

October 9, 2012

BY E-MAIL AND FEDERAL EXPRESS

District of Columbia Board of Zoning Adjustment
441 4th Street N.W.
Washington, D.C. 20001

Re: Findings of Fact and Conclusions of Law (Case No. 18395)

Honorable Members of the Board:

The Independent Gas Station Operators Alliance ("IGSOA"), by and through counsel, submit this letter to bring to your attention several errors and improprieties in the record for the above-referenced matter and respectfully request that the Board of Zoning Adjustment ("Board") take the necessary steps to correct these improprieties before rendering a final decision on the Applicant's request for special exception. In the alternative, if the Board decides to move forward and render a final decision, the IGSOA now submits its proposed Findings of Fact and Conclusions of Law for your review.

There has been a number of errors and improprieties committed during the course of this matter by the Board, ANC 5A, and ANC Commissioner Robert King. More specifically:

1. The Board erred by failing to considering their own regulations – D.C. Zoning Regulations §§ 3104.1 and 101.4(d) – during the hearing. The Board further erred during the September 11, 2012 hearing by failing to, at a minimum, explain why §§ 3104.1 and 101.4(d) did not apply to the Applicant's special exception request.
2. ANC 5A failed to submit a timely report to the Board pursuant to the D.C. Zoning Regulations and ANC 5A's own bylaws. *See* 11 D.C.M.R. § 3115.1; ANC 5A Bylaws, Article V, Section 7. Further, ANC 5A failed to provide sufficient notice of the September 26 meeting to the community and failed to allow the community any substantive discussion on the Applicant's special exception request at its September 26 meeting.
3. Commissioner King failed to disclose a significant conflict of interest to the Board, ANC 5A, or the community. Commissioner King has been involved in an on-going legal dispute with DAG SPE Managing Member Inc., the holding

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18395
EXHIBIT NO. 43

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company for approximately 22 of the 34 gasoline stations operated by members of the IGSOA in the District.

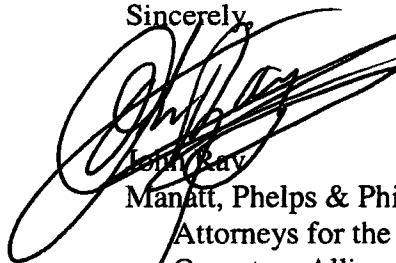
4. At the September 10, 2012 single member district meeting, Commissioner King improperly allowed the Applicant's legal counsel to assist in counting the votes regarding the Applicant's proposed gas station. This was a clear conflict of interest and casts a cloud on the results of the vote.

In light of these significant errors and improprieties in the record of this matter, the IGSOA respectfully requests that the Board not accept any report submitted by the ANC 5A; the ANC 5A be required to hold additional community meetings and present its report to the Board in accordance with the D.C. Zoning Regulations and the ANC 5A bylaws; and that Commissioner King disclose his conflict of interest and recuse himself from any involvement in this matter. Alternatively, if ANC 5A is allowed to submit a report despite these errors and improprieties, the Board should not give it the "great weight" required under the D.C. Zoning Regulations.

However, if the Board decides to continue and make a final decision on the Applicant's request for a special exception, please find attached the IGSOA's proposed Findings of Fact and Conclusions of Law. The IGSOA does not oppose the Fort Lincoln Costco; or its liquor or gasoline sales. The IGSOA only opposes Costco's efforts to sell both motor vehicle gasoline **and** liquor, in direct violation of § 25.313(d) of the D.C. Code and §§ 3104.1 and 101.4(d) of the D.C. Zoning Regulations.

I would also like to bring to your attention a letter that we filed today responding to Deputy Director Nero's letter, also from today, stating that the record was closed for this matter. Please find attached our letter in response to Deputy Director Nero's letter. Please feel free to contact me with any questions or concerns.

Sincerely,



John Ray
Manatt, Phelps & Phillips, LLP
Attorneys for the Independent Gas Station
Operators Alliance
700 12th Street, NW, Suite 1100
Washington, DC 20005-4075
(202) 585-6565
(202) 585-6600 Fax

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cc: D.C. Office of the Attorney General
ANC 5A, Chairperson Janae Grant
Kyrus L. Freeman, Holland & Knight

Enclosures