

Arent Fox

April 30, 2010

VIA ELECTRONIC MAIL ONLY

Meredith Moldenhauer, Chair
Board of Zoning Adjustment
441 Fourth Street NW Suite 210 S
Washington DC 20001

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Reference Number
031342.00001

Re: Appeal of Steuart Investments
BZA Case No. 18041
Opposition to Appellee's Motion to Strike

Dear Chairperson Moldenhauer and Members of the Board:

On April 30, 2010, we received a Praccipe requesting that the Board exclude certain information filed by the Appellant in the above-referenced case on April 29, 2010. In response, we file this letter in opposition to what we believe was intended to be a Motion to Strike.

During the course of and at the conclusion of the public hearing on this matter on April 6, 2010, the Board asked for three specific pieces of information from the parties prior to the decision in this case. First, the Board asked for the resume of Ellen McCarthy, the Appellant's expert in planning and zoning. Transcript, BZA Hearing of April 6, 2010 ("Transcript"), p. 183, lines 3-7. Second, the Board requested the resume of Paul Goldstein, Development Review Specialist in the Office of Planning, to support Mr. Goldstein's expert qualification before the Board. *Id.* Third and finally, the Board asked for a copy of the Combined Lot Development Transfer discussed in Ms. McCarthy's testimony. Transcript, p. 43, Line 18; and p. 86, Lines 6-15.

At the conclusion of the hearing, Commissioner May noted that "if there was something else that would help us decide, I'd be open to seeing it." Transcript at p. 183, line 17. In response, the Chair stated "...we'll leave that up to the [appellant] *to determine whether or not they wish to submit some additional information* as to the background. What we'll do then is we'll also leave some time frame in the schedule open for the appellee to respond to that, if that information is submitted on the record." Transcript at p. 183-184, lines 22-24, 1-4 (emphasis added).

The Appellant submits that the Board allowed for additional time to accept argument and whatever additional information the Appellant saw fit to provide into the record in support of its case, with ample opportunity for the Board to respond. The Board noted that this information

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18041

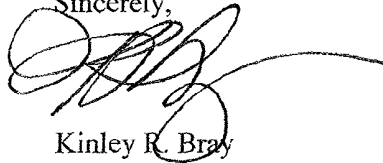
EXHIBIT NO. 27

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should be filed no later than April 20, 2010, so that the Appellee would have time (until April 26, 2010) to respond in writing. The Appellant declined to file any additional argument, and instead submitted only the information that was requested directly by the Board.

We submit that accepting the items filed on April 29, 2010 into the record poses no prejudice to the Appellee and were made in response to direct requests from the Board; therefore they should not be stricken from the record.

Sincerely,



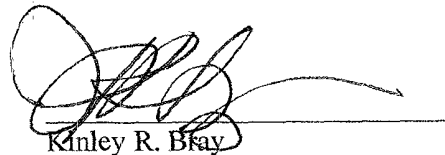
Kinley R. Bray

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via electronic mail on April 30, 2010 to the following individuals:

Jay A. Surabian
Assistant Attorney General, Department of Consumer and Regulatory Affairs
Office of the General Counsel
Jay.surabian@dc.gov

Advisory Neighborhood Commission 6C
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