is correct.
3 Q. And is it also correct that zoning, in
4 fact, did a review before the plans went to DDOE
5 this time?
6 A. Did an initial review, yes, that's
7 correct.
8 Q. And in the footnote it says that
9 AppleTree's application and plans were sent to DDOE
10 on about September 1st, 2007; do you agree with
11 that?
12 A. Possibly so, yeah. Again, I'm bad with
13 dates, so I know it was sent to DDOE, I can, I can,
14 I can attest to that.
15 Q. Do you have any doubt that it was on
16 September 1st, 2007?
17 A. I have no knowledge of, you know,
18 specific date, the specific date.
19 Q. Does September 1st, 2007, sound wrong to
20 you for any reason?
21 A. No.
22 Q. And on Exhibit 15, which is that

0095

1 building plan review status we've looked at a few
2 times now, there's a box that says zoning and the
3 review status says approved; do you see that?
4 A. That is correct.
5 Q. And the status date says August 23rd,
6 2007; is that correct?
7 A. That's correct.
8 Q. Does this indicate to you that before
9 September 1, 2007, when DCRA sent the plans to DDOE
10 that zoning had already reviewed and approved
11 AppleTree's permit application?
12 A. That is correct.
13 Q. Then turning back to the notice of
14 revocation, I want to go to the next sentence, we're
15 taking them one at a time here.
16 A. Where, on which page?

17 Q. On Page 2.
18 A. Okay.
19 Q. It says that, "the application and plans
20 were not returned by DDOE until October 25th, 2007";
21 do you see that sentence?
22 A. Where are you reading?
0096
1 Q. It's the --
2 A. Okay, I got it. Uh-huh, application and
3 plans were not, okay.
4 Q. Is that statement correct?
5 A. Or thereabout.
6 Q. You have no reason to doubt that
7 October 25th, 2007, is the right date?
8 A. I, I have no reason to doubt, especially
9 if October 25th was a Friday.
10 Q. Would a permit issue on a Friday?
11 A. No, it was issued on the Monday, as far
12 as I can recollect.
13 Q. In your experience, how long does it
14 take DDOE generally to conduct its review of a
15 permit application?
16 A. I can't answer that. It varies. Some
17 can be done in one day, some take months, in my
18 experience.
19 Q. Some take two months?
20 A. That, yeah.
21 Q. And since April 2007, how many times
22 have you become aware of DDOE taking two months to
0097
1 review a permit application?
2 A. I can't -- I'm not very familiar with
3 all of the application process because I don't get
4 involved with it, but I do know that several
5 complaints from applicants, there's an extensive
6 review sometimes conducted by DDOE that takes
7 months.
8 Q. Do these applicants complain to you
9 directly?
10 A. They complain by, they complain to the
11 Mayor.
12 Q. In your opinion, is two months a long
13 time for an environmental review?
14 A. I don't know because I don't know the
15 extent of their reviews.
16 Q. At the very beginning of the deposition
17 we were talking about the three different categories
18 of processes for reviewing an application and you
19 described for me a one-day process, a 14-day process
20 and a 30-day process?
21 A. Uh-huh, we were talking about
22 performance times --
0098
1 Q. Right.
2 A. -- not processes. They were performance
3 times, okay.
4 Q. Thank you. Is AppleTree's application
5 one of the 30-day applications?
6 A. Yes.
7 Q. Is there a way that you can tell that
8 from looking at the application?
9 A. Yes, the file number.
10 Q. For the record, I believe Mr. Douglas

11 was pointing to Exhibit 2; is that correct?
12 A. That is correct.
13 Q. And where is the file number indicated?
14 A. In the bottom right-hand corner.
15 Q. And what --
16 A. 3758 A, that tells me that it was a
17 30-day process.
18 Q. Is it the "A" that tells you that?
19 A. That is correct.
20 Q. And is it unusual in your experience for
21 a 30-day process to take two years?
22 A. It is somewhat unusual.

0099

1 Q. Has it ever happened before?
2 A. Oh, yeah, yes.
3 Q. How many times do you specifically know
4 of it taking that long?
5 A. I don't know about anything
6 specifically, but I know there's applications that
7 was three and four years.
8 Q. How do you know that if you don't know
9 it specifically?
10 A. Because you, you see the records
11 sometimes still floating around and you look at, you
12 know, some addresses that people are still working
13 on and it's, they will -- application submission
14 date is very late, you know, so that's how I know
15 about it.
16 Q. I think you testified earlier that you
17 believe that DDOE has not completed its review; is
18 that correct?
19 A. That's my understanding.
20 Q. Does DDOE ordinarily return plans to
21 DCRA before it's completed its review?
22 A. No, they do not.

0100

1 Q. Are you aware of any occasion when
2 that's happened before?
3 A. When it's, when we request it to be
4 returned.
5 Q. And you did say before that you
6 requested it to be returned, why did you request it
7 to be returned before they finished their review?
8 A. If I remember correctly, I think the
9 Zoning Administrator wanted to conduct his review
10 and was awaiting the return of that, those plans and
11 application.
12 Q. When did the Zoning Administrator tell
13 you that he was awaiting the plans and application?
14 A. I think it's, it was approximately the
15 week before October 26th.
16 Q. So the middle of October, about?
17 A. Somewhere around there, yeah.
18 Q. Did he ever tell you that he wanted to
19 get the plans back in September?
20 A. It's a possibility but I, I don't
21 remember specifically that he came to me in
22 September. Possibly.

0101

1 Q. When the plans were returned, were they
2 then given to the Zoning Administrator?
3 A. The Zoning Administrator never got an
4 opportunity to see the plans because that's what

5 started the trend of events, the plans came back,
6 was returned by DDOE and that's when it, the permit
7 got issued.

8 Q. Why does the issuance of the permit
9 prevent the Zoning Administrator from looking at the
10 plans?

11 A. Because it's now issued, I mean
12 everything is gone.

13 Q. But DCRA's position is that it wants to
14 revoke the permit so that it can complete the
15 reviews; am I correct about that?

16 A. That's correct. So in the revocation
17 they're asking for the applicant to return all the
18 documents back to DCRA.

19 Q. Why, but DCRA has the plans?

20 A. DCRA has the permanent set of plans.
21 Remember, they have a permit and they have two
22 official set of the plans. They've got half of the

0102
1 documents. If the Zoning Administrator do a review,
2 he has to review the entire document, all the
3 documents.

4 Q. What documents doesn't the Zoning
5 Administrator have that he needs to complete his
6 review?

7 A. The complete set of plans.

8 Q. And DCRA does not have a complete set of
9 plans?

10 A. They do have a complete set of plans,
11 they do have a permanent set of plans but the action
12 taken on these plans have to be done on all sets,
13 see, they -- that's it. So they have half and we've
14 got half.

15 Q. I don't think that you're being unclear
16 but I think I'm not understanding, so --

17 A. No.

18 Q. -- if you could bear with me and try to
19 explain that just step by step like you would
20 explain it to a truly lay person.

21 A. Okay. The permit got issued and when
22 that permit is issued, the applicant is given two

0103
1 sets of the plans with a permit. DCRA have now an
2 application and two sets of the plans.

3 Now all these plans that are submitted
4 needs to be identified with the same thing. If
5 zoning, it has to review these plans, they have to
6 make sure that what they're looking at is on all
7 four sets. Any action taken, it has to be taken on
8 all four sets.

9 Q. Now the four sets of plans all have the
10 same drawings on them; is that correct?

11 A. Supposed to. That's what they make sure
12 to.

13 Q. And the plat is the same?

14 A. And the plat, same thing, yes.

15 Q. Is there any reason why the Zoning
16 Administrator can't look at the copy of the plans
17 that DCRA has to determine whether they comport with
18 the zoning regulations?

19 A. I don't think there's any -- no, I don't
20 think there's any reason why he can't.

21 Q. But to your knowledge the Zoning

22 Administrator has not done that even though the
0104
1 plans have been back since October 25th of 2007?
2 A. I'm not sure. I don't know. I don't
3 know.
4 Q. To your knowledge, he has not?
5 A. To my knowledge, he has not.
6 Q. Have you ever talked to Mr. Le Grant
7 about when he's going to review AppleTree's permit
8 application?
9 A. No, no.
10 Q. I want to try to understand a chronology
11 of events that I think we have discussed, but I want
12 to try to make sure that I have it down.
13 A. Okay.
14 Q. Around the middle of October, Matthew
15 Le Grant told you that he would like to get the
16 plans for his review; is that correct?
17 A. Or thereabout, that's correct.
18 Q. And you don't recall him ever making
19 that request to you before the middle of October; is
20 that also correct?
21 A. I can't say that as a fact. I think
22 Mr. Le Grant has asked me on several occasions when,
0105
1 if DDOE has completed a review and if they have
2 returned the plans as yet. I think that is just in
3 passing. I don't think it's just one time he came
4 to me or, you know, brought it to my attention, so I
5 can't tell you about specific dates.
6 Q. But in the middle of October he asked
7 you to try to get them back?
8 A. I think, yes, I think I was requested to
9 make contact with DDOE and ask them to return the
10 plans.
11 Q. So that Mr. Le Grant could review them?
12 A. They didn't say why, no.
13 Q. And you don't remember him making the
14 request to get them back before the middle of
15 October specifically?
16 A. I don't know. I mean, you know, like I
17 said, I've spoken to Mr. Le Grant on several
18 occasions with regards to the status of this
19 application and the plans and when is it going to be
20 returned, so I don't know if in those conversations
21 was before, you know, the middle of October. It has
22 to be, I mean, you know, you know, I don't know.
0106
1 Q. And so you did what Mr. Le Grant asked
2 and requested the plans back, correct?
3 A. Yes.
4 Q. And they came back; is that correct?
5 A. Well I think -- yeah, DDOE brought it
6 back, yes.
7 Q. But Mr. Le Grant to your knowledge never
8 looked at the plans when they came back?
9 A. To my -- he never got an opportunity,
10 no.
11 Q. And to your knowledge he never got them
12 out of the file room; is that also correct?
13 A. I don't know that. I don't know that.
14 Q. You've never heard that he did?
15 A. No, I never, I haven't heard that he

16 did.
17 Q. And about two weeks ago you got them out
18 of the file room to send back to DDOE?
19 A. I did, yes.
20 Q. Have you had any conversations with DDOE
21 about its status?
22 A. No.

0107
1 Q. Has DCRA followed up with DDOE about its
2 status?
3 A. I don't know. I don't know.
4 Q. I want to flip back to Exhibit 15, the
5 building plan review status.
6 A. Okay.
7 Q. And ask you about the very last item in
8 the box that says historic. Do you see that box?
9 A. I see the box.
10 Q. What does it mean that historic is
11 pending?
12 A. Pending means that it has not been
13 reviewed by historic.
14 Q. And if I could get you to look at
15 AppleTree's application, which was Exhibit 2, and
16 turn to page 3.
17 A. Uh-huh.
18 Q. Does it say anything on page 3 about
19 whether historic has had a chance to review the
20 plans?
21 A. That is correct, historic has reviewed
22 and approved on 2/9/06.

0108
1 Q. Is there any reason why that box that's
2 on the review plan status, Exhibit 15, would say
3 pending if, in fact, historic has approved?
4 A. That is -- yes, there is a reason.
5 Q. And what is the reason?
6 A. The reason is that when this was, when
7 this was printed up, the status of this job here,
8 the permit clerk did not go into the system and
9 update it to show an approved status for historic.
10 Q. But that doesn't mean that it wasn't
11 approved, it just wasn't updated?
12 A. That is correct.
13 Q. So I'm looking at Exhibit 15 --
14 A. Okay.
15 Q. -- and it looks like the latest approval
16 was granted on August 31st, 2007; do you agree with
17 that?
18 A. The latest is August 31st, 2007, yes.
19 Q. And historic, although it says pending,
20 was also approved; is that correct?
21 A. That is correct, on the application.
22 Q. My question is if everything was

0109
1 approved by August 31st, 2007, why wasn't
2 AppleTree's permit granted as soon as practicable?
3 A. I don't know. That could be the
4 applicant didn't retrieve it, didn't -- I don't, I
5 don't know.
6 MR. MENDRO: I'm going to show you a
7 document that we'll have marked for identification
8 as Exhibit Number 17.

9 (Deposition Exhibit No. 17

10 was marked for identification)
11 BY MR. MENDRO:
12 Q. Please just let me know when you've had
13 a chance to review that document.
14 A. (Witness examining document)
15 MR. TAYLOR: Okay, we're going to object
16 to any questions regarding this document as it is
17 nowhere referenced in the notice of revocation which
18 is being appealed.
19 MR. MENDRO: Objection is noted.
20 BY MR. MENDRO:
21 Q. Please let me know when you've had a
22 chance to review it.
0110
1 MR. TAYLOR: And we're, Mr. Douglas is
2 not being provided as someone who would have any
3 knowledge of this document. We have not put forward
4 any person who would be prepared to testify about
5 this document.
6 THE WITNESS: Okay, I've read it.
7 BY MR. MENDRO:
8 Q. Earlier we discussed what DCRA's role
9 is.
10 Does DCRA have any role in determining
11 whether a permit applicant has approval to open a
12 charter school?
13 A. I don't know. And I could only speak
14 towards the building permit office, not the entire
15 DCRA. I don't know.
16 Q. Does the building permit office ever get
17 involved in that?
18 A. No.
19 Q. Is that part of the building permit
20 office's authority?
21 A. No.
22 Q. I want to point you to -- have you seen
0111
1 this document before?
2 A. No.
3 Q. The second paragraph in this document
4 references a high level of community interest in
5 this project referring to AppleTree's project?
6 A. Okay, uh-huh.
7 Q. Does DCRA contend that there is a high
8 level of community interest in AppleTree's project?
9 A. Not that I know, I'm not familiar.
10 Q. Have you heard or are you aware that
11 DCRA has had contact with the community, members of
12 the community about AppleTree's project?
13 A. No, I don't -- no, I am not familiar
14 with that.
15 Q. If you could turn, please, to Exhibit 16
16 again, the notice of revocation.
17 A. Okay.
18 Q. There is, there are two footnotes at the
19 bottom of the second page.
20 A. Okay.
21 Q. The second one is numbered footnote
22 three and this references somebody named
0112
1 commissioner David Holmes.
2 Are you familiar with this person?
3 A. No.

4 Q. Have you ever heard his name before?
5 A. No.
6 Q. Have D.C. officials or employees other
7 than officials or employees of DCRA said anything to
8 DCRA about AppleTree's application for a permit?
9 A. Say that again, I'm sorry.
10 Q. Are there other people in the D.C.
11 Government --
12 A. Okay.
13 Q. -- of elected officials, appointed
14 officials or employees who have spoken to DCRA about
15 AppleTree?
16 A. Not that I know of.
17 Q. And you're not aware that Commissioner
18 wells or Councilman wells has said anything to DCRA
19 about AppleTree?
20 A. That conversation would probably be,
21 take place with the Director, not with me. No, I'm
22 not, I'm not familiar. It's possible.

0113

1 Q. Are you familiar with any communications
2 by the City Administrator with DCRA about
3 AppleTree's application project?
4 A. No.
5 Q. Are you aware of any communications
6 between anyone at DCRA and the City Administrator
7 about AppleTree at all or AppleTree's property at
8 all?
9 A. No.
10 Q. Do you, have you heard of an individual
11 named Bill Crews?
12 A. Yes, of course.
13 Q. Who is Mr. Crews?
14 A. Mr. Crews is a former Zoning
15 Administrator.
16 Q. And when did Mr. Crews cease to be a
17 Zoning Administrator?
18 A. I think sometime last year.
19 Q. Did DCRA put Mr. Crews on administrative
20 leave before he ceased working for DCRA?
21 A. I don't know that.
22 Q. Have you heard anything about that?

0114

1 A. Oh, if Mr. Crews was placed on
2 administrative leave? I'm not sure. I'm not sure.
3 I'm not sure.
4 Q. Have you heard any rumors about that?
5 A. No. My day don't allow me to have, deal
6 with rumors.
7 Q. Have you ever talked with Mr. Crews
8 about AppleTree?
9 A. No. No.
10 Q. I would like to show you a document that
11 has been pre-marked for identification as Exhibit
12 Number 3.
13 A. Okay.
14 Q. Once you've had a chance to look at
15 Exhibit Number 3, can you tell me if you've seen it
16 before?
17 A. (Witness examining document).
18 No.
19 Q. No, you have not seen Exhibit --
20 A. I have not seen this, I don't recall

21 ever seeing this.
22 Q. Has anybody ever spoken to you about
0115 collecting documents for AppleTree?
2 A. Yes.
3 Q. And did you discuss the various
4 categories of documents that are enumerated in
5 Exhibit Number 3?
6 A. No. I just told the person where to go.
7 Q. And do you personally have any documents
8 related to AppleTree in your files?
9 A. Not that I know of.
10 Q. Have you searched your files?
11 A. No, I haven't.
12 Q. Were you asked to search your files?
13 A. I think they, the FOIA employee asked me
14 to, for the records for, to research their records.
15 I don't keep files on applications.
16 Q. Have you ever written an E-mail about
17 AppleTree or its application?
18 A. No, I -- not that I can recall. I may
19 have written requesting the return of the
20 application from DDOE, but that's, you know, that's
21 as much as I can remember.
22 Q. Have you ever received any E-mails about
0116 AppleTree?
2 A. I, I don't recall any, something
3 sticking out about AppleTree coming to me. You
4 know, you get, forgive me, because I receive over
5 60 or 70 E-mails a day and I don't, I don't look at
6 all of them, so I would have to do a research.
7 Q. But you haven't searched your E-mails
8 yet to see if there's anything related to AppleTree?
9 A. No, no.
10 Q. What steps has DCRA as an Agency taken
11 to respond to this FOIA request in Exhibit 3?
12 MR. TAYLOR: I'll tell you, at this
13 point I'm going to lodge the objection that the
14 Office of Administrative Hearings does not have
15 jurisdiction over FOIA requests and, therefore, this
16 deposition does not have a scope of inquiry covering
17 FOIA requests.
18 BY MR. MENDRO:
19 Q. So what are the steps that DCRA took to
20 respond to this FOIA request?
21 A. I don't know.
22 Q. Do you know that DCRA took any steps to
0117 respond to the FOIA request?
2 A. No, I don't know, I'm not familiar.
3 MR. MENDRO: I think I'm ready to take a
4 short break and we'll go off the record.
5 (Discussion off the record)
6 BY MR. MENDRO:
7 Q. Earlier today you mentioned training for
8 the PRCs.
9 A. Uh-huh.
10 Q. Do you personally train the PRCs?
11 A. In this instance, this was something
12 that was done approximately about a year or two ago
13 where I took on the responsibility of conducting an
14 entire training for all of the permit center

15 personnel. But, no, I --
16 Q. Now during that training did you train
17 Mr. Thomas, Tyrone Thomas?
18 A. Yeah, I think Mr. Thomas was a part of
19 that, part of that folk, yeah.
20 Q. And during that training did you
21 instruct Mr. Thomas on the process for clearing
22 holds?
0118
1 A. I don't know. I would have to, I would
2 have to re-review and see exactly what, what the
3 training entailed.
4 Q. And to do that you review, you would
5 look at the documents we discussed before, the
6 training materials?
7 A. Yes. I would have to look at them.
8 Q. Other than your training about a year
9 ago of all the permit center personnel, does DCRA
10 provide other training to the PRCs?
11 A. DCRA provides training to all of DCRA
12 staff through what is called CWD, don't ask me what
13 CWD means, something working development -- oh,
14 Center for Workforce Development.
15 Q. Did Mr. Tyrone Thomas receive CWD
16 training?
17 A. I don't know. It's something that is
18 requested by, requested by the, by the employee or
19 sometimes recommended by his supervisor.
20 Q. So CWD training isn't mandatory for all
21 employees?
22 A. No, it's not.
0119
1 Q. And it isn't mandatory for all PRCs?
2 A. No.
3 Q. Does CWD training explain the process
4 for clearing holds?
5 A. No.
6 Q. Are you aware of anyone that has told
7 Mr. Tyrone Thomas the process for clearing holds?
8 A. No, I'm not aware of anyone.
9 Q. Do you know that anyone ever told him
10 that he has to ask his supervisor before he clears a
11 hold in the system?
12 A. I would have to say no, I don't know
13 that, even though I think opposite, but, you know,
14 no, I don't know that.
15 Q. And to be clear, you did tell him that
16 after AppleTree's permit issued; isn't that right?
17 A. I did have a conversation with him but I
18 didn't specifically say this is what you need to
19 follow going forward, I mean we talked about his
20 action in clearing this hold for the -- you know,
21 and I would, I would hope that it was inferred based
22 on what I said that he knew before he cleared any
0120
1 other holds he will see a supervisor.
2 Q. But you don't know that anyone ever told
3 him before AppleTree's permit issued that he had to
4 ask his supervisor to clear a hold; isn't that
5 right?
6 A. That is correct, no.
7 Q. And you also don't know that he knew
8 that?

9 A. I don't know that he knew that. Yeah, I
10 can't speak to what he knew.

11 Q. Did he tell you that he didn't know
12 that?

13 A. No, we never had that conversation.

14 Q. And I think I asked this but just to
15 make sure, there aren't any written regulations that
16 explain how to clear a hold?

17 A. Not that I, I can tell you specifically
18 right now that I can recollect, but I've got a
19 candid feeling there may be, there just may be.

20 Q. There might be?

21 A. Yes.

22 Q. But you're not aware of any memo about

0121

1 how to clear a hold?

2 A. That is correct.

3 Q. And you're not aware of any policy
4 statement about how to clear a hold specifically?

5 A. That I can recall right now. I reserve
6 the right to make -- to correct that at a later
7 date.

8 MR. MENDRO: I'm finished asking
9 questions today.

10 Did you have questions that you wanted
11 to ask?

12 MR. TAYLOR: No, DCRA has no questions
13 for this witness.

14 MR. MENDRO: As I said at the outset of
15 the deposition, I very much appreciate your time
16 today, Mr. Douglas.

17 THE WITNESS: Sure.

18 MR. MENDRO: Thank you for participating
19 in this proceeding.

20 THE WITNESS: You're welcome.

21 MR. MENDRO: Notwithstanding your
22 helpful participation, the record will show that

0122

1 Mr. Douglas did not take steps to become informed
2 about issues that were presented in our deposition
3 notice and for that reason we must reserve the right
4 to continue this deposition at another time.

5 MR. TAYLOR: That is understood and I
6 note that the deposition has gone on for a little
7 less than three hours and I understand that the case
8 law typically describes a time frame that a
9 deposition can take.

10 I would hope that you would catalog
11 questions that you believe were not adequately
12 answered and then we can discuss how to move
13 forward, whether it be by providing people to come
14 in to testify or through affidavits or written
15 interrogatories, or as a written deposition.

16 MR. MENDRO: I appreciate your, DCRA's
17 willingness to continue to cooperate with us.

18 We are not going to concede that we're
19 not entitled to continued deposition by oral
20 testimony, but we will work with you to let you know
21 how we want to proceed.

22 MR. TAYLOR: Okay, and, like I say, DCRA

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1 is going to cooperate and we will make sure that any
2 relevant information gets provided to you.

Douglas 2 22 08 (5).txt
MR. MENDRO: We are off the record.
(Whereupon, at 1:00 p.m., the
deposition of LENNOX DOUGLAS
was concluded.)
* * * * *

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CERTIFICATE OF NOTARY PUBLIC
I, MONICA A. VOORHEES, the officer
before whom the foregoing deposition was taken, do
hereby certify that the witness whose testimony
appears in the foregoing deposition was duly sworn
by me; that the testimony of said witness was taken
by me in stenotype and thereafter reduced to
typewriting under my direction; that said deposition
is a true record of the testimony given by said
witness; that I am neither counsel for, related to,
nor employed by any of the parties to the action in
which this deposition was taken; and further, that I
am not a relative or employee of any counsel or
attorney employed by the parties hereto, nor
financially or otherwise interested in the outcome
of this action.

MONICA A. VOORHEES
Notary Public in and
For the District of Columbia

My Commission expires:
May 31, 2010

0125

A C K N O W L E D G E M E N T O F D E P O N E N T

I, LENNOX DOUGLAS, do hereby acknowledge
I have read and examined the foregoing pages of
testimony, and the same is a true, correct and
complete transcription of the testimony given by me,
and any changes or corrections, if any, appear in
the attached errata sheet signed by me.

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18 Date
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1 Dennis M. Taylor, Esquire
2 Assistant Attorney General
3 Office of the Attorney General
4 For the District of Columbia
5 941 N. Capitol Street, N.W.
6 Suite 9500
7 Washington, D.C. 20002
8 IN RE: Appletree vs DCRA

9 Dear Mr. Taylor:
10 This letter is to advise you that the original
11 transcript of Lennox Douglas, taken in the above
12 matter will be available in our office, Capital
13 Reporting Company, located at 1821 Jefferson Place,
14 Northwest, Washington, D.C., for signature.
15 Pursuant to the rules, the transcript will be
16 available for 30 days beginning Tuesday, March 4, 2008
17 If you have any questions, please do
18 not hesitate to call. Thank you.
19 Yours,
20 Monica A. Voorhees
21 Reporter, Notary
22 cc: Mr. Mendro, Esq.

0127

1 Capital Reporting Company
2 1821 Jefferson Place, N.W.
3 Third Floor
4 Washington, D.C. 20036
5 (202) 857-3376

6 E R R A T A S H E E T

7 Case Name: APPLETREE vs DCRA

8 Witness Name: LENNOX DOUGLAS

9 Deposition Date: 2/22/08

10 Page No. Line No. Change/Reason for Change
11
12
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14
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16
17
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19
20

21
22

Signature

Date

D TAB 39

From: Sweeney, James (DDOE) [<mailto:james.sweeney@dc.gov>]

Sent: Friday, February 29, 2008 5:11 PM

To: Argo, Linda (DCRA); Taylor, Dennis (DCRA)

Cc: Hawkins, George (DDOE); Stanley, Neil (DDOE); Corman, Bicky (DDOE); Carew, Christopher (DDOE); Burrell, Collin (DDOE); Burnett, Caroline (DDOE); Hamilton, Robert (DDOE)

Subject: Appletree School - 138 12th Street, NE

The Department of the Environment, Toxic Substances Division, has reviewed relevant records pertaining to the subject site and we report the following findings:

- There are no registered underground storage tanks on the property (Our review included our own databases plus old fire department records in our possession).
- The site is not, and has never been, listed as a generator of hazardous waste.
- The site is not on the list of potential brownfield sites prepared by the Office of the Deputy Mayor for Planning and Economic Development.

We have also reviewed the Phase I Environmental Assessment Report prepared for the client by Hillis-Carnes in June 2005.

We agree with the findings of the Phase I report that there do not appear to be any Recognized Environmental Conditions (REC) at the site.

However, in light of the anecdotal reports that vehicles were fueled at the site when it was occupied by Steuart L.P and Brothers Fuel Oil from 1943 to 1954, we would recommend that the applicant hire a contractor to conduct a geophysical survey (metal detectors) to determine if there is the possibility of underground tanks at the site. A geophysical survey would allow for information to be gathered without the need for an intrusive investigation.

If tanks are discovered on-site, either through a geophysical survey or during construction of the proposed addition, this would have to be reported to our underground storage tank program, and proper procedures would be required to remove the tank(s) and to determine if contamination is present.

James P. Sweeney

Chief, Land Remediation and Development Branch

District Department of the Environment

51 N Street, NE, #3004

Washington, DC 20002

202-535-2289

james.sweeney@dc.gov

D TAB 40

GIBSON, DUNN & CRUTCHER LLP
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MPerry@gibsondunn.com

March 6, 2008

Direct Dial
(202) 887-3667

Fax No.
(202) 530-9696

Client No.
C 04753-00001

Dennis M. Taylor, Esq.
Assistant Attorney General
941 North Capitol Street, N.E.
Suite 9401
Washington, D.C. 20001

Re: *AppleTree Institute for Education Innovation*

Dear Mr. Taylor:

We represent AppleTree Institute for Education Innovation with regard to Building Permit No. 89587. We understand that the Zoning Administrator and his direct reports reviewed AppleTree's application for the permit numerous times, and that they repeatedly approved the application as compliant with all applicable zoning laws of the District of Columbia. We further understand that DCRA may soon direct the Zoning Administrator to review AppleTree's application yet again, even though DCRA already issued a building permit to AppleTree more than four months ago, on October 26, 2007.

We write to advise DCRA that recent public statements by Director Linda Argo appear to miscomprehend the zoning law applicable to AppleTree's permit application. Ms. Argo has reportedly said that the application will be governed by the law in effect at the time a final determination is made on the application. *See Ben Weinstein, ANC 6A Drills DCRA Chief Over Permitting Errors, CapitolHillVoice.com* (Sept. 21, 2007), <http://www.capitolhillvoice.com/pages/Articles/cat/22/op/extended/article/53/cat/22> (reporting Ms. Argo's comments about AppleTree's application). DCRA's November 15, 2007 notice of its intention to attempt to revoke AppleTree's permit contains a similar statement. Both statements appear to suggest that AppleTree's application is subject to amendments to the zoning regulations that did not become effective until September 14, 2007.

The law is otherwise. As you know, the Board of Zoning Adjustment has already considered AppleTree's permit application. On July 25, 2007, the BZA issued a formal order

GIBSON, DUNN & CRUTCHER LLP

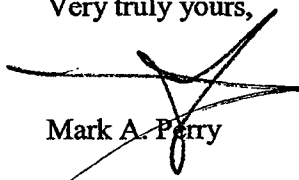
Dennis M. Taylor, Esq.
March 6, 2008
Page 2

determining that AppleTree's application satisfied all zoning regulations effective on that date. This order—which conclusively authorized the issuance of AppleTree's permit for all purposes within the scope of the BZA's regulatory authority—became effective on August 6, 2007. DC law is clear that amendments to the zoning regulations after this date are inapplicable to AppleTree's application: "All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated." 11 DCMR § 3202.6. Thus, the September 14 amendments to the regulations are irrelevant to AppleTree's application and provide no legal basis for divesting AppleTree of its settled rights.

To our knowledge, no official of the District of Columbia has ever provided an on-the-record explanation of why the cited regulation does not mean exactly what it says—*i.e.*, that the Zoning Administrator is to apply the law in effect on the date the BZA order "authorized" the issuance of the building permit. We therefore request that you bring this letter to the attention of the Zoning Administrator immediately. If the Zoning Administrator ultimately determines to deny AppleTree's permit on the basis of the September 14, 2007 amendments, we respectfully request that he specifically address 11 DCMR § 3202.6 in his explanation.

We also submit that, since this issue may arise in all cases in which the BZA issues an order authorizing the issuance of a building permit, you may wish to consult the Solicitor General as to the meaning of the regulation.

Very truly yours,



Mark A. Perry

cc: Jill Stern, Esq.
General Counsel
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.E.
Suite 9400
Washington, DC 20002

D TAB 41

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2008 MAR 21 P 3:27

APPLETREE INSTITUTE FOR
EDUCATION INNOVATION
Petitioner

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Respondent

&

ADVISORY NEIGHBORHOOD
COMMISSION 6A
Intervenor

Case No.: CR-C-07-100087

ORDER GRANTING ANC 6A'S MOTION TO INTERVENE

I. INTRODUCTION

On or about November 15, 2007, the Department of Consumer and Regulatory Affairs ("DCRA") issued AppleTree Institute for Education Innovation ("AppleTree") a Notice to Revoke Building Permit Number 89587 ("Notice to Revoke"). On November 30, 2007, AppleTree filed a petition challenging the Notice to Revoke. On December 17, 2007, a representative of Advisory Neighborhood Commission ("ANC") 6A, Commissioner David

Holmes, submitted to this administrative court a statement expressing the ANC's interest in learning how it might participate in these proceedings.¹

This administrative court issued a Case Management Order ("CMO") on December 27, 2007, setting a status conference for January 16, 2008. The CMO was served on the parties and on Commissioner Holmes. In addition to setting out a standard agenda for the status conference, the CMO instructed Commissioner Holmes to appear at the status conference and explain his submission of December 17, 2007. Commissioner Holmes appeared at the status conference and expressed ANC 6A's interest in intervening in this case to develop evidence and argue that Permit No. 89587 was properly revoked. I advised Commissioner Holmes to submit any motion to intervene promptly and said that I would not delay the ongoing proceedings in the meantime.

On January 30, 2008, Commissioner Holmes, purportedly acting on behalf of ANC 6A,² filed a Request Of Advisory Neighborhood Commission 6A To Intervene in these proceedings pursuant to OAH Rule 2812 ("Intervention Request"). In its Intervention Request, ANC 6A indicated that it had sought the parties' consent to intervention. According to ANC 6A, AppleTree had not consented, and DCRA had not responded. On February 11, 2008, AppleTree filed an opposition to the Intervention Request. DCRA filed no response, and at a status

¹ Mr. Holmes's submission of December 17, 2007, did not request leave to intervene or any other action by this administrative court and was not filed or served on the parties in accordance with OAH Rules.

² The Request Of Advisory Neighborhood Commission 6A To Intervene identifies the proposed intervenor variously as "ANC 6A," "David Holmes, for and on behalf of ANC 6A," "ANC 6A and Holmes" and "Holmes." Based on the arguments made in the Intervention Request and on the caption and discussion in *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 429 (D.C. 2006) (affirming a Board of Zoning Adjustment holding that an ANC had standing as an intervenor to appeal a DCRA decision to the Board of Zoning Adjustment), I construe the pending motion as a request for intervention by ANC 6A.

conference on March 18, 2008, DCRA's lawyer, Dennis Taylor, Esq., stated that the agency would take no position on the ANC's request to intervene.

Based on the Intervention Request and AppleTree's response, and for the reasons set forth in this Order, I grant ANC 6A's request to intervene.

II. CONCLUSIONS OF LAW AND DISCUSSION

Under the rules of this administrative court, "Anyone who has an interest in the subject matter of a case pending before the court, and who contends that the representation of his or her interest may be inadequate, may file a motion to intervene" OAH Rule 2816.2. Motions to intervene in OAH actions are decided "in accordance with the provisions of D.C. Superior Court Civil Rule 24." *Id.*

A motion to intervene must include a statement of grounds on which intervention is sought and a pleading "setting forth the claim or defense for which intervention is sought." *Id.* ANC 6A indicated in a statement filed under OAH Rule 2816.2, which accompanied its Intervention Request, that it wishes to intervene "in support of DCRA's defense that, because the construction permit in question here was erroneously issued, the DCRA Director correctly revoked the permit."

Under rules of the Superior Court of the District of Columbia, intervention may be sought either as a matter of right or by permission. Super. Ct. Civ. R. 24. A request to intervene *must* be granted "(1) When applicable law confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a

practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Super. Ct. Civ. R. 24(a). Intervention *may* be granted "(1) When applicable law confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common[, in either case taking into consideration] whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Super. Ct. Civ. R. 24(b). Rule 24 is intended to promote judicial economy by facilitating the resolution of related issues in a single lawsuit while preventing litigation from becoming unmanageably complex. *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795, 799 (D.C. 1975); *see Me-Wuk Indian Cmty. v. Kempthorne*, 246 F.R.D. 315, 319 (D.D.C. 2007) ("intervention is a tool of judicial efficiency").

ANC 6A has not indicated whether it seeks intervention as of right or by permission, and I have therefore considered whether the proposed intervenor meets either standard.

A. Intervention as of Right – Rule 24(a)

ANC 6A does not assert that it has an "unconditional right" to intervene in this case under Super. Ct. Civ. R. 24(a)(1), and I have identified no such right in statutes or case law concerning the duties of Advisory Neighborhood Commissions or revocations of DCRA permits.

See D.C. Official Code §§ 1-207.38, 1-309.10 and § 2-509.³ Even in the absence of such an “unconditional right” established by law, however, an applicant for intervention must be allowed to intervene if it “claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” Super. Ct. Civ. R. 24(a)(2). The District of Columbia Court of Appeals has described the test under this rule as consisting of four parts: timeliness, interest, impairment of interest, and adequacy of representation. *Jones v. Fondufe*, 908 A.2d 1161, 1162-1163 (D.C. 2006). The court has also instructed that Rule 24(a) be interpreted “liberally,” but not “indiscriminate[ly.]” *Vale Properties, Ltd. v. Canterbury Tales, Inc.*, 431 A.2d 11, 14 (D.C. 1981); see *McPherson v. D.C. Hous. Auth.*, 833 A.2d 991, 994 (D.C. 2003).

³ ANC 6A also “does not assert that the OAH is bound by the ‘great weight’ requirement of the Advisory Commission Act.” Intervention Request at 4. I agree, at least in the context of this proceeding. According to the great weight standard, “issues and concerns” raised in an ANC’s written recommendations must be given great weight in certain deliberations by government agencies involved in “government actions.” D.C. Official Code § 1-309.10(d)(3)(A). The matter before me, however, is a contested case under the District of Columbia Administrative Procedure Act, in which the only issue to be decided – and the issue as to which ANC 6A seeks to intervene – is whether Permit No. 89587 can be revoked because it was “issued in error.” 12A DCMR 105.6(6). Although much of ANC 6A’s Intervention Request focuses on the underlying question of whether Permit No. 89587 should have been issued in the first place, that question is only tangentially relevant here, and ANC 6A’s fundamental and longstanding opposition to AppleTree’s plans for 138 12th Street, NE, is simply irrelevant to the narrow legal issue that I must decide. Even assuming this were a “government action” under D.C. Official Code § 1-309.10(d)(3)(A), I would therefore not be required to give “great weight” to the ANC’s underlying concerns about Permit No. 89587. See *Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), quoting *Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981) (The great weight standard “extends only to those issues and concerns that are ‘legally relevant’”).

1. Timeliness

No issue has been raised by AppleTree or DCRA as to the timeliness of ANC 6A's request to intervene. The request was made two weeks after the initial status conference in this case and about eight weeks after AppleTree filed its petition to review the revocation of Permit No. 89587. At the time ANC 6A filed its Intervention Request, discovery had just commenced and no dispositive motions had been filed. Although discovery is now underway, the proposed intervenor's participation should not cause significant delay or disruption. In its Intervention Request, ANC 6A expressed interest in seeking certain information from DCRA in discovery, but the ANC's areas of interest closely match AppleTree's comprehensive discovery requests.

Based on the considerations described above and in Sections II.A.2-4 below, I conclude that ANC 6A's request for intervention was timely. *See Emmco Ins. Co. v. White Motor Corp.*, 429 A.2d 1385, 1387 (D.C. 1981) (in evaluating the issue of timeliness, a court should consider (1) the length of time between the proposed intervenor's learning, or having reason to learn, of its interest in the main action and the filing of the request for intervention; (2) the reason for any delay; (3) the stage of litigation at the time intervention is requested; (4) potential prejudice to the original parties if intervention is granted; and (5) potential prejudice to the proposed intervenor if intervention is denied); *United States v. AT&T*, 642 F.2d 1285, 1295 (D.C. Cir. 1980).

2. ANC 6A's Interest in the Subject "Property or Transaction"

The only issue before this administrative court is the validity of the revocation of DCRA Permit No. 89587. Assuming the underlying issuance of the permit is not successfully challenged by ANC 6A or another aggrieved party, the overturning of the permit revocation will

allow construction at 138 12th Street, NE, to proceed. Affirmance of the revocation, however, will mean that construction may not proceed unless and until another permit is issued. ANC 6A argues that it has an interest in these proceedings because it has opposed issuance of the permit, and continues to do so, for reasons that include the health and safety concerns of residents and school children within ANC 6A's geographic boundaries.

The District of Columbia Court of Appeals has "adopted a broad reading of the word 'interest'" in Super. Ct. Civ. R. 24(a), holding that the interest test is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *McPherson*, 833 A.2d at 994 (internal citations omitted). The court has instructed, "While that interest must be 'significantly protectable' to require intervention, we have eschewed any attempt to define precisely the nature of the interest contemplated by the rule. Rather, we employ the interest test as a 'practical guide' to the handling of law suits." *Vale Properties, Ltd.*, 431 A.2d at 14 (internal citations omitted).

ANC 6A has a right to appeal decisions granting or refusing building permits within its geographic boundaries. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 429-430 (D.C. 2006) (affirming Board of Zoning Adjustment ("BZA") holding, consistent with D.C. Official Code § 6-641.07(f),⁴ that 11 DCMR 3199.1, "grants 'automatic' party status to any ANC 'in any appeal involving property located with in [its] area'"). Although these proceedings are not, technically or practically speaking, an appeal of a decision granting or refusing a building

⁴ Under D.C. Official Code § 6-641.07(f), "Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter."

permit, or an appeal to the BZA, a final order in this case may result in the allowance or prohibition of construction at 138 12th Street, NE. I therefore conclude that ANC 6A has a practical interest in this case entitled to recognition under Super. Ct. Civ. R. 24(a)(2).

3. Impairment of Interest

Similarly, the test of potential impairment of interest has been described in the analogous context⁵ of Fed. R. Civ. P. 24(a)(2) as a “practical” one. See *San Juan County v. United States*, 503 F.3d 1163, 1200 (10th Cir. 2007) (“The issue is the practical effect of a judgment in favor of [an existing party], not the legally compelled effect”).

In *Fund for Animals, Inc. v. Norton*, 322 F.3d 728 (D.C. Cir. 2003), a wildlife protection group brought suit against the U.S. Department of the Interior (“DOI”) to challenge its decision to list a particular species of Mongolian sheep as “threatened,” rather than “endangered,” under the Endangered Species Act (“ESA”) and therefore entitled to only limited protection against hunting and other harms. Several groups with economic interests in wild sheep hunting and related commerce sought to intervene as defendants, including “NRD,” an agency of the Mongolian government involved in the export of Mongolian sheep to the United States. The Court of Appeals for the District of Columbia found that NRD had met the “impairment of interest” test for intervention as of right, even though the foreign agency would have had other options to protect its interest in the relatively unrestricted export of the Mongolian sheep affected by the DOI decision:

[T]he NRD is “so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect [its]

⁵ Because the federal and local rules on intervention are “substantially identical,” federal court decisions are persuasive authority for interpreting the local rule. *Jones v. Fondufe*, 908 A.2d 1161, 1164 (D.C. 2006).

interest.” Fed. R. Civ. P. 24(a)(2). . . . [We read Fed. R. Civ. P. 24(a)(2)] “as looking to the ‘practical consequences’ of denying intervention, even where the possibility of future challenge to the regulation remains available.” *Natural Res. Def. Council*, 561 F.2d at 909 (quoting *Nuesse*, 385 F.2d at 702). Regardless of whether the NRD could reverse an unfavorable ruling by bringing a separate lawsuit, there is no question that the task of reestablishing the status quo if the [plaintiff] succeeds in this case will be difficult and burdensome. *See id.* at 910 (“It is not enough to deny intervention under 24(a)(2) because applicants may vindicate their interests in some later, albeit more burdensome, litigation.”). Moreover, as the NRD further argues, its loss of revenues during any interim period would be substantial and likely irreparable. *Cf. Mova Pharm.*, 140 F.3d at 1076 (holding that danger of loss of market share due to denial of a preliminary injunction satisfied the third Rule 24(a)(2) factor).

Id. at 735 (alterations in the original). Under that “practical” standard, I conclude that ANC 6A’s interest in preventing the proposed construction at 138 12th Street, NE, might be impaired by the outcome of these proceedings. I recognize, of course, that a final order in this case will have no effect on any legal right ANC 6A might have (or might have had) to *appeal* DCRA’s underlying decision to issue Permit No. 89587. *See* 11 DCMR 3199.1(a)(4) and 3200.2; D.C. Official Code § 6-641.07(f). As a practical matter, however, ANC 6A’s interest is at risk in these proceedings.

4. Adequacy of Existing Representation

ANC 6A contends that although its interest in this case is “aligned with DCRA’s” and “consistent with DCRA’s” (Intervention Request at 3), DCRA will not vigorously litigate the matter or adequately represent ANC 6A’s interest because of the potential for intra-agency conflicts of interest and embarrassment. Intervention Request at 10. AppleTree asserts that DCRA’s representation would be adequate, or should be presumed likely to be adequate, citing a recent decision by this administrative court in which neighboring property owners were not allowed to intervene in an action brought against DCRA by a private party whose building

permit had been revoked. *DCRA v. Vu*, OAH No. CR-C-06-100009, Memorandum Order on Motion to Intervene, 2006 D.C. Off. Adj. Hear. LEXIS 69 (August 1, 2006). In the *Vu* case, this administrative court found that applicants for intervention had not shown their interests would be inadequately represented by DCRA.

As a general matter, the burden of showing potentially inadequate representation is “not onerous.” *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); see *Trbovich v. UMW*, 404 U.S. 528, 538 (U.S. 1972) (“The requirement . . . is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal”) (internal citation omitted). The adequacy of a government entity’s representation of the interests of a potential intervenor depends on the similarity of the public and private interests, the likelihood that similar legal arguments would be made by the government entity and the proposed intervenor, and the potential for conflicts of interest that could interfere with the government’s ability to advance those arguments. *Dimond*, 792 F.2d at 192-3. A presumption of adequate representation may arise “when the representation being evaluated is that of a government agency” and “the representative is a governmental body or officer charged by law with representing the interests of the absentee.” *NRDC v. U.S. EPA*, 99 F.R.D. 607, 610 (D.D.C. 1983), quoting *Commonwealth of Pa. v. Rizzo*, 530 F.2d 501, 505 (3d Cir.), cert. denied, 426 U.S. 921 (1976). Although “intervention in suits in which the government is a party should not be lightly granted,” *Calvin-Humphrey*, 340 A.2d at 800, courts “have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736.

In *Natural Resources Defense Council v. Costle*, the U.S. Court of Appeals for the District of Columbia Circuit granted intervention under Fed. R. Civ. P. 24(a)(2) despite an

apparent “coincidence of interest” between an existing government party and a proposed intervenor. 561 F.2d 904, 912 (D.C. Cir. 1977). Certain rubber manufacturers had sought intervention in an action brought by environmental groups against the U.S. Environmental Protection Agency relating to regulation of various pollutants, and the court held, “Even when the interests of EPA and [proposed intervenors] can be expected to coincide . . . such as on the exclusion of a specific pollutant from regulation, that does not necessarily mean that adequacy of representation is ensured for purposes of Rule 24(a)(2).” Similarly, in a Second Circuit case cited in *Natural Resources Defense Council*, pharmacists and an association of pharmacists sought to intervene in a lawsuit brought by consumers against a state agency that had issued regulations prohibiting the advertising of prescription drug prices. The consumers and the proposed intervenors opposed the regulation, which the court found fostered “consumer ignorance” and interfered with comparison shopping. *New York Public Interest Research Group, Inc. v. Regents of University of N.Y.*, 516 F.2d 350, 351-352 (2d Cir. 1975). In granting intervention, which was supported by the government agency, the court noted the “likelihood that the pharmacists will make a more vigorous presentation of the economic side of the argument than would the [government agency].” *Id.*

In this case, the proposed intervenor acknowledges that it shares DCRA’s “ultimate objective” – a determination that revocation of Permit No. 89587 is proper because the permit was issued “in error.” Beyond that ultimate objective, however, the interests of DCRA and ANC 6A may quickly diverge, and there are strategies and arguments supporting the ultimate objective that ANC 6A might develop more aggressively than DCRA, such as those that suggest intentional wrongdoing or recklessness by DCRA. In addition, in the absence of a clear definition of the term “in error,” as it is used in 12A DCMR 105.6(6), DCRA and ANC 6A

might be expected to take significantly different positions as to the grounds under which revocation of a building permit is proper.

On the issue of adequacy of representation, this case is distinguishable from *Vu* in at least two respects. First, DCRA opposed the motion for intervention in *Vu* (2006 D.C. Off. Adj. Hear. LEXIS 69 at *1) but has taken no position on intervention in this case. Although I hesitate to draw too much from DCRA's decision not to file an opposition paper or articulate any position on the matter, DCRA's silence remains noteworthy. *See New York Public Interest Research Group, Inc.*, 516 F.2d at 352 (intervention granted where there was an acknowledgment by agency that proposed intervenors "should have an opportunity to make their own arguments").

Second, although the proposed intervenors in *Vu* and in this case both raise a concern about the possibility of "malfeasance" by DCRA in the issuance of a building permit, ANC 6A also implies there may have been collusion between DCRA and AppleTree in the permit's issuance. Intervention Request at 5. ANC 6A's allegations are not especially compelling, but they are also not patently frivolous. Evidence elicited in testing those allegations could be relevant to the reasons for the permit's revocation. If such an intimation of collusion was made in *Vu*, it is not apparent from the Memorandum Order On Motion To Intervene.

ANC 6A also fears that DCRA will be an inadequate representative of its interest because of the potential for intra-agency conflicts of interest and embarrassment in the prosecution of this case. This concern may be especially acute because the issue here is the nature of an error made by DCRA in execution of its statutory duties. In order to prevail, DCRA need only show the existence of an error that was sufficient to give it authority to revoke the permit under 12A DCMR 105.6(6). ANC 6A, in contrast, might have a legitimate interest in developing a more

comprehensive picture of any “error” made by DCRA in issuance of the permit. This distinction amounts to more than minor disagreement about the “litigation strategy or objectives” with the party who would otherwise represent ANC 6A’s interest. *Compare Chiglo v. City of Preston*, 104 F.3d 185 (8th Cir. 1997) (“the proposed intervenor cannot rebut the presumption of representation by merely disagreeing with the litigation strategy or objectives of the party representing him”), with *Jones v. Fondufe*, 908 A.2d at 1164 (“unwilling[ness] to raise claims or arguments that would benefit the putative intervenor may qualify as an inadequate representative in some cases”) (quoting *Jones v. Prince George’s County*, 348 F.3d 1014, 1019-1020 (D.C. Cir. 2003)).

I conclude that ANC 6A’s interest would not be adequately represented by DCRA⁶ and, consequently, that ANC 6A has established it meets all four elements of the test for intervention as of right. *Jones v. Fondufe*, 908 A.2d at 1161.

B. Permissive Intervention – Rule 24(b)

Intervention can also be based on a conditional right to intervene under applicable law or on common questions of law or fact in a proposed intervenor’s claim or defense and the main action. In any case, permissive intervention requires a showing that intervention will not unduly “delay or prejudice the adjudication of the rights of the original parties.” Super. Ct. Civ. R. 24(b).

⁶ ANC 6A would also not be adequately represented by AppleTree, although AppleTree and ANC 6A have certain overlapping interests in establishing the circumstances of DCRA’s issuance of Permit No. 89587. Such overlapping interests will limit the potential for burden and delay arising from the granting of intervention.

For the reasons set forth in Section II.A above, I find that ANC 6A has demonstrated that there are common questions of law or fact in the proposed claim and in the existing case between DCRA and AppleTree.

I also find that intervention by ANC 6A will not unduly delay this case or prejudice the parties. I recognize that intervention by the ANC raises some potential for delay and confusion. Most of the arguments and allegations made by ANC 6A in its Intervention Request are, at least on first inspection, irrelevant and distracting and should have been raised either in the original permitting proceedings or in an appeal of the issuance of Permit No. 89587. My job is not to second-guess any substantive decision made by DCRA to issue the permit in question, and I have no authority to do so. In short, I cannot affirm revocation of the permit simply because I find that the permit should not, *as a matter of law*, have been issued in the first place. The fact that the term “in error” is not defined in applicable statutes, regulations or case law leaves some room for interpretation of the limits of my authority. I have no reason to believe, however, that the drafters of 12A DCMR 105.6(6) intended the permit revocation process to be available as a backup appeal mechanism for intervenors who have no right to request or contest revocation on their own. Unless ANC 6A demonstrates otherwise, I will consider most of the facts it alleges and arguments it makes in its Intervention Request irrelevant to this case.

As the presiding administrative law judge in this matter, I have the authority to “limit the terms and conditions of intervention.” OAH Rule 2816.3. I will exercise that authority as necessary to prevent undue “delay or prejudice” to AppleTree and DCRA in this case. Super. Ct. Civ. R. 24(b).

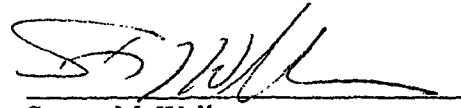
III. CONCLUSION

ANC 6A is entitled to intervene in this case as a matter of right and also meets the test for permissive intervention. Super. Ct. Civ. R. 24. ANC 6A may participate in these proceedings to show that Permit No. 89587 was issued "in error" (*see* 12A DCMR 105.6(6)) and was, therefore, properly revoked.

IV. ORDER

Based on the foregoing and the entire record in this case, it is, this 21st day of March, 2008:

ORDERED, that the Request Of Advisory Neighborhood Commission 6A To Intervene is **GRANTED**; ANC 6A may intervene to show that Permit No. 89587 was issued "in error."



Steven M. Wellner
Administrative Law Judge

Certificate of Service:

By U.S. Mail (Postage Paid) and by FAX:

Jason J. Mendro, Esq.
Mark A. Perry, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5306
FAX: (202) 530-9626

Dennis Taylor, Esq.
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002
FAX: (202) 442-9447

By Inter-Agency Mail:

Lennox Douglas
Acting Administrator
Building and Land Regulation
Administration
941 North Capitol Street, NE, Room 2000
Washington, DC 20002

Jill Stern, Esq., General Counsel
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002

By U.S. Mail (Postage Paid):

Mr. David Holmes
919 Massachusetts Avenue, NE
Washington, DC 20002

I hereby certify that on 3-21,
2008, this document was caused to be served
upon the above-named parties at the
addresses listed and by the means stated.



Clerk / Deputy Clerk

D TAB 42



ECS Mid-Atlantic, LLC

14026 Thunderbolt Place, Suite 100

Chantilly, VA 20151-3232

Tel: (703) 471-8400

Fax: (703) 834-5527

LETTER OF TRANSMITTAL

March 24, 2008

Appletree Institue
415 Michigan Avenue, NE
3rd Floor
Washington, DC 21107

ATTN: Mr. Russ Williams

RE: **Appletree Charter School - GPR Testing**

ECS Job # **01:11747-A**

Permits:

Location: **12th Street, NE, No. 138
Washington, DC**

We are enclosing:

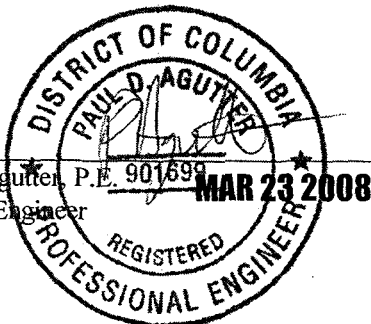
- ☒ Materials Engineering Division Reports
- ☒ For your use
- ☒ As requested

ENCL:

Field Report # 2

03/22/2008

Paul D. Agutter, P.E. 901699
Principal Engineer



Teresa E. Dallinger

Teresa E. Dallinger, E.I.T.
Project Manager

**ECS Mid-Atlantic, LLC**

14026 Thunderbolt Place, Suite 100
Chantilly, VA 20151-3232
Tel: (703) 471-8400
Fax: (703) 834-5527

FIELD REPORT

Project **Appletree Charter School - GPR Testing**
Location **Washington, DC**
Client **Appletree Institute - Russ Williams**

Project No. **01:11747-A**
Report No. **2**
Day & Date **Saturday 03/22/2008**
Weather **50°/ Sunny**
On-Site Time **2.00**
Lab Time **0.25**

Remarks

Trip Charges* Tolls/Parking*
Chargeable Items

Re Obs. Time **0.00**

Time of Arrival Departure
08:15A 10:15A

* Travel time and mileage will be billed in accordance with the contract.

Summary of Services Performed (field test data, locations, elevations & depths are estimates) & Individuals Contacted.

The undersigned arrived on site, as requested, to perform a Ground Penetrating Radar (GPR) investigation on the asphalt parking lot located behind the property at 138 12th Street NE currently a vacant 2 story row house.

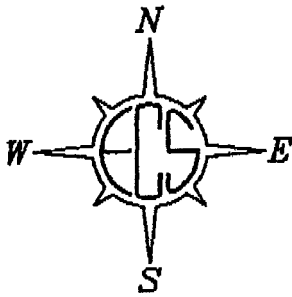
The purpose of this investigation was to try and determine the presence and location of possible buried fuel tanks and utilities on the premises.

Utilizing the GSSI SIR-3000 GPR system with a 400 MHz antenna, an area approximately 77' X 35' was scanned; After scanning was complete it was determined that there did not appear to be any buried fuel tanks located within the scanned area.

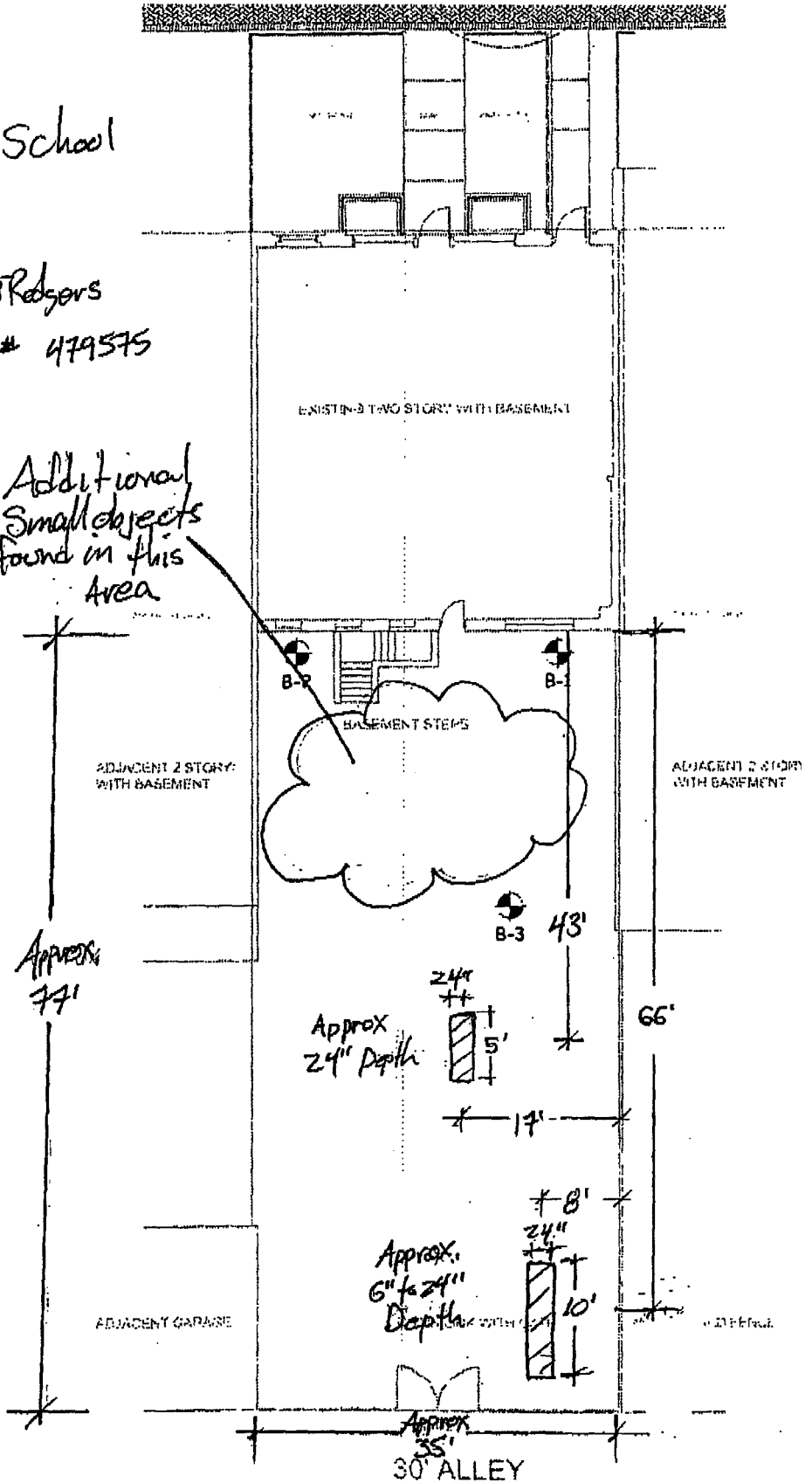
Multiple subsurface anomalies were located below the surface of the asphalt, though due to the small size it was determined that these anomalies appeared to be trash or debris from previous excavations, two un-determined objects were located and marked. The placement of subsurface anomalies was marked on the surface of the asphalt in orange paint where the items appeared to be located. The approximate size and depth of cover was recorded on the attached sketch.

GPR data show a cross sectional image of subsurface conditions derived from energy of high frequency electromagnetic waves. Reflections of these waves occur where a variation in material properties occurs.

11747-A
Appletree Charter School
GPR location
SAT 3/22/08 JRodgers
WO# 479575



Additional
Small objects
found in this
Area



D TAB 43

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the date last signed below, and effective April 8, 2008, by and between AppleTree Institute For Education Innovation, Inc., a Massachusetts non-profit corporation based in the District of Columbia and AppleTree Early Learning Public Charter School, Inc., a District of Columbia non-profit corporation (collectively “AppleTree”) and the District Of Columbia Department Of Consumer And Regulatory Affairs, an executive agency within the District of Columbia government (“DCRA”) (together the “Parties”).

WHEREAS, on October 26, 2007, DCRA issued Permit No. 89587 (the “Permit”) to AppleTree, authorizing AppleTree to begin construction on its property located at 138 12th Street NE, Washington, DC (the “Property”);

WHEREAS, on November 15, 2007, DCRA issued the Notice of Revocation of Building Permit No. 89587 (the “Revocation Notice”), stating that the Permit is being revoked;

WHEREAS, on November 30, 2007, AppleTree filed a timely appeal of the Revocation Notice with the District of Columbia Office of Administrative Hearings (Case No. CR-C-07-100087) (the “OAH Appeal”);

WHEREAS, AppleTree and DCRA desire to resolve the outstanding disputes;

NOW THEREFORE, in consideration of the mutual promises, releases, agreements, and covenants contained herein, and other valuable consideration, the sufficiency of which is hereby acknowledged by AppleTree and DCRA, the Parties agree as follows:

1. DCRA expressly acknowledges that the Permit is valid.
2. Within five business days from the date of execution of this Agreement by both parties, DCRA will withdraw the Revocation Notice by a written letter of revocation withdrawal

(the "Revocation Withdrawal"). Promptly thereafter, AppleTree and DCRA will file a joint motion to dismiss with prejudice the OAH Appeal, in a form substantially similar to that of the motion attached in the Appendix to this Settlement Agreement.

3. Upon completion of construction on the Property and submission of the requisite application form, and provided that (a) the construction conforms with the Permit and is in compliance with the District of Columbia Construction Codes as determined by periodic inspections as required by the Construction Codes and (b) there is no change in occupancy load or use that would require filing and approval of a new building permit application, DCRA will make all reasonable efforts to timely issue a Certificate of Occupancy to AppleTree.

4. Effective on the date that DCRA issues the Revocation Withdrawal, AppleTree, and its subsidiaries, affiliates, agents, officers, directors, employees, successors and assignees expressly waives and releases any and all claims for monetary relief, including attorneys' fees (if any), whether or not known, which now exist or may have heretofore existed, against the District of Columbia (and its agencies, officials, and employees) relating to the Permit or the Property; subject to the limitations set forth in Paragraph 5 below.

5. If AppleTree alleges that DCRA has failed to comply with material terms of this Settlement Agreement, AppleTree will provide DCRA with formal written notice of the alleged breach and provide DCRA with a reasonable opportunity of not less than fifteen (15) business days to cure the alleged breach (the "Cure Period"). If at the end of the Cure Period, AppleTree alleges that DCRA has not cured the breach, despite notice and a reasonable opportunity to do so, then AppleTree agrees that it will mediate with DCRA in good faith before filing any claims against the District of Columbia (and its agencies and officials) relating to the Permit or Property. If such mediation is not successful, AppleTree may assert claims against the District

of Columbia (and its agencies and officials) relating to the Permit or the Property, notwithstanding any other provision in this Settlement Agreement, including without limitation Paragraph 4 above.

6. Any notices under this Agreement shall be served on the following:

FOR DCRA:

Director
Department of Consumer and Regulatory Affairs
941 North Capitol St., NE, Suite 9500
Washington, DC 20002

With a copy to:

General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol St., NE, Suite 9400
Washington, DC 20002

FOR APPLETREE:

Mark A. Perry
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

With a copy to:

Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, SE
Washington, D.C. 20003

7. AppleTree acknowledges that DCRA must comply with any ruling by the Board of Zoning Adjustment and/or the District of Columbia Court of Appeals adverse to AppleTree. Any actions taken by DCRA in compliance with such rulings will not be construed as a failure of DCRA to comply with the terms of this Settlement Agreement. Furthermore, no actions taken

by DCRA in compliance with such rulings shall be considered a breach of this Agreement pursuant to the terms of Paragraph 5 above.

8. AppleTree and DCRA agree that each will bear its own costs and legal fees associated with BZA Case No. 17532, OAH Case No. CR-C-07-100087, and the negotiation or enforcement of this Settlement Agreement.

9. This Settlement Agreement reflects the entire agreement and understanding between AppleTree and DCRA with respect to the settlement contemplated herein. Furthermore, this Settlement Agreement supersedes all prior or contemporaneous agreements, arrangements, understandings, communications, representations or warranties, both oral and written, related to the Revocation Proceeding.

10. The construction, interpretation, operation, effect and validity of this Settlement Agreement shall be governed by the laws of the District of Columbia, without regard to conflicts of laws principles.

11. AppleTree and DCRA acknowledge, represent and warrant that each has been fully advised by its attorneys concerning the execution of this Settlement Agreement, that each has fully read and understands the terms of this Settlement Agreement, and that each has freely and voluntarily executed this Settlement Agreement.

12. The Parties have entered into this Agreement solely for the purpose of avoiding the burdens and expense of further litigation, and the making of this Agreement is not intended, and shall not be construed, as an admission that the Parties or any of its officers, agents, servants, members, or employees, have violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract, or committed any wrong, whatsoever, against any of the other Parties. The Parties further understand and agree that, upon

execution of this Agreement, no Party will be considered a “prevailing party” for any reason, including but not limited to, an award of attorneys’ fees or costs under any statute or otherwise.

13. This Settlement Agreement may be executed in one or more counterparts and may be executed by signature transmitted by facsimile or electronic mail. All executed counterparts and each of them shall be deemed to be one and the same instrument.

14. The undersigned warrant that they are fully authorized, as indicated below, to enter into this Settlement Agreement on behalf of AppleTree and DCRA, respectively.

IN WITNESS THEREOF, AppleTree and DCRA have fully executed this Settlement Agreement as of the date of the last signature below.

**AppleTree Institute For Education
Innovation, Inc. and AppleTree Early
Learning Public Charter School, Inc.:**

**District of Columbia Department of
Consumer and Regulatory Affairs:**

Signature

Signature

Printed Name

Printed Name

Principal’s Title

Principal’s Title

Date

Date

execution of this Agreement, no Party will be considered a "prevailing party" for any reason, including but not limited to, an award of attorneys' fees or costs under any statute or otherwise.

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14. The undersigned warrant that they are fully authorized, as indicated below, to enter into this Settlement Agreement on behalf of AppleTree and DCRA, respectively.

IN WITNESS THEREOF, AppleTree and DCRA have fully executed this Settlement Agreement as of the date of the last signature below.

AppleTree Institute For Education
Innovation, Inc. and AppleTree Early
Learning Public Charter School, Inc.:

Russ Williams
Signature

Russ Williams
Printed Name

Executive Director
Principal's Title

4/22/08
Date

District of Columbia Department of
Consumer and Regulatory Affairs:

Signature

Printed Name

Principal's Title

Date

execution of this Agreement, no Party will be considered a "prevailing party" for any reason, including but not limited to, an award of attorneys' fees or costs under any statute or otherwise.

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IN WITNESS THEREOF, AppleTree and DCRA have fully executed this Settlement Agreement as of the date of the last signature below.

**AppleTree Institute For Education
Innovation, Inc. and AppleTree Early
Learning Public Charter School, Inc.:**

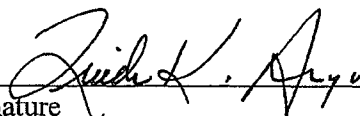
Signature

Printed Name

Principal's Title

Date

**District of Columbia Department of
Consumer and Regulatory Affairs:**


Signature

Linda K. Argo
Printed Name

Director
Principal's Title

April 22, 2008
Date

Mark A Perry / *BY PERMISSION*
JJM

MARK A. PERRY
MPerry@gibsondunn.com
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GIBSON, DUNN & CRUTCHER LLP
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Tel: (202) 955-8500
Fax: (202) 530-9626

*Counsel for AppleTree Institute For Education
Innovation*

JILL STERN
General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

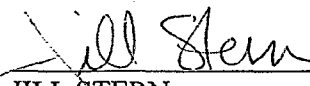
LORI S. PARRIS
Deputy General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

DENNIS M. TAYLOR
D.C. Bar No. 479856
Assistant Attorney General
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(202) 442-8199
(202) 442-9447 (fax)
E-mail: dennis.taylor@dc.gov

*Counsel for District Department of Consumer
and Regulatory Affairs*

MARK A. PERRY
MPerry@gibsondunn.com
JASON J. MENDRO
JMendro@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel: (202) 955-8500
Fax: (202) 530-9626

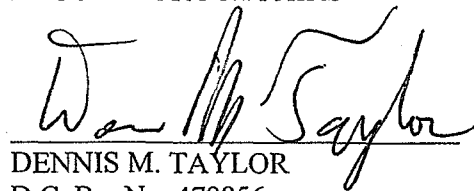
*Counsel for AppleTree Institute For Education
Innovation*



JILL STERN
General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS



LORI S. PARRIS
Deputy General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS



DENNIS M. TAYLOR
D.C. Bar No. 479856
Assistant Attorney General
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Suite 9400
941 N. Capitol Street, NE
Washington, DC 20002
(202) 442-8199
(202) 442-9447 (fax)
E-mail: dennis.taylor@dc.gov

*Counsel for District Department of Consumer
and Regulatory Affairs*

APPENDIX

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

APPLETREE INSTITUTE FOR EDUCATION
INNOVATION,

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,

Respondent

&

ADVISORY NEIGHBORHOOD
COMMISSION 6A

Intervenor.

Case No. CR-C-07-100087

APPLETREE AND DCRA'S JOINT MOTION TO DISMISS

Having resolved their underlying controversy, and the notice of revocation having been withdrawn, *see* Exhibit A, Petitioner AppleTree Institute For Education Innovation and Respondent District Of Columbia Department Of Consumer And Regulatory Affairs respectfully move jointly for dismissal of this proceeding with prejudice.

Dennis Taylor, counsel for DCRA, contacted Mr. David Holmes, representative for Intervenor Advisory Neighborhood Commission 6A, by phone to seek Intervenor's consent to this Motion. Mr. Holmes stated ____.

WHEREFORE, AppleTree and DCRA jointly and respectfully move that the Court enter an order dismissing this proceeding with prejudice.

DRAFT

Respectfully submitted,

DATED: _____, 2008.

GIBSON, DUNN & CRUTCHER LLP

By: _____

Mark A. Perry (DC Bar #438203)

MPerry@gibsondunn.com

Jason J. Mendro (DC Bar #482040)

JMendro@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 2003610

Tel: (202) 955-8500

Fax: (202) 530-9626

*Counsel for AppleTree Institute For Education
Innovation*

DATED: _____, 2008.

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

By: _____

Dennis M. Taylor (DC Bar # 479856)

Assistant Attorney General

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Suite 9400

941 N. Capitol Street, NE

Washington, DC 20002

(202) 442-8199

(202) 442-9447 (fax)

Dennis.taylor@dc.gov

*Counsel for District Department of Consumer and
Regulatory Affairs*

DRAFT

EXHIBIT A

DRAFT

[INSERT LETTER WITHDRAWING REVOCATION NOTICE]

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

APPLETREE INSTITUTE FOR EDUCATION
INNOVATION,

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,

Respondent

&

ADVISORY NEIGHBORHOOD
COMMISSION 6A

Intervenor.

Case No. CR-C-07-100087

CERTIFICATE OF SERVICE

I certify that on _____, 2008, a correct copy of the foregoing **APPLETREE AND DCRA's JOINT MOTION TO DISMISS**, was served on the persons listed below by U.S. mail (and, where noted, also by electronic mail):

Jill Stern, Esq.
General Counsel
Department of Consumer and Regulatory
Affairs
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002

Dennis M. Taylor, Esq.
Assistant Attorney General
941 North Capitol Street, NE
Suite 9401
Washington, D.C. 20001
(Via e-mail and U.S. Mail)

Mr. Lennox Douglas
Acting Administrator
Building and Land Regulation
Administration
941 North Capitol Street, NE
Room 2000
Washington, D.C. 20002

Mr. David Holmes
919 Massachusetts Avenue, NE
Washington, DC 20002
(Via e-mail and U.S. Mail)

Jason J. Mendro

D TAB 44

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director



April 28, 2008

**VIA E-MAIL and
U.S. FIRST CLASS MAIL**

AppleTree Institute for Education Innovation, Inc.
Russ Williams
Managing Director
400 7th Street, SE
Washington, D.C. 20003

Mark A. Perry, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

**WITHDRAWAL OF NOTICE OF REVOCATION OF
BUILDING PERMIT NUMBER 89587**

On November 15, 2007, the Department of Consumer and Regulatory Affairs ("DCRA") issued a Notice of Revocation of Building Permit Number 89587 (the "Notice of Revocation"). Building Permit Number 89587 (the "Permit") had been issued on October 26, 2007 to AppleTree Institute for Education Innovation ("AppleTree") for interior renovation and demolition of an existing two-story building, and construction of a three-story addition with basement at 138 12th Street, NE, Square 0988, Lot 0820 (the "Property"). Immediately upon issuing the Permit, DCRA determined that the issuance was in error because DCRA issued the Permit prior to completion of reviews by all of the disciplines and/or agencies required to approve the application, specifically reviews by the Office of the Zoning Administrator ("OZA") and the District of Columbia Department of the Environment ("DDOE").

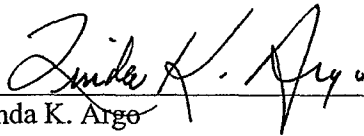
DDOE completed its review of the application on March 28, 2008, following AppleTree's completion of a geophysical survey, carried out utilizing ground penetrating radar. The survey indicated, "that there did not appear to be any buried fuel tanks located

within the scanned area.” In a March 28, 2008 email from James Sweeney of DDOE to Linda Argo, DCRA Director, DDOE indicated that DDOE did not have any environmental objection to allowing construction of the project to move forward.

On April 22, 2008, following the DDOE review, the OZA concluded its final review of the application and issued zoning approval of the building permit application for the Property.

Since the DDOE and OZA approvals have now been obtained, the Department of Consumer and Regulatory Affairs hereby withdraws the November 15, 2007 Notice of Revocation and confirms the validity of the Permit *nunc pro tunc*.

Any questions may be directed to the Permits Administration at (202) 442-4541.



Linda K. Argo
Director