

0001

IN THE DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

APPLETREE INSTITUTE FOR EDUCATION
INNOVATION,

Petitioner

vs.

DISTRICT OF COLUMBIA DEPARTMENT
OF CONSUMER AND REGULATORY
AFFAIRS,

Respondent

Case No.
CR-C-07-100087

Washington, D.C.

wednesday, February 20, 2008

Deposition of:

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

A P P E A R A N C E S

On behalf of Petitioner:

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

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

21
22
0003

C O N T E N T S	
EXAMINATION BY:	PAGE
MR. MENDRO	4
MR. TAYLOR	133
DEPOSITION EXHIBITS:	
1. Printout from File Jobs System	24
2. Building Permit Application	40
3. FOIA Request	43
4. Copy of Plans associated with AppleTree Building Permit	56
5. 12/11/07 E-mail from Le Grant to Holmes	64
6. Printout of Applicant's Permit Status	67
7. Printout of DCRA PIV Program	73
8. Order 17532	124
(All Exhibits attached to transcript, except Exhibit 4, which is retained by Counsel)	

17
18
19
20
21
22
0004

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

0005

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

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

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

20 A. Yes.

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

0006

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

9 A. Okay.

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

14 Does all of that make sense?

15 A. Yes, thank you.

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

18 A. No.

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

22 A. None so whatever.

0007

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

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

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

11 A. Certainly.

12 I worked for a consulting firm in
13 San Francisco called Sedway Cooke in approximately
14 1936 and from 1987 to 2002, I was employed with the
15 City of Berkeley California. I worked from 2005 to
16 2006 at the City of Alexandria, Virginia, and I
17 began my employment with the District of Columbia in
18 April 2006.

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

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

22 Q. Okay.

0008

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

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

6 A. Correct.

7 Q. And what position did you begin in?

8 A. I began my employment with the District
9 as the Deputy Zoning Administrator, a position I
10 held from April 2006 through June of 2007.
11 Q. And then in June 2007, your position
12 changed?
13 A. I was appointed the interim Zoning
14 Administrator, a position I held until October 2007,
15 at which point I was appointed the Zoning
16 Administrator.
17 Q. And what, what does the interim Zoning
18 Administrator mean?
19 A. I was appointed to be the interim or
20 Acting Zoning Administrator pending completion of an
21 employment search that the Director undertook before
22 the position was filled permanently.

0009

1 Q. So there was, if I understand correctly,
2 there was an opening in the position of Zoning
3 Administrator?
4 A. Yes.
5 Q. And during, before that position was
6 filled you were Acting or interim Zoning
7 Administrator?
8 A. Yes.
9 Q. Do you know how that opening in the
10 position of Zoning Administrator came about?
11 A. Yes.
12 Q. Could you explain that for us?
13 A. The then Zoning Administrator, Mr. Bill
14 Crews, was placed on administrative leave in the end
15 of June 2007 and he ultimately resigned.
16 Q. And what is your understanding of why
17 Mr. Crews was placed on administrative leave?
18 A. I do not --
19 MR. TAYLOR: Objection. May call for
20 speculation.
21 You may answer, if you know.
22 THE WITNESS: I was going to say I do

0010

1 not know.
2 BY MR. MENDRO:
3 Q. What is your understanding?
4 A. Simply that the position serves at the
5 pleasure of the Director and the Director decided
6 that Mr. Crews no longer was able to discharge the
7 position in her, in the way that she felt it needed
8 to be carried out.
9 Q. And when you say the Director, you're
10 referring to the Director of DCRA, correct?
11 A. That's correct.
12 Q. Is that Linda Kay Argo?
13 A. Yes.
14 Q. Was it Mrs. Argo at the time that
15 Mr. Crews was placed on administrative leave?
16 A. Yes.
17 Q. And do you have any understanding as to
18 why Ms. Argo felt that he was unable to carry out
19 his duties?
20 A. No.
21 Q. Has anyone discussed that with you?
22 A. No, it was, it's been explained to me as

0011

1 a personnel matter. It was not a matter of, that
Page 4

2 could be discussed.
3 Q. Did anybody, do you have any inkling --
4 A. I did not speculate.
5 Q. Do you have an opinion?
6 MR. TAYLOR: Objection for relevance to
7 the current matter.
8 BY MR. MENDRO:
9 Q. Do you, have you ever formed an opinion
10 about why Mr. Crews was put on hold?
11 A. No.
12 Q. I should say why Mr. Crews was put on
13 leave, to clarify?
14 A. The answer is still no.
15 Q. Okay. And your current title today?
16 A. Zoning Administrator.
17 Q. And that's the title that you acquired
18 in October of 2007?
19 A. That's correct.
20 Q. And please walk me through the
21 responsibilities that you have as Zoning
22 Administrator.
0012
1 A. Certainly. A Zoning Administrator is
2 charged with the administration, enforcement and
3 interpretation of the zoning regulations of the
4 District of Columbia. It is a position in an office
5 of approximately 10 individuals that are supervised
6 by the Zoning Administrator.
7 Q. What's the official name for that
8 office?
9 A. The Office of Zoning Administrator.
10 Q. And does the Office of Zoning, the
11 Zoning Administrator have any responsibility for
12 environmental review?
13 A. No.
14 Q. Okay. And I just want to be clear that
15 when I say environmental review, I'm talking about
16 the environmental discipline for reviewing permits.
17 Was that sufficiently clear when I asked
18 the question?
19 A. Yes.
20 Q. Okay. And the answer is still no?
21 A. Correct.
22 Q. Okay. And you say that the Zoning
0013
1 Administrator and the Office of Zoning
2 Administration is responsible for, for reviewing and
3 applying the zoning regulations, did I get that
4 correct?
5 A. Yes.
6 Q. And does that office also issue
7 approvals for permit applications?
8 A. Let me explain. Applications for
9 building permit applications -- or applications for
10 building permits, I should say, are subject to
11 review by the permitting and licensing division as
12 well as the Office of Zoning Administrator for
13 compliance with respective applicable regulations.
14 My office reviews building permit
15 applications to check compliance with the zoning
16 regulations. So any approval of applications are
17 approvals for compliance with the zoning
18 regulations.

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

0014
1 with the zoning regulations?

2 A. That's correct.

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

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

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

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

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

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

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

22 A. Yes.

0015
1 Q. Are other people responsible for certain
2 approvals?

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

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

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

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

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

0016
1 A. On occasion the Deputy Mayor may ask
2 that an application be looked into.

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

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

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

9 A. Maybe 5 percent.

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

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

7 answer.
8 THE WITNESS: Thank you. Okay. I was
9 beginning to answer the question on the assumption
10 it was the zoning only, but thank you for the
11 clarification.
12 So the backlog factor that I mentioned
13 earlier does still, is involved. What's also
14 involved then is the complexity of the application
15 and then since it's involving multiple disciplines,
16 the -- or the coordination between the disciplines
17 as to getting all the reviews done and so the DCRA
18 has a goal of, for complex applications to have the
19 initial review done in 30 days.
20 BY MR. MENDRO:
21 Q. And to clarify, 30 days is a goal to
22 have all disciplines have reviewed an application?
0020
1 A. Conduct initial review.
2 Q. How about how often is that goal met, in
3 your experience?
4 A. Presently due to staffing levels, that
5 goal is probably met between 30 to 50 percent of the
6 time.
7 Q. And about how long have the staffing
8 levels been similar to what they are today such that
9 that percentage holds?
10 MR. TAYLOR: Calls for speculation.
11 You may answer, if you know.
12 THE WITNESS: Let me ask for a
13 clarification, are you talking about the present
14 staffing levels versus historically or, because
15 staffing levels have changed during my tenure?
16 BY MR. MENDRO:
17 Q. Right, let me rephrase the question this
18 way, you said that you're estimating that about 30
19 to 50 percent of building permit applications are
20 reviewed completely by DCRA in all disciplines
21 within 30 days, correct?
22 A. Correct.
0021
1 Q. And you said that that 30 to 50 percent
2 estimation relates to the current staffing levels;
3 is that also correct?
4 A. Yes.
5 Q. During your tenure here, have the
6 staffing levels been higher such that there's been,
7 such that the goal has been met more than 50 percent
8 of the time?
9 A. I'll answer it this way, in my tenure
10 the staffing levels have increased so that the
11 completion rate of meeting the 30-day goal has
12 improved.
13 I would say at this point in time,
14 again, 30 to 50 percent, but that's an improvement
15 over the past and our hopes are to improve that in
16 the future.
17 Q. And I'd like to ask the question that I
18 might have accidentally asked before, from the time
19 that the, that your office, the Office of the Zoning
20 Administrator, receives an application for your part
21 of the review, how long does it ordinarily take your
22 office to complete its review?
0022

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

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

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

17 A. Correct.

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

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

22 Q. Where is the file room located?

0023

1 A. On the second floor of this building.

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

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

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

8 A. Yes.

9 Q. Are those same plans available
10 electronically?

11 A. No.

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

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

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

19 A. No.

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

22 A. The file jobs tracking system I

0024

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

6 Excuse me a minute.

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

9 (Discussion off the record)

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

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

14 BY MR. MENDRO:

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

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

21 A. Yes.

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

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

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

7 MR. TAYLOR: Objection as toward
8 foundation.

9 BY MR. MENDRO:

10 Q. Can, let me rephrase my question.

11 Can you tell where this printout was
12 generated from?

13 A. No.

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

19 A. That's correct.

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

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

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

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

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

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

11 A. I do.

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

14 A. No.

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

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

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

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

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

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

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

0028

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

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

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

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

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

0029

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

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

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

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

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

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

0030

1 without a BZA Order, right?

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

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

10 I don't know if that is clear.

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

13 A. Okay.

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

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

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

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

2 A. That's correct.

3 Q. Okay.

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

6 (Discussion off the record)

7 BY MR. MENDRO:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 But I don't have a good system to

0033

1 differentiate those from others.

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

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

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

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

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

20 A. Any, any discipline.

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

0034

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

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

11 A. Can you rephrase that?

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

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

18 A. Correct.

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

22 A. Correct.

0035

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

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

17 and may be approved.

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

0036

1 A. Yes, that is the function of the hold
2 for correction status.

3 Q. And who communicates and how do they
4 communicate that an application is held for
5 correction?

6 A. In the file job system the comments that
7 I mentioned earlier list out those aspects that an
8 applicant may address and this is available
9 electronically and a hard copy is printed out and
10 placed with the application so the applicant is,
11 those comments are made available to the applicant
12 to understand the reasons for the hold for
13 correction status.

14 Q. And you said that the, the held for
15 correction status is available electronically?

16 A. Yes.

17 Q. Would the permit applicant be able to
18 access it electronically?

19 A. Yes.

20 Q. And the person who would print that
21 information and put it with the application, would
22 that be a zoning technician, ordinarily?

0037

1 A. Yes.

2 Q. And the held for correction status is a
3 status that an application would get before approval
4 was granted, correct?

5 A. Well, some applications upon review are
6 found to be compliant and may be approved in the
7 first review. Other applications may be held for
8 correction, changes are made or information is
9 supplied and so as to allow the technician to then
10 re-review the information and it may result in an
11 approval.

12 Q. I'm not entirely sure that I got it.
13 The, when the Office of the Zoning
14 Administrator receives an application and either
15 needs more information or determines that the
16 application as it currently is written doesn't
17 comply, the application may be held for correction,
18 right?

19 A. Correct.

20 Q. But that decision would be made before
21 the Office of Zoning Administration granted its
22 approval?

0038

1 A. Yes, if there is ultimate approval, that
2 step, intermediary hold for correction step may
3 occur.

4 Q. The hold for correction step may occur
5 after there's approval?

6 A. No.

7 Q. Only before, that's what I was --

8 A. Only before.

9 Q. Thank you, that's what I didn't

10 understand.

11 A. Okay.
12 Q. So the file job system could tell us if
13 there are other applications that have been pending
14 since February 2006, right?
15 A. Yes.
16 MR. MENDRO: Mr. Taylor, can we request
17 a printout that would identify any applications that
18 have been pending that long.
19 MR. TAYLOR: Yes, so we can discuss
20 that, parameters, off line.
21 MR. MENDRO: Okay, very well.
22 BY MR. MENDRO:
0039
1 Q. And I believe you said you're not aware
2 that any have been pending that long, you do not
3 know of any?
4 A. I do not know.
5 Q. Okay, and do you know of any that have
6 been pending for one year today?
7 A. Not specifically.
8 Q. When did the Office of the Zoning
9 Administrator begin reviewing AppleTree's
10 application? And actually let me just clarify
11 before we talk about AppleTree that we're talking
12 about AppleTree Institute for Education --
13 Innovation, are you familiar with AppleTree?
14 A. Yes.
15 Q. Okay. I'm going to show you a document
16 that we will mark for identification as Exhibit 2.
17 MR. TAYLOR: Excuse me, is there a
18 question pending?
19 MR. MENDRO: There is not.
20 I asked if he was familiar with
21 AppleTree, that was the answer, he said yes.
22 (Deposition Exhibit No. 2
0040
1 was marked for identification)
2 BY MR. MENDRO:
3 Q. I've just handed you a document, it's
4 marked for identification as Exhibit Number 2.
5 Have you had a chance to review it?
6 A. Give me a moment.
7 (Witness examining document).
8 Yes.
9 Q. Please explain what this document is.
10 A. This document appears to be a photocopy
11 of the building permit application for AppleTree for
12 its proposed site at 138 12th Street, Northeast, in
13 the District of Columbia.
14 Q. And my next series of questions
15 throughout this proceeding when I refer to the
16 permit, I'm referring to this permit; does that make
17 sense?
18 A. Sure.
19 Q. And when I refer to AppleTree, I'm
20 referring to the applicant on this permit, does that
21 make sense as well?
22 A. Yes.
0041
1 Q. If you ever need clarification, please
2 just let me know.
3 When did the Office of the Zoning
4 Administrator begin to review this permit

5 application?

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

8 You may answer, if you know the answer.

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

12 BY MR. MENDRO:

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

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

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

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

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

0042

1 A. Yes.

2 Q. And what are in those folders?

3 A. Documents related to this case.

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

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

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

12 A. Yes.

13 Q. Who is that correspondence from?

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

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

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

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

0043

1 A. Not at this time.

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

5 A. Yes.

6 Q. -- to DCRA?

7 Have you seen that FOIA request?

8 A. I have not seen it directly.

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

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

13 BY MR. MENDRO:

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

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

19 A. Let me look over it for a moment.
20 (Witness examining document).

21 I believe that the addressee to the
Page 16

22 letter, Ms. Robinson, has talked to me about this
0044

1 FOIA request.

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

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

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

10 A. Not to my knowledge.

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

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

14 Q. An E-mail folder labeled AppleTree?

15 A. Yes.

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

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

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

0045
1 A. The contents are available to her
2 through the District's information -- Office of
3 Information Services.

4 Q. Okay.

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

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

12 A. No.

13 Q. No.

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

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

20 A. Not that I'm aware of.

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

0046

1 A. Not that I recall.

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

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

7 A. Yes.

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

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

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

14 A. Xoan Mac, zoning technician.

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

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

20 A. Yes.

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

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

3 A. Yes.

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

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

9 BY MR. MENDRO:

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

12 A. I would say in box number 3.

13 Q. Right.

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

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

18 A. That is Xoan Mac's.

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

21 A. Correct.

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

0048 1 August 7, 2007, right?

2 A. Correct.

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

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

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

11 A. I could only speculate.

12 Q. What is your hunch on this one?

13 MR. TAYLOR: Objection.

14 BY MR. MENDRO:

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

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

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

22 A. No.

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

3 A. No.

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

8 A. I do not know.

9 Q. Now, other than this approval, this

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

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

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

19 A. Yes.

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

0050

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

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

7 A. No.

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

10 A. No.

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

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

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

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

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

0051

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

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

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

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

12 A. Yes.

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

16 A. Yes.

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

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

0052

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

4 Q. Are there any other reasons why you
5 would re-review a zoning technician's work?
6 A. Not that I'm aware of at this point.
7 MR. TAYLOR: Okay, are we close to the
8 time to take the initial break?
9 MR. MENDRO: If you would like to take a
10 break, certainly.
11 MR. TAYLOR: All right.
12 THE WITNESS: Sure.
13 MR. MENDRO: Do you want to do it now or
14 do you want to go a few more minutes?
15 THE WITNESS: Let's take a break.
16 MR. MENDRO: Okay.
17 (Discussion off the record)
18 BY MR. MENDRO:
19 Q. When, before we took the break we were
20 discussing approvals, zoning approvals for
21 AppleTree's building permit application and you had
22 said that you re-reviewed the application after

0053
1 zoning technician Xoan Mac had also reviewed and
2 approved AppleTree's application; is that correct?
3 A. Yes.
4 Q. And when did you start the process of
5 re-reviewing AppleTree's application?
6 A. I believe it was around August 21st.
7 Q. And if you could, walk me through the
8 steps of how you conducted your review?
9 A. I looked over the review that Ms. Mac
10 had done. I also looked over the Board of Zoning
11 Adjustment Order. I had received information about
12 pending Zoning Commission Orders and concluded that
13 the application could be approved as in compliance
14 with the regulations in effect at the time.
15 Q. And upon reaching that conclusion, what
16 did you do?
17 A. I entered an approval into the status
18 step in file jobs August 23rd.
19 MR. MENDRO: And, for the record, a
20 printout of that approval is something that we would
21 also like and have not received yet.
22 BY MR. MENDRO:

0054
1 Q. And when you say that you entered an
2 approval into file jobs, what physically does that
3 mean that you have to do?
4 A. In the status step for the zoning
5 discipline one enters a -- adds a step and can
6 choose between, for example, hold for correction,
7 approval or denial and in this case I chose the
8 approval as the status step and then keyed that into
9 the computer program.
10 Q. And keying, does that consist of doing
11 like a drop-down window where you select one of
12 three choices?
13 A. That's correct.
14 Q. And in the course of your re-review
15 beginning around August 21st, did you look at
16 AppleTree's plans?
17 A. Yes.
18 Q. And in the course of that re-review, did
19 you look at plats?
20 A. Yes, I looked at a plat.

Te 55

Print

21 Q. In the course of AppleTree's
 22 applications, are you aware that the, that the plat
 0053
 1 ever changed?
 2 A. No, I'm not.
 3 Q. Do you know that it didn't?
 4 A. I'm not sure if it had in the course of
 5 its review.
 6 Q. Okay. Since the time that you first
 7 looked at AppleTree's application, has there been
 8 any change on the plat?
 9 A. No, not that I'm aware of.
 10 Q. And since the time that you first looked
 11 at AppleTree's application, has there been any
 12 change to the drawings?
 13 A. No.
 14 Q. And for the record, could you explain
 15 what the drawings are?
 16 A. The drawings showed the, the floor plans
 17 and the elevations of the proposed conversion of the
 18 existing building into a public charter school.
 19 Q. And could you explain what the plat is,
 20 for the record?
 21 A. The plat is a depiction of the building
 22 as cited, cited on a lot of land so you can compare
 0056
 1 it with the property lines.
 2 Q. And other than Ms. Mac's review, the BZA
 3 Order, the plans, drawing and plat, is there
 4 anything else that you reviewed for purposes of your
 5 personal review of AppleTree's permit application?
 6 A. You did mention BZA Order, correct?
 7 Q. Correct.
 8 A. No, that was the information I reviewed.
 9 Q. This is, this is going to be a little
 10 awkward, but I want to show you a very large set of
 11 documents as an exhibit.
 12 MR. MENDRO: We're up to Exhibit 4.
 13 (Deposition Exhibit No. 4
 14 was marked for identification)
 15 MR. TAYLOR: Brought enough for
 16 everybody?
 17 MR. MENDRO: Unfortunately not.
 18 BY MR. MENDRO:
 19 Q. I've just handed you a document that's
 20 been marked for identification as Exhibit Number 4.
 21 It's a very large printout consisting of several
 22 pages.
 0057
 1 Could you explain for the record what
 2 this document is?
 3 A. Give me a moment to look through them.
 4 Q. Please take your time.
 5 A. (Witness examining document).
 6 Okay.
 7 Q. Have you had an opportunity to review
 8 Exhibit Number 4?
 9 A. Yes.
 10 Q. Could you explain for the record what
 11 this document or set of documents is?
 12 A. This appears to be a photocopy of the
 13 plans associated with the AppleTree building permit.
 14 Q. And these are, this is a copy of the

15 plans that you reviewed, correct?

16 A. Yes.

17 Q. And is there a stamp on these plans that
18 indicates approval by the Office of the Zoning
19 Administrator?

20 A. There is.

21 Q. Can you explain for the record where
22 that stamp appears?

0058

1 A. There is a stamp on drawing A1. Yes,
2 the zoning stamp appears on drawing A1.

3 Q. And who placed that stamp?

4 A. Ms. Xoan Mac.

5 Q. And after you re-reviewed the plans, you
6 didn't place another stamp on the drawings?

7 A. No, I did not.

8 Q. And earlier I believe you said that
9 another step in the approval process would be a
10 signature on the building -- the permit application;
11 is that correct?

12 A. Yes.

13 Q. Is that the signature that we discussed
14 earlier on Exhibit Number 2?

15 A. Yes.

16 Q. And those are the two written components
17 of the approval from the Office of the Zoning --
18 from the Office of the Zoning Administrator; is that
19 correct?

20 A. Yes.

21 Q. And the, you also said that there's an
22 electronic step in the approval process that occurs

0059

1 in the file jobs system.

2 Did Ms. Mac's, did Ms. Mac enter an
3 electronic approval in file jobs?

4 A. Yes.

5 Q. And when you re-reviewed, did you enter
6 another one?

7 A. Yes.

8 Q. And did you provide any sort of written
9 confirmation of your approval after you re-reviewed
10 the plans?

11 A. I simply entered the approval into the
12 file jobs system.

13 Q. Now before your review in August of
14 2007, had you reviewed AppleTree's application
15 before?

16 A. No.

17 Q. And did you review AppleTree's
18 application after August?

19 A. Yes.

20 Q. Okay. If you don't mind, I think I'll
21 just set these aside just because they're
22 cumbersome.

0060

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

6 What were the reasons for you
7 re-reviewing AppleTree's application for a building
8 permit?

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

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

17 A. As compared to what?

18 MR. TAYLOR: I'm going to object for
19 calling for speculation.

20 BY MR. MENDRO:

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

0061 1 decisions ever after she's granted approval?

2 A. Yes.

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

4 A. No.

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

7 A. Once.

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

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

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

15 A. Her experience is above average.

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

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

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

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

6 Q. About how many others were there?

7 A. Maybe one or two others.

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

10 A. I don't remember.

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

13 A. I believe they were possibly men.

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

16 A. Which individuals?

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

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

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

0063 1 A. No.

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

3 AppleTree's application?

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

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

11 A. I believe it was the same.

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

14 A. In that general time frame, yes.

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

17 A. No.

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

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

22 Q. And the communications from the other

0064

1 individuals, how did they communicate with you?

2 A. I believe it was through phone calls.

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

6 A. It happens I would say weekly.

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

8 A. That's correct.

9 MR. MENDRO: Are we up to 5?

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

12 BY MR. MENDRO:

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

16 A. Let me look over it for a moment.
17 (Witness examining document).

18 Yes.

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

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

0065

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

4 A. Correct.

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

7 A. Correct.

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

10 A. Yes.

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

13 A. Not with me.

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

16 A. I believe so, yes.

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

19 BY MR. MENDRO:

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

22 A. I believe there was more than one,

0066

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

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

5 A. Yes.

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

11 BY MR. MENDRO:

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

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

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

20 A. I believe so.

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

0067

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

3 A. No.

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

6 A. No.

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

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

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

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

16 BY MR. MENDRO:

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

19 A. (Witness examining document).

20 Okay.

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

0068

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

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

6 A. It does.

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

9 A. This chart says zoning approved.

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

12 A. October 26th, 2007.

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

14 say August 9th when Xoan Mac approved?

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

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

0069

1 another individual at DCRA and changed to approved.

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

4 A. Correct, I did not.

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

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

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

19 A. Yes.

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

0070

1 A. That's correct.

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

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

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

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

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

22 A. Correct.

0071

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

4 A. Yes.

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

8 A. That's correct.
9 Q. And zoning approval was also correctly
10 granted on August 23rd or thereabouts when you
11 re-reviewed AppleTree's application and granted
12 approval again?
13 A. Yes.
14 Q. Now you said that the new zoning
15 regulations took effect on September 14th, but that
16 the hold was issued on September 18th?
17 A. Yes.
18 Q. Is there a reason for the lag between
19 the 14th and the 18th?
20 A. That's when I actually received the
21 paper Orders.
22 Q. The paper Orders referring to?
0072
1 A. The Zoning Commission Orders that were
2 issued the 14th is when I received -- and became
3 aware of them is on September 18th.
4 Q. When did Mr. Holmes tell you that such
5 regulations were pending, such changes in
6 regulations were pending?
7 A. I believe it was in August 2007.
8 Q. Do you know which day in August 2007?
9 A. No.
10 Q. But you might be able to tell that by
11 looking at the correspondence in your file?
12 A. I may be able to, yes.
13 Q. Have you ever spoken with Mr. Holmes
14 about AppleTree before August of 2007?
15 A. No.
16 Q. And the other members of the community
17 that contacted you about AppleTree's permit
18 application, did they also contact you in August of
19 2007?
20 A. I, I'm not sure of the date, if it was
21 August 2007 or thereafter.
22 Q. But those members of the community did
0073
1 not contact you about AppleTree before August of
2 2007?
3 A. Not that I recall.
4 MR. MENDRO: If you bear with me one
5 second, I'd like to show you another document. I
6 believe we're up to Exhibit Number 7.
7 (Deposition Exhibit No. 7
8 was marked for identification)
9 BY MR. MENDRO:
10 Q. Mr. Le Grant, I've just handed you a
11 document that has been marked for identification as
12 Exhibit Number 7.
13 Please review the document and let me
14 know when you've had a chance to review it.
15 A. Thank you.
16 (Witness examining document).
17 Yes, I'm ready.
18 Q. Okay. Could you please describe what
19 Exhibit Number 7 is?
20 A. Exhibit Number 7 appears to be a
21 printout of DCRA's Permit Intake Validation Service
22 program which summarizes information about a
0074
1 particular address.

2 Q. Does this printout come from the file
3 jobs system that we've talked about?
4 A. No, it's a separate computer program.
5 Q. Do you use this program in the course of
6 your work?
7 A. I do.
8 Q. And it's just, is it a different
9 software system?
10 A. It's my understanding such as it is of
11 computer programs that it is a separate program that
12 pulls information from a variety of databases and
13 summarizes it in one place.
14 Q. I want to, I want to try to understand
15 this document a little bit better so I'm going to
16 ask you a series of questions about what this
17 information means.
18 And I'd like to start by drawing your
19 attention to about the middle of the page beneath
20 the box that has the word attention in it and
21 specifically there's a line that says administrative
22 holds.
0075
1 A. Yes.
2 Q. And under that line it says hold by --
3 or type of hold and then the next line down says
4 zoning hold by admin?
5 A. Yes.
6 Q. In this area there's a column that says
7 created by and beneath that column are the letters
8 M., then it looks like Le Grant.
9 Does this refer to you?
10 A. Yes.
11 Q. And did you enter this hold into the
12 Permit Intake Validation Service system?
13 A. Yes, I did.
14 Q. And you did that yourself, manually?
15 A. Yes.
16 Q. And the column that says create date,
17 explain if you can what that column shows?
18 A. Create date shows the date of
19 August 10th, 2007, as the date in which I placed the
20 hold into this system for this particular address.
21 Q. And why is it that you placed the hold
22 on August 10th of 2007 on AppleTree's -- on your
0076
1 review of AppleTree's application?
2 A. In response to my then knowledge of the
3 controversy regarding this application, the fact
4 that there were, it was subject to a BZA Order and
5 that there were possibly pending Zoning Commission
6 orders, I placed the hold with the purpose that I
7 would have an opportunity to review the permit
8 application prior to its issuance.
9 Q. And, in fact, you did review the permit
10 application after you put this hold on and prior to
11 the permit's issuance, correct?
12 A. Yes.
13 Q. There's a column that says status and
14 that column says active, what does that mean?
15 A. That means that the hold is in effect,
16 it's active, means it's in effect.
17 Q. And when, when does the hold become
18 inactive or removed?

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

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

0077

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

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

6 A. I did not.

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

8 A. No.

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

11 A. I did.

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

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

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

20 A. Yes.

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

0078

1 A. It does.

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

4 A. Yes, I was acting Zoning Administrator.

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

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

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

12 A. Yes.

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

16 A. Will you rephrase that.

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

22 A. Yes.

0079

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

4 A. Yes.

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

9 A. Yes.

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

12 A. I did not.

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

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

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

0080

1 A. Twice it did.

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

6 A. Yes.

7 Q. So the purpose was met, correct?

8 A. Initially, yes.

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

11 A. I did not.

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

16 A. Until the permit is issued, right.

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

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

0081

1 prevent issuance.

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

7 A. Okay.

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

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

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

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

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

0082

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

5 A. In this case, yes.

6 Q. And what were the reasons for keeping

7 the hold?

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

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

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

0083

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

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

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

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

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

17 Q. And how do they change those things?

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

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

0084

1 still a hold by you?

2 A. Yes.

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

6 A. Correct.

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

10 MR. TAYLOR: Asked and answered.

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

13 BY MR. MENDRO:

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

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

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

20 A. I felt I answered it previously.

21 MR. TAYLOR: My objection stands.

22 BY MR. MENDRO:

0085

1 Q. So, please, proceed.
2 Do you want, should I re-ask the
3 question?
4 A. Please.
5 Q. I think we've established that the
6 regulations in effect on August 23rd, zoning
7 regulations were zoning regulations that AppleTree's
8 application satisfied, correct?
9 A. Yes.
10 Q. And we're not clear, you're not clear
11 yet because you haven't conducted your review
12 whether AppleTree's application would satisfy the
13 regulations that became effective later; is that
14 correct?
15 A. Correct.
16 Q. And by later we're talking about
17 sometime around September 14th, 2007; is that
18 correct?
19 A. That's correct.
20 Q. So the effect of your hold was to
21 prevent AppleTree's permit from issuing before the
22 new regulations became effective; is that correct?

0086

1 A. No.
2 Q. And explain your answer, please.
3 A. Again, the effect of the hold is not to
4 prevent permit issuance. The effect of the hold is
5 to ensure that in this case that no building permit
6 be issued unless I reviewed the application.
7 Although I reviewed the application in October -- I
8 mean in August 2007, the permit had not been issued.
9 I wanted to ensure that at the time of
10 building permit issuance, that the regulations in
11 effect at that point in time were being followed.
12 Q. But you've also said that it would be
13 error for the permit to be granted before you lifted
14 the hold, so --
15 A. Yes.
16 Q. So until you lifted the hold, the
17 permit -- until you lifted the hold, AppleTree is
18 susceptible to changes in the law; is that correct?
19 A. Any application that -- any application
20 subject to the regulations in effect at the time of
21 building permit issuance, so AppleTree's application
22 would be included in that class.

0087

1 Q. And if you left the hold on until next
2 year and the zoning regulations changed between now
3 and next year, your opinion is that AppleTree would
4 be subject to any of the regulations that became
5 effective in that time?
6 MR. TAYLOR: Objection to form.
7 BY MR. MENDRO:
8 Q. Do you understand the question?
9 A. I do, however in the subject case there
10 were pending regulations I was aware of.
11 In the scenario you've floated it would
12 be, to me, speculative if for some unknown
13 regulation to be proposed that's -- or no, no
14 actually proposed regulation.
15 Q. But, nevertheless, your opinion is that
16 if it remained on hold until next year and new
17 regulations were passed between now and then, that

18 AppleTree's permit would be subject to the new
19 regulations; is that correct?
20 A. I'm not sure if I would agree with that
21 statement.
22 Q. But you do agree in this case that
0088
1 AppleTree is subject to the new regulations that
2 were, that became effective on September 14th?
3 A. That, I would agree with that.
4 Q. And why is it that your opinion would
5 differ between the example that I just gave you and
6 AppleTree's example?
7 MR. TAYLOR: I would note, again, asked
8 and answered.
9 THE WITNESS: Yeah, I felt I've answered
10 that question.
11 BY MR. MENDRO:
12 Q. I don't feel that I've understood the
13 answer, is it because you knew that there were
14 regulations pending; is that the difference?
15 A. I was aware of specific regulations that
16 were pending.
17 Q. And is that what the difference is
18 between the hypothetical --
19 A. I would guess, yeah, the scenario you
20 flcated, yeah, that's the difference.
21 Q. So your opinion is that if the Zoning
22 Administrator is aware that new regulations are
0089
1 pending and the Zoning Administrator issues a hold
2 until those regulations become effective, that the
3 new regulations will be applied to the pending
4 permit, correct?
5 MR. TAYLOR: Objection to form.
6 THE WITNESS: Let me answer it in this
7 way, the -- the unfortunate choice of words in the
8 system talk about hold. I interpret that really to
9 be a flag that and the details prescribe a
10 particular course of action; in this case, no
11 building permit issuance unless approved by the
12 Zoning Administrator, so it's not a hold more than
13 it is a flag to ensure that at the time of building
14 permit issuance that the applications are referred
15 to me for my review.
16 BY MR. MENDRO:
17 Q. But you've said that the building permit
18 can't issue until the hold is lifted, so what do you
19 mean by the time of issuance?
20 A. The time of issuance is when all other
21 disciplines' reviews have been completed and
22 reviewed -- and approved by all of the disciplines.
0090
1 Q. And were you -- when did that occur in
2 AppleTree's case?
3 MR. TAYLOR: Calls for speculation.
4 THE WITNESS: Yeah, I do not know when
5 the other disciplines' reviews were completed. I
6 can -- I know about the review for the zoning
7 discipline, but not, I would not keep track of the
8 other disciplines' reviews.
9 BY MR. MENDRO:
10 Q. You check once a week on pending
11 applications, correct?

12 A. Yes.
13 Q. So once a week you would know whether
14 the other disciplines had approved AppleTree's
15 permit?
16 A. No, I look -- the lists I look at are
17 basically a list of application number of
18 outstanding review status, namely, pending
19 applications.
20 I do not go into the other
21 disciplines -- in fact, I cannot even access the
22 other disciplines' status pages. It's none of my
0091
1 concern. My concern is for the, those applications
2 pending before the zoning discipline.
3 Q. At the time -- now I think before you
4 said that you issued a hold on September 14th --
5 A. 18th.
6 Q. -- or September 18th, 2007.
7 Is that a different hold than the one
8 that's reflected in this exhibit?
9 A. Yes.
10 Q. And is there a document that shows that
11 hold?
12 A. I believe so in my files.
13 MR. MENDRO: All right, and I'll say to
14 Mr. Taylor that that's another document that we
15 would like to see.
16 BY MR. MENDRO:
17 Q. And so if I understand correctly, you
18 never removed the hold that's, that's shown in
19 Exhibit 7 and you issued another hold on or about
20 September 14th, 2007; is that correct?
21 A. On September 18th, that's correct.
22 Q. September 18th, thank you.
0092
1 Have you ever issued two holds on a
2 single application before?
3 A. Yes.
4 Q. Are there other applications pending now
5 that have two holds on them?
6 A. Yes.
7 Q. What are the reasons generally for
8 issuing holds on permits?
9 A. Which holds are you referring to?
10 Q. Well holds on the zoning review?
11 MR. TAYLOR: Still -- you still need to
12 clarify that question, I believe.
13 BY MR. MENDRO:
14 Q. Do you understand?
15 MR. TAYLOR: You can answer if you
16 understand his question.
17 THE WITNESS: Restate it.
18 BY MR. MENDRO:
19 Q. Well let me ask you this: How common is
20 it to place a hold on an issuance -- how common is
21 it for your office to place a hold on the issuance
22 of a permit?
0093
1 A. The hold that was referred to in the
2 Exhibit 7 is a hold that's placed on a particular
3 address or for -- I should say for a particular
4 property and that type of hold I, weekly I will
5 place a hold on, a similar hold on a particular

6 property that might be pending an enforcement action
7 or some other issue that I become aware of that I
8 wish to see those applications.
9 Q. And how many holds has your office
10 placed on applications this year?
11 A. Of the type that's illustrated in
12 Exhibit 7, I'd say between 25 to 40.
13 Q. Okay. And when we say 25 to 40, that's
14 25 to 40 holds on different applications?
15 A. On different properties.
16 Q. Okay. And is there a way to search the
17 system to see all the holds that are in effect at a
18 given time?
19 A. I'm not sure. I do not know.
20 Q. Were your reasons for issuing a hold on
21 September 18th different than the reasons for
22 issuing the hold that's shown in Exhibit 7 on

0094

1 August 10th?
2 A. In part. On August 10th because I, as I
3 stated earlier, I was aware of that there was a
4 recent Board of Zoning Adjustment Order pending,
5 Zoning Commissioner Orders, as well as it's been
6 communicated by members of the community controversy
7 over the application was the reason I put the hold
8 in on Exhibit 7.
9 On September the 18th I held the
10 application for the building permit, specific in
11 this case held for correction because of the
12 publication of the Zoning Commission Orders that
13 changed the applicable zoning regulations -- that
14 possibly changed the applicable zoning regulations
15 effective, applicable to the application.
16 Q. So on September 18th it was because the
17 regulations had changed, on August 10th it was
18 because of controversy raised by members of the
19 community?
20 A. As I stated before, it was a recently
21 issued BZA Order, there were pending Zoning
22 Commissioner Orders and there was controversy as

0095

1 evidenced by communications by members of the
2 community.
3 Q. And what was the controversy that they
4 raised?
5 A. Well there were members of the community
6 that opposed the establishment of this use.
7 Q. And did those members of the community
8 tell you why they opposed the establishment of
9 AppleTree's use?
10 A. Yes.
11 Q. And what did they tell you?
12 A. As I recall, there were concerns about
13 the suitability of this location for a school.
14 Q. Okay. And starting with Mr. Holmes,
15 what did Mr. Holmes say about the suitability of the
16 property for a school?
17 A. As I recall, Mr. Holmes' communications
18 were not so much the substance of his concerns but
19 more that communicating to me to ensure my awareness
20 of the applicable Board of Zoning Adjustment and
21 Zoning Commission actions that might impact the
22 case.

0096

1 Q. And did the other individuals express
2 different concerns?
3 A. No, similar concerns.
4 Q. Okay. So at the end of the day, the
5 controversy that the members of the community,
6 including Mr. Holmes, raised were the very same
7 regulations that took effect on September 14th?
8 A. Well, because of the history of the case
9 that it was subject to my predecessor Bill Crews'
10 determination denying the application, the
11 subsequent appeal to the Board of Zoning
12 Adjustments, the zoning adjustments' decision
13 overturning Mr. Crews' determination and then
14 changes to the regulations as enacted by the Zoning
15 Commission, the aspects of this case were quite
16 complex and members of the community felt the need
17 to avail me their views on various aspects of that
18 controversy and that history and there were -- I,
19 they felt they needed to make sure I was aware of
20 different aspects of those various bodies' actions.
21 Q. Now, did any of them tell you that you
22 should place the application on hold?

0097

1 A. No.
2 Q. Whose decision was that?
3 A. To place on hold?
4 Q. Correct.
5 A. It was mine.
6 Q. And did you discuss that decision with
7 anyone else?
8 A. I informed other members of this
9 Department of my decision.
10 MR. TAYLOR: Excuse me, Mr. Mendro,
11 you're speaking still in regard to Exhibit 7?
12 MR. MENDRO: I'm speaking in regard to
13 both of the holds, the one evidenced in Exhibit 7
14 and the one that we've discussed but have not
15 received any documents to evidence that occurred on
16 or about September 18th.
17 BY MR. MENDRO:
18 Q. Let me just turn back to Exhibit 7 for
19 just a moment, though.
20 A. Okay.
21 Q. There's, underneath the hold that you
22 testified that you placed there's another, there's

0098

1 another entry of a hold there.
2 Can you explain what that entry means?
3 A. Under the heading required review holds,
4 property DB look-up?
5 Q. Right.
6 A. Okay. That is a, the label is Historic
7 preservation which means this is in an area subject
8 to review by the Office of Historic Preservation in
9 the Office of Planning, the purpose of which is to
10 ensure that applications are referred to the Office
11 of Historic Preservation for their review.
12 Q. And in the created by column for that
13 entry there's the letters, it looks like it says
14 MILARDM?
15 A. Yes.
16 Q. Do you know who that refers to?

17 A. No, I do not.
18 Q. And do you know the status of this
19 particular hold?
20 A. It says active.
21 Q. It says active on this document?
22 A. Yes.
0099
1 Q. Do you know anything else about this
2 particular hold?
3 A. No.
4 Q. Okay.
5 A. Are you aware of any other holds that
6 have been placed on AppleTree's permit application.
7 A. Not that I'm aware of.
8 Q. When you placed this hold on
9 August 10th, 2007, on AppleTree's application, did
10 you communicate with any representatives of
11 AppleTree to inform them of that hold?
12 A. I do not recall if I did.
13 Q. And when you subsequently placed another
14 hold on AppleTree's application on September 18th,
15 2007, did you do anything to communicate to
16 AppleTree the fact that you had placed that hold?
17 A. I'm not sure. I believe I may have
18 either called or E-mailed the applicant informing
19 them of that change in status.
20 Q. But when you say you may have, you don't
21 remember that you did?
22 A. I don't remember.
0100
1 Q. And did you ever meet with Russ Williams
2 concerning the status of AppleTree's application?
3 A. No. I believe I spoke to him on the
4 telephone.
5 Q. Do you recall when about you spoke with
6 Mr. Williams?
7 A. No, I do not recall the date, I'm sorry.
8 Q. Do you think you spoke with Mr. Williams
9 on one occasion or more than one occasion?
10 A. It may have been one or two occasions.
11 Q. You don't think it was as many as five?
12 A. No, I don't believe it was.
13 Q. And do you recall the content of your
14 discussion with Mr. Williams?
15 A. No. No, I do not.
16 Q. Do you understand Mr. Williams to be a
17 representative of AppleTree?
18 A. Yes.
19 Q. In terms of timing, I know that you've
20 said that you don't remember the exact date, do you
21 think you spoke with him before August of 2007?
22 A. No, I did not.
0101
1 Q. Do you think it was after November of
2 2007?
3 A. I really do not recall.
4 Q. But sometime in August or thereafter?
5 A. Most likely sometime August or
6 thereafter.
7 Q. In a correspondence that we've looked at
8 between you and Mr. Holmes, I believe it's Exhibit
9 Number 5 --
10 A. Uh-huh.

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

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

18 Q. Correct.

19 A. Let me re-read it.

20 (Witness examining document).

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

0102 1 Q. Is the directive described in this
2 E-mail, the September 18th directive, the same
3 September 18th hold that we've been discussing?

4 A. Yes.

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

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

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

16 A. Correct, I had not.

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

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

0103 1 regulations that came into effect on September 14th
2 changed AppleTree's ability to comply with the
3 zoning regulations -- let me restate that again.
4 That went on for too long.

5 I will strike the last question.

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

12 A. That's correct.

13 MR. MENDRO: Is that better?

14 MR. TAYLOR: That's better.

15 BY MR. MENDRO:

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

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

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

0104 1 this is concerning AppleTree?

2 A. No, he did not.

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

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

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

10 A. Yes.

11 Q. -- that were your AppleTree file?

12 A. Yes.

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

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

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

20 A. I believe that I was informed by

21 Mr. Lenny Douglas, L-E-N-N-Y, Douglas.

22 Q. Who is Mr. Douglas?

0105

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

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

6 A. It is.

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

9 A. Permitting.

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

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

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

19 MR. TAYLOR: Objection, overly broad.

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

22 BY MR. MENDRO:

0106

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

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

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

14 A. The --

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

17 You may answer if you have knowledge.

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

21 BY MR. MENDRO:

22 Q. So just to make sure that I understand,
0107
1 the last stop before issuance is Mr. Douglas'
2 department?
3 A. With, within DCRA, Mr. Douglas' division
4 must -- it's my understanding must complete reviews
5 prior to building permit issuance.
6 Q. And when those reviews are completed in
7 the ordinary course, the permit actually issues?
8 A. That's my understanding.
9 Q. And what did Mr. Douglas say to you when
10 he came to speak with you about AppleTree's permit?
11 A. That the building permit had been issued
12 contrary to the hold for correction that I had
13 placed on the application.
14 Q. And did he distinguish between the hold
15 that you placed on August 10th and the hold that you
16 placed on September 18th?
17 A. No, I believe he was referring to the
18 hold I placed on September 18th.
19 Q. And why do you believe that?
20 A. Because that was the, the hold that had
21 revoked the zoning approval and there was no zoning
22 approval for that application in effect at that
0108
1 point.
2 Q. Did Mr. Douglas tell you anything else
3 at that time?
4 A. No, other than that the application had
5 been -- or that the permit had been issued.
6 Q. And when did you have this conversation
7 with Mr. Douglas about AppleTree's permit?
8 A. I believe it was at the end of October
9 2007.
10 Q. Do you remember a specific date?
11 A. No.
12 Q. Do you know if you had any written
13 correspondence with Mr. Douglas about this issue?
14 A. There may have been some E-mails, but I
15 don't recall specifically.
16 MR. MENDRO: And, Mr. Taylor, AppleTree
17 would request those E-mails, as well.
18 BY MR. MENDRO:
19 Q. And did Mr. Douglas express an opinion
20 to you about whether the permit should have issued?
21 A. Yes.
22 Q. And what opinion did he express?
0109
1 A. That the permit should not have been
2 issued.
3 Q. And did he explain that position?
4 A. Yes.
5 Q. And please, if you could tell me what
6 his explanation was?
7 A. That a permit clerk errored in issuing
8 the permit and that it should not have been issued.
9 Q. And did he tell you how the permit clerk
10 errored?
11 A. No.
12 Q. Did he say anything about why it was an
13 error?
14 A. At that point in time he did not know,
15 he was going to look into the matter further.

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

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

0110

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

3 A. I believe it was Mr. Thomas.

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

6 A. No.

7 Q. Why AppleTree's permit --

8 A. No.

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

11 A. Yes.

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

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

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

20 A. No.

21 Q. And why have you not?

22 A. The plans have at times been deposited

0111

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

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

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

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

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

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

14 A. It was in DCRA.

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

18 A. Oh.

19 Q. -- since September 18th?

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

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

0112

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

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

7 A. Yes.

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

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

4 THE WITNESS: Okay.
5 MR. MENDRO: And we'll try to wrap this
6 up.

7 (Discussion off the record)

8 BY MR. MENDRO:

9 Q. We're back on the record after a break.
10 I want to follow up about the sort of
11 the process for holds and one question I had for you
12 is is there any sort of written policy statements
13 concerning holds?

14 A. No.

15 Q. Are there any procedures about when to
16 issue holds?

17 A. There are, I'm not aware of written
18 procedures on holds. Let me clarify, are you
19 referring to the holds specific to applications or
20 the holds for properties that are like illustrated
21 in example Exhibit 7?

22 Q. I probably should get a little more

0116 clarification on the difference between those two
1 things.

2 I, let's get Exhibit 7 back out. So
3 there were two holds listed on Exhibit 7, correct?

4 A. Yes.

5 Q. And are these both holds on property?

6 A. Yes.

7 Q. And so these holds are not specific to a
8 particular application?

9 A. Correct.

10 Q. Now was the hold that you issued on
11 September 18th different in that regard?

12 A. The hold I placed on September 18th was
13 on an application, so it is different than the ones
14 illustrated in Exhibit 7.

15 Q. So I will ask, I will try to be more
16 clear with my question.

17 With regard to holds placed on property,
18 are there any written procedures or policies?

19 A. Not that I'm aware of.

20 Q. And with regard to holds placed on
21 applications, are there any written procedures or

0117 policies?

1 A. I'm not aware of those policies being in
2 writing.

3 Q. Where do those policies exist?

4 A. Prior to my employment with -- or upon
5 my employment with the District, it was explained to
6 me as staff practice as to what constitute -- what
7 constitutes a hold for correction on a particular
8 application.

9 Q. And who explained this staff practice to
10 you?

11 A. This was explained to me at the time by
12 the then lead zoning technician, a woman named Faye
13 Oguneye. She's no longer employed with the
14 District.

15 Q. And other than the --

16 MR. TAYLOR: Excuse me, I think this
17 would be an excellent time for spelling.

18 THE WITNESS: Oh, boy, I'm trying to
19 remember it. Faye is F-A-Y-E, Oguneye, because she
20

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

0118

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

3 BY MR. MENDRO:

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

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

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

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

0119

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

4 A. That's correct.

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

9 MR. TAYLOR: Calls for speculation.

10 Answer if you have knowledge.

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

12 BY MR. MENDRO:

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

18 A. No.

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

22 A. Yes.

0120

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

3 MR. TAYLOR: Calls for speculation.
4 Answer if you have the answer.

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

8 BY MR. MENDRO:

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

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

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

15 any reviews remained to be completed?

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

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

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

0121
1 had not yet been completed.

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

4 A. Yes.

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

7 A. No.

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

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

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

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

0122
1 reviews of AppleTree's permit.

2 Q. And today can you remember which --

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

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

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

10 A. No.

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

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

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

17 A. No.

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

22 A. That is correct.

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

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

8 Q. But you do have knowledge that she did

9 become designated to be the reviewer of the
10 application?
11 A. Yes.
12 Q. And did you ever have communications
13 with Xoan Mac about when it would be appropriate for
14 her to proceed with her review?
15 A. No.
16 Q. And to be a little more specific, did
17 you ever tell Ms. Mac that she should not complete
18 her review until after the BZA Order became
19 effective?
20 A. I did not.
21 Q. And I just want, just for the sake of
22 being very clear, I'd just like to show you the BZA
0124
1 Order, we've discussed it several times today.
2 A. Okay.
3 MR. MENDRO: And we are up to Exhibit 8.
4 (Deposition Exhibit No. 8
5 was marked for identification)
6 BY MR. MENDRO:
7 Q. So the document that I just handed to
8 you is an Order, at the top it says appeal number
9 17532.
10 It also says in bold hearing date
11 November 21, 2006, decision date, January 9th, 2007.
12 Have you seen this Order before?
13 A. Yes.
14 Q. And could you just briefly explain what
15 it is?
16 A. This is the, the Order of the Board of
17 Zoning Adjustment on its review and decision of the
18 appeal of the Zoning Administrator's denial,
19 previous denial of the AppleTree building permit
20 application.
21 Q. And has anyone ever spoken with you
22 about the correctness of this Order?
0125
1 A. What do you mean by correctness?
2 Q. Well, for example, has anyone ever
3 expressed an opinion to you that this Order is
4 incorrect?
5 A. I don't recall somebody, anybody
6 speaking to me about whether this Order was correct
7 or not. There's been communications to me about the
8 matter of opinion as to whether the zoning admin --
9 the Board of Zoning Adjustment rightly decided this
10 case, but that's just a matter of opinion. I've not
11 heard a specific concern expressed to me about
12 whether the Order faithfully reflected the decision
13 of the Board of Zoning Adjustment.
14 Q. And who expressed opinions to you about
15 this BZA Order?
16 A. I believe it was the same individuals I
17 mentioned earlier, possibly Commissioner Holmes and
18 the other individuals, the other two individuals
19 whose names I cannot recall, they may have
20 speculated about well BZA decided this, we didn't,
21 they didn't agree with that decision, but they maybe
22 offered an opinion to me about the BZA decision.
0126
1 Q. And apart from not agreeing with it, do
2 you remember anything else about their opinions

3 about the BZA decision?

4 A. No, not, not about this.

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

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

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

12 A. Yes.

13 Q. -- of the BZA?

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

16 A. Oh, that's true.

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

0127

1 A. I did not.

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

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

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

7 A. Yes.

8 Q. And what has she told you about the
9 timing of her review?

10 A. It was her understanding that she could
11 sign off and approve the application upon
12 publication of the BZA Order.

13 Q. Was it her understanding that she
14 couldn't do it any sooner than that?

15 A. I do not know.

16 Q. Did she ever talk to you about whether
17 she could do it before the publication of the Order?

18 A. It was presented to me like after the
19 fact, well now that the BZA Order has been published
20 and the 10 days period following that is passed, I
21 can, talking to herself, she said I could sign off
22 on the building permit application.

0128

1 Q. When is the first time that you became
2 aware of this decision?

3 A. It was in either July or August 2007.

4 Q. And how did you become aware of the
5 BZA's decision?

6 A. I don't recall specifically, but it may
7 have been through a communication by a member of the
8 public, one of the individuals I mentioned earlier
9 that this publication, the Order -- publication was
10 either imminent or had just occurred, right around
11 that time frame either July or August of 2007.

12 Q. Did you ever hear that other, other
13 employees of the D.C. Government were interested in
14 AppleTree's permit application?

15 A. Could you clarify your question.

16 Q. Well, have you heard that employees of
17 the D.C. Government outside of your office and
18 outside of DCRA were interested in whether
19 AppleTree's permit was granted or denied?

20 A. Yes.
21 Q. And what have you heard along those
22 lines?
0129
1 A. Well, when you say D.C. Government
2 employees or D.C. Government officials --
3 Q. I meant to include both elected
4 officials, appointed officials and staff and
5 employees.
6 A. Oh, yeah, what I recall is, again, the
7 appointed officials in the form of the ANC
8 Commissioners communicating to me their, their
9 interests or information about the BZA Order.
10 Q. And have you heard about anybody else
11 being interested, any officials or employees of the
12 D.C. Government apart from the ANC Commissioners?
13 A. I did receive a communication from
14 Council Member on this.
15 Q. A D.C. Council Member?
16 A. Yes.
17 Q. Which D.C. Council Member communicated
18 with you --
19 A. Tommy Wells.
20 Q. And this is just for the sake of Monica,
21 if I could just finish the question before you
22 answer, even though it will be easy to anticipate
0130
1 what I'm going to say. Tommy Wells communicated
2 with you.
3 And what was the substance of Mr. Wells'
4 communication?
5 A. Mr. Wells phoned me inquiring about the
6 status of the application and I, and I do not recall
7 exactly when he called me and then I informed him
8 basically of the status of the application at that
9 point in time, but I don't recall if it was in
10 August or September of 2007.
11 Q. Did Mr. Wells indicate why he was
12 interested in the status of AppleTree's application?
13 A. That the AppleTree application had been
14 a matter of controversy and he wanted to know for
15 his own information or for his ability to explain to
16 members of his constituents as to what was happening
17 with the review.
18 Q. Did he express an opinion to you about
19 whether the permit should be granted --
20 A. No.
21 Q. -- or denied?
22 A. No.
0131
1 Q. Are there any other members of the D.C.
2 Government?
3 A. Not that I recall, no.
4 Q. Do you recall hearing that the City
5 Administrator has any interest in Apple --
6 A. I did not.
7 Q. If I can just complete the question.
8 I'm sorry, I know it's tedious and it's
9 been going on for a while, but --
10 A. Okay.
11 Q. Have you heard or formed an opinion that
12 the City Administrator has any interest in whether
13 AppleTree's permit is granted or denied?

14 A. I have not.
15 Q. For the time being, we are finished with
16 all of our questions. Hopefully we can get home
17 before the snow really comes down, although it's
18 starting now.
19 As Mr. Taylor and I have discussed,
20 there is still an issue of some outstanding
21 documents that we've been looking for and that we've
22 requested in December and that we hope to have the
0132 benefit of at this proceeding and at the proceeding
2 that will occur tomorrow and Friday.
3 So, we do reserve the right to reopen
4 the deposition to the extent that it's necessary to
5 ask further questions about documents that we
6 receive belatedly.
7 That's my position for the record.
8 MR. TAYLOR: I understood you, I
9 understand your position and, and I'm sure you will
10 keep me apprised of your conversations with our FOIA
11 officer.
12 MR. MENDRO: I certainly will.
13 MR. TAYLOR: Have you completed your
14 questions?
15 MR. MENDRO: I've, I'm finished with our
16 questions for today.
17 I do want to discuss with you while
18 we're on the record a number of documents that came
19 up in the course of this conversation that we would
20 like to request.
21 MR. TAYLOR: Okay. Maybe it would be
22 appropriate for me to ask a couple of small
0133 questions before we get to that.
2 MR. MENDRO: Absolutely.
3 EXAMINATION BY COUNSEL FOR RESPONDENT
4 BY MR. TAYLOR:
5 Q. Mr. Le Grant, do you have any hesitation
6 at all in enforcing BZA Order 17532?
7 A. No.
8 Q. Have you received any pressure from
9 anyone to disregard BZA Order 17532?
10 A. No.
11 Q. Turning to Exhibit 7, when you placed
12 the hold on on August 10th, was that with the
13 intention of denying a permit?
14 A. No.
15 Q. Did you have a plan of action designed
16 should you receive word that a permit was ready to
17 issue?
18 A. No, other than once a permit was ready
19 to issue, at that time ensuring that it was issued
20 and consistent with all applicable regulations in
21 effect at the time.
22 Q. If you had been notified that the only
0134 thing between -- the only thing preventing issuance
2 of a permit was your hold in the PIV system, the
3 Exhibit 7 system, and the date was August 27, 2007,
4 would that have required any re-review of the
5 application on your part?
6 A. No.
7 Q. Why not?

8 A. Because at that point in time the
9 operable applicable authority for reviewing the
10 application was BZA Order 17532.

11 Q. Let's skip ahead, if the date in
12 question was September 7th, 2007, and you received
13 the same information about other reviews being
14 completed and the only thing between issuance or the
15 only thing holding up issuance was your hold, would
16 that have required any further review on your part?

17 A. No.

18 Q. If, and assume the same situation, now
19 the date is September 20th of 2007, would that have
20 required any further review on your part?

21 A. Yes.

22 Q. Did you ever receive word that the

0135

1 permit was ready to issue but for the hold that you
2 placed in PIVS?

3 A. No.

4 MR. TAYLOR: I have no further
5 questions.

6 MR. MENDRO: And we don't have any
7 additional questions, so we can proceed to documents
8 if you're --

9 MR. TAYLOR: Okay, and I'm glad you
10 brought that up. I was going to do it myself
11 because I don't think at this point the City can
12 afford to avail itself of a transcript and I am not
13 sure that I would want to trust my notes, so if you
14 would tell me what documents you have put down in
15 your notes as requesting, I will make a list and see
16 what can be made available to you.

17 MR. MENDRO: Thank you very much and let
18 me also repeat my thanks for your time today,
19 Mr. Le Grant, we appreciate it.

20 THE WITNESS: Okay.

21 MR. MENDRO: We are going to get the
22 transcript and we're going to review it and I'll let

0136

1 you know if I miss anything now, but let me tell you
2 the list.

3 MR. TAYLOR: I'm sure you will.

4 MR. MENDRO: I'll tell you the list I've
5 assembled as we went along. We've mentioned two
6 different computer systems, the PIV system as you've
7 just described it and also the file job system.

8 We would like printouts from both of
9 those systems and any others that would demonstrate
10 any changes in the AppleTree permit application
11 process. By way of example, we would like any
12 printouts that reflect the 8/9 or 8/7 approval by
13 Mrs. Xoan Mac, also the 8/23 approval that
14 Mr. Le Grant testified to.

15 Also, the 9/18 hold that Mr. Le Grant
16 testified to and we do have this PIV printout
17 showing the 8/10 hold, but if there's a printout
18 from file job or another system that we should see,
19 we'd like to see that, as well.

20 Just waiting for you to catch up.

21 MR. TAYLOR: Thank you. Okay.

22 MR. MENDRO: We'd like a printout from

0137

1 file job or whatever the appropriate system is that

2 would show how many applications have been pending
3 for over a year and another for over two years.

4 MR. TAYLOR: Similar situations
5 vis-a-vis legal review to this case?

6 MR. MENDRO: I'm sorry?

7 MR. TAYLOR: Are you inquiring as to any
8 application that has been pending for that length of
9 time for any reason or are you looking for cases
10 that would be consistent with the posture of this
11 case?

12 MR. MENDRO: We'd like for any reason.
13 I suspect that it's not going to be a voluminous
14 number. If it is, we can talk about that, but
15 Friday's deposition will be a deposition concerning
16 the knowledge of DCRA as an entity.

17 MR. TAYLOR: Uh-huh.

18 MR. MENDRO: And DCRA ought to be able
19 to testify about which of those situations are
20 different than the situation here so we should be
21 able to learn if -- your search turns out that there
22 are thousands of permit applications that have been

0138
1 on hold for two years and that they are all
2 distinguishable, that's information we should be
3 able to glean on Friday.

4 MR. TAYLOR: Given that, okay, Wednesday
5 is just about over.

6 MR. MENDRO: Right.

7 MR. TAYLOR: And we have deposition
8 tomorrow and then depositions all day Friday, I
9 cannot guarantee production of this by Friday.

10 MR. MENDRO: Okay. Understood. I'll, I
11 trust that you'll make your best efforts given the
12 time constraints we have and for now the answer to
13 your question is all applications that have been on
14 hold for one year and all that have been on for two,
15 if that makes sense.

16 In addition we'd like the
17 correspondence -- everything that's in
18 Mr. Le Grant's file for AppleTree. He discussed
19 several manila folders that concern AppleTree's case
20 and also the E-mails in his AppleTree E-mail folder.

21 And we discussed during the deposition a
22 number of items of correspondence such as

0139
1 correspondence between you and Mr. Williams and you
2 and Mr. -- you is referring now to Mr. Le Grant, but
3 Mr. Le Grant and Mr. Douglas, Mr. Le Grant and
4 Mr. Holmes, Mr. Le Grant and Mr. Williams.

5 I think I understood that all that
6 correspondence to the extent that you have it
7 printed is in those manila folders, but to the
8 extent that it exists elsewhere, we would want to
9 get it from those other locations.

10 And that's everything that I can
11 remember.

12 MR. TAYLOR: Okay.

13 MR. MENDRO: Thank you for your time.

14 (Whereupon, at 3:53 p.m., the
15 deposition of MATTHEW LE GRANT
16 was concluded.)

17 * * * * *

19
20
21
22
0140

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

19
20
21
22
0141

My Commission expires:
May 31, 2010

ACKNOWLEDGEMENT OF DEPONENT

1
2
3
4 I, MATTHEW LE GRANT, do hereby
5 acknowledge I have read and examined the foregoing
6 pages of testimony, and the same is a true, correct
7 and complete transcription of the testimony given by
8 me, and any changes or corrections, if any, appear
9 in the attached errata sheet signed by me.
10
11
12
13
14
15
16
17

18
19
20
21
22
0142

Date MATTHEW LE GRANT

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

Dear Mr. Taylor:

This letter is to advise you that the original transcript of MATTHEW LE GRANT, taken in the above matter will be available in our office, Capital Reporting Company, located at 1821 Jefferson Place, Northwest, Washington, D.C., for signature.

Pursuant to the rules, the transcript will be available for 30 days beginning Monday, March 3, 2008.

If you have any questions, please do not hesitate to call. Thank you.

Yours,

Monica A. Voorhees

Reporter, Notary

cc: Mr. Mendro, Esq.

0143

Capital Reporting Company
1821 Jefferson Place, N.W.
Third Floor
Washington, D.C. 20036
(202) 857-3376

E R R A T A S H E E T

Case Name: Appletree vs DCRA

Witness Name: MATTHEW LE GRANT

Deposition Date: 2/20/08

Page No. Line No. Change/Reason for Change

Signature

Date