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IN THE DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

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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,

7

8

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Respondent
-----X

Case No.
CR-C-07-100087

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Washington, D.C.

11

Friday, February 22, 2008

12

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Deposition of:

14

LENNOX DOUGLAS

15

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 10:15 a.m., when
we 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

4

Ajay Sutaria

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17 (*Exhibits attached to transcript.)

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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

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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,

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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?

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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
1 just handed to you is a deposition notice.
2 Have you seen this document before,
3 Mr. Douglas?
4 A. I may have.
5 Q. Do you specifically recall having seen
6 this document before?
7 A. This one specifically, no, I can't, I
8 can't recall specifically seeing this.
9 Q. I'd like to ask you to turn to the third
10 page of this document --
11 A. Okay.
12 Q. -- and there you'll find Schedule A with
13 a list of topics.
14 A. Certainly.
15 Q. Have you seen this Schedule A before?
16 A. Yes.
17 Q. Have you taken reasonable steps to
18 become informed on each of the topics listed in
19 Schedule A?
20 A. No, no, I have not.
21 Q. You said a moment ago that you were the
22 Acting Deputy Director of Permitting?
0010
1 A. That's correct.
2 Q. What, is there a non-Acting Director or
3 are you the only person who is in this position
4 right now?
5 A. I'm the only person in the position.
6 Q. And what does the designation Acting
7 mean?
8 A. The person who was previously in the
9 position left the position and I just, I was asked
10 to act in that position.
11 Q. And when did the previous person leave?
12 A. I think it was April of, somewhere
13 around April, March, April of 2007.
14 Q. Who is the person who left?
15 A. Monica Lamboy.
16 Q. Do you have an understanding as to why
17 Monica left?
18 A. Oh, no.

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

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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 1 A. I don't think I've seen the building
2 permit, no.

3 Q. Have you heard about this building
4 permit before today?

5 A. Yes.

6 Q. What have you heard about this building
7 permit?

8 A. Well I, I initially, this building
9 permit, what I heard about it -- it's not what I
10 heard, I mean it's that I, this building permit was
11 issued, the date that it was issued I was notified
12 about it.

13 Q. And just to be clear, this permit was
14 issued on October 26th, 2007; is that correct?

15 A. That's what the record states.

16 Q. And you said you were notified about
17 this building permit on the day that it issued.
18 Are you usually notified when building
19 permits get issued?

20 A. No.

21 Q. In 2007, how many times has someone come
22 to tell you that a building permit got issued on the

0021 1 day that it got issued?

2 A. I would say in 2007, about a couple
3 times, three or four or five times. I mean I just
4 can't pinpoint.

5 Q. Sure.

6 A. There are varying reasons why a person
7 would bring an application or a notice to me about a
8 permit being issued.

9 Q. But it's not half the time --

10 A. No.

11 Q. It's not even 1 percent of the time,
12 correct?

13 A. That is correct.

14 Q. Who notified you on October 26th, 2007,
15 that AppleTree's building permit in Exhibit 14 had
16 been issued?

17 A. Actually the expeditor that processed

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 h'm 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 expeditor, 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

1 application and routing it for the review of the
2 application.
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

1 was a review and approval on August 24th?
2 A. What it shows, it shows an initial
3 review has been, been reviewed -- has been done and
4 an approval was granted on that initial review.

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
Page 18

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,
Page 22

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.

Douglas 2 22 08 (5).txt

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 folks 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 Q. Do you recall having a meeting with the

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 EY 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

Zoning
GOES
FIRST
↳

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 documents. If the Zoning Administrator do a review,
1 he has to review the entire document, all the
2 documents.
3 Q. What documents doesn't the Zoning
4 Administrator have that he needs to complete his
5 review?
6 A. The complete set of plans.
7 Q. And DCRA does not have a complete set of
8 plans?
9 A. They do have a complete set of plans,
10 they do have a permanent set of plans but the action
11 taken on these plans have to be done on all sets,
12 see, they -- that's it. So they have half and we've
13 got half.
14 Q. I don't think that you're being unclear
15 but I think I'm not understanding, so --
16 A. No.
17 Q. -- if you could bear with me and try to
18 explain that just step by step like you would
19 explain it to a truly lay person.
20 A. Okay. The permit got issued and when
21 that permit is issued, the applicant is given two
0103 sets of the plans with a permit. DCRA have now an
1 application and two sets of the plans.
2 Now all these plans that are submitted
3 needs to be identified with the same thing. If
4 zoning, it has to review these plans, they have to
5 make sure that what they're looking at is on all
6 four sets. Any action taken, it has to be taken on
7 all four sets.
8 Q. Now the four sets of plans all have the
9 same drawings on them; is that correct?
10 A. Supposed to. That's what they make sure
11 to.
12 Q. And the plat is the same?
13 A. And the plat, same thing, yes.
14 Q. Is there any reason why the Zoning
15 Administrator can't look at the copy of the plans
16 that DCRA has to determine whether they comport with
17 the zoning regulations?
18 A. I don't think there's any -- no, I don't
19 think there's any reason why he can't.
20 Q. But to your knowledge the Zoning
21

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?
1 A. Yes.
2 Q. And did you discuss the various
3 categories of documents that are enumerated in
4 Exhibit Number 3?
5 A. No. I just told the person where to go.
6 Q. And do you personally have any documents
7 related to AppleTree in your files?
8 A. Not that I know of.
9 Q. Have you searched your files?
10 A. No, I haven't.
11 Q. Were you asked to search your files?
12 A. I think they, the FOIA employee asked me
13 to, for the records for, to research their records.
14 I don't keep files on applications.
15 Q. Have you ever written an E-mail about
16 AppleTree or its application?
17 A. No, I -- not that I can recall. I may
18 have written requesting the return of the
19 application from DDOE, but that's, you know, that's
20 as much as I can remember.
21 Q. Have you ever received any E-mails about
0116 AppleTree?
1 A. I, I don't recall any, something
2 sticking out about AppleTree coming to me. You
3 know, you get, forgive me, because I receive over
4 60 or 70 E-mails a day and I don't, I don't look at
5 all of them, so I would have to do a research.
6 Q. But you haven't searched your E-mails
7 yet to see if there's anything related to AppleTree?
8 A. No, no.
9 Q. What steps has DCRA as an Agency taken
10 to respond to this FOIA request in Exhibit 3?
11 MR. TAYLOR: I'll tell you, at this
12 point I'm going to lodge the objection that the
13 Office of Administrative Hearings does not have
14 jurisdiction over FOIA requests and, therefore, this
15 deposition does not have a scope of inquiry covering
16 FOIA requests.
17 BY MR. MENDRO:
18 Q. So what are the steps that DCRA took to
19 respond to this FOIA request?
20 A. I don't know.
21 Q. Do you know that DCRA took any steps to
0117 respond to the FOIA request?
1 A. No, I don't know, I'm not familiar.
2 MR. MENDRO: I think I'm ready to take a
3 short break and we'll go off the record.
4 (Discussion off the record)
5 BY MR. MENDRO:
6 Q. Earlier today you mentioned training for
7 the PRCs.
8 A. Uh-huh.
9 Q. Do you personally train the PRCs?
10 A. In this instance, this was something
11 that was done approximately about a year or two ago
12 where I took on the responsibility of conducting an
13 entire training for all of the permit center
14

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?

Douglas 2 22 08 (5).txt

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
0123
1 is going to cooperate and we will make sure that any
2 relevant information gets provided to you.

3 Douglas 2 22 08 (5).txt
4 MR. MENDRO: We are off the record.
5 (Whereupon, at 1:00 p.m., the
6 deposition of LENNOX DOUGLAS
7 was concluded.)
8 * * * * *
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0124

1 CERTIFICATE OF NOTARY PUBLIC
2 I, MONICA A. VOORHEES, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly sworn
6 by me; that the testimony of said witness was taken
7 by me in stenotype and thereafter reduced to
8 typewriting under my direction; that said deposition
9 is a true record of the testimony given by said
10 witness; that I am neither counsel for, related to,
11 nor employed by any of the parties to the action in
12 which this deposition was taken; and further, that I
13 am not a relative or employee of any counsel or
14 attorney employed by the parties hereto, nor
15 financially or otherwise interested in the outcome
16 of this action.

17
18 MONICA A. VOORHEES
19 Notary Public in and
20 For the District of Columbia

21 My Commission expires:
22 May 31, 2010

0125

1 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
2
3

4 I, LENNOX DOUGLAS, do hereby acknowledge
5 I have read and examined the foregoing pages of
6 testimony, and the same is a true, correct and
7 complete transcription of the testimony given by me,
8 and any changes or corrections, if any, appear in
9 the attached errata sheet signed by me.
10
11
12
13
14
15
16
17

18 Date
19
20
21

22
0126

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
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21 _____
22 Signature Date