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§ 1-261. Advisory Neighborhood Commissions - Duties and responsibilities.

(a) Each Advisory Neighborhood Commission (hereinafter in §§ 1-261 to 1-264 the "Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 1-1506(a) or as pertains to the Council of the District of Columbia.

(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission.

(c) (1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agency. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia agency shall maintain a record of such notices sent to each Commission.

(2) The Alcoholic Beverage Control Board shall give notice to Advisory Neighborhood Commissions at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The notice shall be given to the Advisory Neighborhood Commission representing the area in which the applicant's establishment is located. The Board shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to the Commission office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record. In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

(3) The Department of Licenses, Investigation and Inspections shall ensure that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

(d) Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-262(c) which is open to the public in accordance with § 1-262(g).

BZA
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Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16531
EXHIBIT NO.43

At the close of business of the 31st day from mailing of such written notice or earlier if such limited publication has been provided, the affected District government entity may proceed to make its decision. The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken. "Great weight" requires acknowledgement of the Commission as the source of the recommendations, and requires explicit reference to each ANC issue and concern as such as well as specific findings and conclusions with respect to each.

(e) Repealed.

(f) Each Commission may present its views to any federal or District agency.

(g) The Commission shall not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen. The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required.

(h) Each Commission may initiate its own proposal for District government action. The District government entity to which the proposal is made shall acknowledge the proposal in writing to the initiating Commission within 10 days of receipt of the proposal and shall issue a status report to the initiating Commission within 90 days of receipt.

(i) Each Commission shall have access to District government officials and to all District government official documents and public data pursuant to Commissioner's Order No. 71-370 that are material to the exercise of its development of recommendations to the District government.

(j) (1) On or before November 30 of each year, each Commission shall file an annual report with the Council of the District of Columbia and the Mayor for the preceding fiscal year. Such report shall include, but shall not be limited to:

(A) Summaries of important problems perceived by the Commission and in the order of their priority;

(B) Recommendations for actions to be taken by District government;

(C) Recommendations for improvements on the operation of the Commissions;

(D) Financial report; and

(E) Summary of Commission activities.

(2) Minority reports may be filed.

(k) Other than neighborhood or community enhancement campaigns, Commissions may operate programs only in conjunction with existing governmental activities, provided that such activities on behalf of the Commissions do not duplicate already available programs or services, and further provided that the Commissions' programs are not conducted on a contractual basis with existing governmental agencies.

(l) No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of $400 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds $400 per calendar year. Each Commission shall include in the Commission's annual report required pursuant to subsection (j) of this section a report of all contributions received in the previous fiscal year.

(m) Each Commission shall monitor complaints of Commission area residents with respect to the delivery of the District government services and file comments on same with the appropriate District government entity as well as the Council.

(n) Each Commission shall develop an annual fiscal year spending plan budget for the upcoming fiscal year and submit the budget to the Mayor and Council within 60 days of notification of the amount of the Commission's annual allotment. Prior to adoption of the budget at a public meeting of

the Commission and submission of the budget to the Mayor and Council, the Commission shall present the budget at a public meeting of the Commission to elicit comments from the residents of the Commission area.
(o) Each Commission may, where appropriate, constitute the citizen advisory mechanism required by any federal statute (unless specifically prohibited by federal statute).

(1973 Ed., § 1-171i; Oct. 10, 1975, D.C. Law 1-21, § 13, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5454; Apr. 19, 1977, D.C. Law 1-120, § 3, 23 DCR 9924; Oct. 26, 1977, D.C. Law 2-30, § 2 (a), (b), 24 DCR 3723; Apr. 30, 1988, D.C. Law 7-104, § 37, 35 DCR 147; Mar. 6, 1991, D.C. Law 8-203, § 3(c), 37 DCR 8420; Oct. 3, 1992, D.C. Law 9-174, § 3(b), 39 DCR 5859; Apr. 29, 1998, D.C. Law 12-91, § 2(a), 45 DCR 1312.)

§ 1-262. Same - Meetings; bylaws governing operation and internal structure; officers.

(a) Repealed.
(b) Each Commission shall meet in public session at regular intervals at least 9 times per year at locations that are designed to reasonably accommodate the residents of the Commission area, depending on the issues to be considered by the Commission. A Commission may declare a quorum and take official action if a majority of elected representatives of the Commission is present, provided that a majority of the single-member districts have representatives on the Commission pursuant to § 1-257. To the extent possible, each Commission shall, at its first meeting of the calendar year, adopt a schedule of regular Commission meetings for the remainder of the calendar year. Each Commission shall, at its public meetings, consider and make recommendations on matters before the Commission that may include, but are not limited to, actions or proposed actions of the Council, the Mayor, executive branch agencies, or any independent agency, board, or commission. Each Commission shall set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area. Community views shall be adequately considered in positions taken by the Commission. Each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions.
(c) Each Commission shall give notice of all meetings or convocations to each Commission member and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings may be given by:
(1) Posting written notices in at least 2 conspicuous places in each single-member district within the Commission area;
(2) Publication in a city or community newspaper;
(3) Mailing notice to a mailing list; and
(4) In any other manner directed by the Commission.
(d) Each Commission shall establish bylaws governing its operation and internal structure.
(1) These bylaws shall include a statement of Commission responsibilities, voting procedures, the establishment of standing and special committees, the manner of selection of chairpersons and other officers, procedures for prompt review and action on committee recommendations and procedures for receipt of and action upon constituent recommendations at both the single-member district and Commission levels. Said bylaws shall be consistent with the provisions of this act and other applicable laws and shall be a public document.

cert. denied, 489 U.S. 1082 (1989)

TENLEY AND CLEVELAND PARK EMERGENCY COMMITTEE, et al., PETITIONERS, v. DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT. TENLEY AND CLEVELAND PARK EMERGENCY COMMITTEE, et al., APPELLANTS, v. DISTRICT OF COLUMBIA, et al., APPELLEES

Nos. 87-468, 86-813

Court of Appeals of the District of Columbia

550 A.2d 331; 1988 D.C. App. LEXIS 206

November 17, 1988, Decided

PRIOR HISTORY:

[**1] Appeal from the Superior Court of the District of Columbia, Hon. Richard S. Salzman, Trial Judge; Petition for Review of a Decision of the District of Columbia Board of Zoning Adjustment

CORE TERMS: comprehensive plan, zoning, regulation, district of columbia, map, Home Rule Act, land use, Land Use Act, building permit, notice, density, neighborhood, Comprehensive Plan Act, land use element, inconsistency, moratorium, matter-of-right, implementing, consistency, generalized, amend, committee report, statutory notice, developer, vested, legislative history, Land Use Act Committee Report, real estate development, administrative remedies, adequate notice

COUNSEL: Brian W. Smith and Diane L. Olsson, with whom Philip C. Olsson, and Nathalie V. Black were on the brief, for appellants/petitioners.

Whayne S. Quin, with whom C. Francis Murphy, Louis P. Robbins, and John T. Epting were on the brief, for appellees/intervenors/respondents 4000 Wisconsin Avenue Associates, et al.

Lutz Alexander Prager, Assistant Deputy Corporation Counsel, with whom Frederick D. Cooke, Jr., Acting Corporation Counsel at the time the memorandum was filed, and Charles L. Reischel, Deputy Corporation Counsel, submitted a memorandum in lieu of brief for appellee District of Columbia.

JUDGES: Rogers, Chief Judge, * Mack, Associate Judge, and Pryor, ** Senior Judge.

* Judge Rogers was an Associate Judge of this court at the time of argument. Her status changed to Chief Judge on November 1, 1988.

** Judge Pryor was Chief Judge of this court at the time of argument. His status changed to Senior Judge on November 2, 1988.

OPINIONBY: ROGERS

OPINION: [*332] [**2] The principal issue presented in these consolidated appeals is whether the District of Columbia Self Government Act and the District of Columbia Comprehensive Plan Act of 1984 impose a moratorium on private real estate development permitted as a matter of right under the applicable zoning regulations where those regulations may be inconsistent with the District's Comprehensive Plan. Appellants Tenley and Cleveland Park Emergency Committee ("TACPEC") and Philip Mendelson appeal from a decision of the Superior Court dismissing their complaint challenging the issuance and validity of the building permit for a project located at 4000 Wisconsin Avenue, N.W. on the ground that they had failed to exhaust available administrative remedies before either the District of Columbia Zoning Commission or the Board of Zoning Adjustment (BZA). They also contend that the trial court erred in ruling that the Advisory Neighborhood Commission (ANC) 3-C received actual and statutory notice, to which it was entitled under D.C. Code § 1-261 (c) (1987 Repl.), prior to the issuance of the building permit. They appeal too from the court's denial of a motion to amend the judgment or for a new trial. [**3] TACPEC and Mendelson, joined by the North Cleveland Park Citizens' Association, n1 also appeal from a decision of the District of Columbia BZA that it did not have jurisdiction to consider either the status and applicability of the Comprehensive Plan to the Wisconsin Avenue project or whether the notice requirement under D.C. Code § 1-261 (c) had been satisfied. They further contend that the BZA's alternative

ruling that ANC 3-C received actual and statutory notice is not supported by substantial evidence in the record.

n1 For simplicity, we refer to all appellants as TACPEC.

We hold that the Home Rule Act and the Comprehensive Plan do not impose a moratorium on matter of right development and that because the Zoning Commission is the exclusive forum for addressing issues of inconsistency under the Comprehensive Plan, TACPEC failed to exhaust its administrative remedy by not presenting its case to the Zoning Commission. We also hold that ANC 3-C received the notice to which it was entitled under D.C. Code § 1-261 (c) (3). Accordingly, we affirm.

I

This appeal involves the validity of a building permit issued to 4000 Wisconsin Avenue Associates n2 ("the developers") by [*333] the District [**4] of Columbia government for the construction of a large mixed use office-retail project at 4000 Wisconsin Avenue, N.W. n3 By application dated May 24, 1985 and filed on June 3, 1985, the developers submitted preliminary plans for the project to the Zoning Administrator for zoning review and approval. Changes and adjustments were made to the plans over the next several months. The developers formally applied to the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) for a permit to build the project on December 4, 1985. The application was included in a list, prepared weekly by the DCRA's Permit and Certificate Issuance Branch, which indicates projects for which applications have been received and permits issued. Pursuant to D.C. Code § 1-261 (1987 Repl.), which requires the District government to provide thirty days written notice of building applications to affected Advisory Neighborhood Commissions (ANCs), the list was mailed to ANC 3-C on December 9, 1985, and received by ANC 3-C Commissioner Philip Mendelson on December 18, 1985.

n2 Intervenor/Appellee 4000 Wisconsin Avenue Associates Limited Partnership, the developer of the project, is a partnership comprised of The Donohoe Construction Company and The Holladay Corporation. Other appellees are Carol Thompson for the District of Columbia Department of Consumer and Regulatory Affairs and John Touchstone as the Director of the D.C. Department of Public Works.

[**5]

n3 The site on which the building is located consists of 4.7 acres at the west side of Wisconsin Avenue, bordering on Upton Street, N.W. and Glover Archbold Parkway, and is the fourth largest building in northwest Washington, and the eighth largest commercial building in the District.

The thirty-day statutory period for comment by the ANC on the proposed building permit elapsed without the DCRA receiving any recommendations from ANC 3-C. DCRA issued a building permit to the developers on February 19, 1986. At the time the building permit was issued, the zoning regulations applicable to the project site permitted construction of the proposed building as a matter of right. n4 ANC 3-C subsequently wrote letters protesting the issuance of the building permit but by letter dated March 11, 1986, DCRA Director Carol Thompson declined to suspend the permit.

n4 When the building permit was issued, the project site was zoned "C-3-A" which permits medium density mixed commercial development and allows buildings to be erected to a height of 65 feet with a floor area ratio of 2.5. 11 DCMR § 740 (1987). The specifications of the proposed building were within "C-3-A"'s permissible limits. No special exception or variance was sought or required.

[**6]

On February 28, 1986, TACPEC filed an appeal with the Board of Zoning Adjustment (BZA) challenging the validity of the building permit issued by the DCRA. TACPEC's primary argument was that the building permit was improperly issued because the building would be in violation of the District's Comprehensive Plan. n5 TACPEC also alleged that ANC 3-C had received insufficient notice under D.C. Code § 1-261. The BZA ruled that it did not have jurisdiction over the issue of the alleged inconsistency of the proposed development with the Comprehensive Plan because "responsibility for comprehensive plan consistency issues is vested in the Zoning Commission." n6 The BZA also concluded that it was without jurisdiction to consider the issue of notice under D.C. Code [*334] § 1-261; alternatively, the BZA found that the notice requirements were met.

n5 TACPEC also challenged permits for excavation, sheeting and shoring and for public space. The BZA correctly ruled that it lacked jurisdiction to address the validity of these permits because they had not been issued by the Zoning Administrator or under the authority of the zoning regulations. See 12 DCMR § 107.1 (2) (1986); 12 DCMR § 108.2 (1986).

[**7]

n6 The BZA explained:

> The Zoning Commission for the District of Columbia has the statutory duty to insure that the Zoning Regulations are not inconsistent with the Comprehensive Plan. The Land Use Element of the Comprehensive Plan was enacted in March, 1985, ten years after the installation of the elected Mayor and Council of the District of Columbia. Just as it was reasonable for the Executive and Legislative branches to take the time which they determined to be reasonably required to prepare and adopt the Comprehensive Plan, so also is it reasonable for the Zoning Commission to determine a reasonable schedule for the conduct of its business. The Board may not exercise oversight over the Commission in that respect. Further, the Zoning Commission is the only body which may amend the Zoning Regulations, including those provisions which govern matter-of-right developments.

Overlapping the proceedings before the BZA, TACPEC filed a complaint on March 19, 1986, for declaratory and injunctive relief. TACPEC's complaint alleged that the District government had violated D.C. Code § 1-261 by not providing ANC 3-C with adequate notice of the pending building permit application, thereby [**8] depriving ANC 3-C of its statutory right to file written recommendations with respect to the proposed permit. n7 TACPEC also claimed that the District's failure to give ANC 3-C adequate notice of a construction permit application violated the due process clause of the fifth amendment of the U.S. Constitution. TACPEC further alleged that the density of the proposed building violates the Comprehensive Plan for the District of Columbia. The trial court denied the motion for a temporary restraining order, TACPEC withdrew the motion for a preliminary injunction, and a bench trial was held on April 22-24, 1986. The trial court granted the District's motion to dismiss at the close of TACPEC's case. With respect to the validity of the building permit issued by the DCRA, the trial court held that TACPEC had not exhausted its administrative remedies because it had not sought review of that decision before the BZA or the Zoning Commission; the trial court did not decide which was, or if both were, the appropriate agency to provide TACPEC administrative relief. In the alternative, the court held that ANC 3-C received the statutory notice required under D.C. Code § 1-261. n8 Thereafter the court [**9] denied TACPEC's motion to amend the judgment or, in the alternative, for a new trial.

n7 TACPEC also alleged that the District government failed to provide notice of the applications for excavation, sheeting and shoring permits, and of the May 24, 1985, submission for zoning approval. Although these issues appeared in TACPEC's complaint, no evidence regarding these issues was presented at trial and, therefore, we decline to reach them on appeal. We also do not reach the notice issue with respect to the public space permit which was neither pleaded nor addressed in the trial court. *Williams v. Gerstenfeld, 514 A.2d 1172, 1177 (D.C. 1986).*

n8 The trial court also held that TACPEC had failed to establish its claim that traffic generated by the new building would become a public or private nuisance. This issue has not been pursued on appeal. Another claim relating to Department of Public Works permits for paving Glover-Archbold Park and an extension of Upton Street was dismissed as premature. A separate action in Superior Court relating to these permits also resulted in a judgment against TACPEC. TACPEC v. District of Columbia, 115 Daily Wash. L. Rptr. 1973 (Sept. 21, 1987). This case is currently on appeal in this court. TACPEC v. District of Columbia, No. 87-604.

[**10]

II

TACPEC contends on appeal that the trial court and the BZA both erred in ruling that they were without jurisdiction to adjudicate TACPEC's claim that the building permit for private development at 4000 Wisconsin Avenue, although concededly permitted as a matter of right under the applicable zoning regulations, was invalid as inconsistent with the District's Comprehensive Plan. In its own words, TACPEC claims that "the heart of [its] case is that since the Comprehensive Plan controls land use actions in the District and the challenged permits [see note 5, supra] violate the Plan, those permits are illegal, regardless of whether the permitted activity would comply with the zoning regulations." Consideration of the District of Columbia Self-Government Act n9 and the Comprehensive Plan demonstrate that the Comprehensive Plan is not self-executing and does not directly regulate the development of private property in the District of Columbia. n10

n9 The District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973), reprinted in 1 D.C. Code 175 (1981) (Home Rule Act).

(1988) (footnotes omitted). The cases cited by TACPEC are readily distinguishable.

[**30]

n22 The BZA and the Zoning Administrator have no power to implement the Comprehensive Plan. The BZA's enabling statute explicitly states that it "shall not have the power to amend any [zoning] regulation or map." D.C. Code § 5-424 (e) (1981); see *Rose Lees Hardy Home & School v. District of Columbia Bd. of Zoning Adjustment, 343 A.2d 564, 566 (D.C. 1975); Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 539 (D.C. 1972).* The Zoning Administrator is limited to enforcing and certifying occupancy regulations. 11 DCMR § 3200 (1987); Reorg. Order No. 55, Pt. III F, 1 D.C. Code § 185 (1973).

n23 The parties have represented to us that on May 21, 1987, the Zoning Commission voted to rezone the area at issue from C-3-A to C-2-B, the conformance Chairman Clarke advocated, see note 18, supra, and the kind of lower density zoning that TACPEC argued was mandated by the Comprehensive Plan. To our knowledge, the Zoning Commission has yet to issue an order to that effect. See 11 DCMR § 3028.8 ("A written order setting forth a final action shall become final and effective upon publication in the D.C. Register, unless a later effective date is provided for by the Commission.").

[**31]

Accordingly, we hold that the Zoning Commission is the exclusive agency vested with responsibility for assuring that the zoning regulations are not inconsistent with the Comprehensive Plan, and that TACPEC failed to exhaust its administrative remedies.

III

TACPEC also contends that the trial court and the BZA n24 erred in ruling that [*342] the list of building applications sent to ANC 3-C by the DCRA was sufficient notice as a matter of law under D.C. Code § 1-261 (c). n25 Section 1-261 (c) (3) requires that "each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission." On December 18, 1985, ANC 3-C received a list of building permits applied for and issued by the DCRA's Permit and Certificate Issuance Branch during the week of December 2-6, 1985. Issued building permits are listed first and are designated with the letter "B" and a number. Pending building permit applications follow and are designated with the letter "A" and a number. The list of "A" permits included a reference to the application for the 4000 Wisconsin Avenue, N.W. project [**32] and identified it by the letter "A" and a number, by street address, lot and square numbers, and indicated that the application was for a "new building." The listing also stated the date that the application was received, that plans had been filed, the amount of the fee and the date it was paid, and a projected cost of $22,000,000.

n24 The BZA ruled that it did not have jurisdiction to consider the notice issue, but nevertheless heard evidence and rendered its decision on the issue. The District of Columbia urges that the BZA has ancillary jurisdiction to consider certain limited threshold procedural issues, such as notice, that arise in the context of substantive zoning disputes before the BZA. It cites *Brown v. District of Columbia Bd. of Zoning Adjustment, 413 A.2d 1276, 1280-81 (D.C. 1980),* appeal after remand, *486 A.2d 37 (1984),* in which the court held that the BZA had inherent authority, and the duty to protect the integrity of its proceedings, to entertain a motion to disqualify an attorney alleged to have violated the revolving door, conflict of interest rule (MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 9-101 (B) (1979)). *413 A.2d at 1284.* In view of our decision in *Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372 (D.C. 1977),* construing the Home Rule Act and the act setting forth the duties and responsibilities of the ANCs (D.C. Law 1-58) to require agencies to give "great weight" to the ANC's written comments and to discuss the issues raised therein in the agency's decision on the merits, *id. at 1384,* the District's position is not without some appeal. However, we need not decide whether the BZA has jurisdiction to decide the notice issue. Assuming that the BZA did have such jurisdiction, its finding that ANC-3 received the statutory notice to which it was entitled was also the finding of the trial court.

[**33]

n25 Although the BZA's decision on the notice issue used the term "actual notice," the BZA's findings of facts numbers 11 through 15 make clear that the BZA more precisely determined only that the list of applications sent by the DCRA to ANC 3-C complied with the statutory requirements of D.C. Code § 1-261 (c) (3).

We hold that this list provided ANC 3-C with the statutory notice to which it was entitled under D.C. Code

§ 1-261 (c) (3). See *Kopff, supra* note 24, *381 A.2d at 1380-81.* While the list may not have been a "model of clarity," to borrow the BZA's observation, we are satisfied that in view of the clear statutory mandate to provide ANCs with current lists of construction applications, the list sufficiently distinguished applications from issued permits to place ANC 3-C on notice that a permit application for 4000 Wisconsin Avenue was pending. See *American Sec. Bank v. American Motorists Ins. Co., 538 A.2d 736, 739-40 (D.C. 1988); George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, 429 A.2d 1342, 1345 (D.C. 1981).* n26 The BZA concluded that the list was "more than adequate for any person with an interest in proposed construction to become [**34] informed about the significance of [the] distinction [between the "A" and "B" permits], and thereby to know when an application is pending." We think this conclusion even more compelling for elected representative ANC commissioners.

n26 In view of our conclusion that ANC 3-C received adequate notice under D.C. Code § 1-261 (c) (3), we do not reach the trial court's alternative ruling that ANC 3-C also had actual notice of the pendency of the building permit application. See *Shiflett v. District of Columbia Bd. of Appeals and Review, 431 A.2d 9, 10 (D.C. 1981).* In any event, TACPEC's reliance on ANC 3-C Commissioner Philip Mendelson's testimony is misplaced because the trial court specifically discredited his testimony. *Washington v. District of Columbia, 429 A.2d 1362, 1369-70 (D.C. 1981)* (credibility determination is within the province of the trier of fact). See *American Sec. Bank, supra, 538 A.2d at 739-40; George Washington Univ., supra, 429 A.2d at 1345.*

Accordingly, we affirm both the judgment of the trial court and the decision of [*343] the BZA. n27

n27 TACPEC's final contention, that the District's failure to provide adequate notice of the pending building permit application denied ANC 3-C due process, is meritless. Assuming arguendo that the District provided no notice at all, this failure would establish only a statutory violation of D.C. Code § 1-261. ANCs are political subdivisions of the District of Columbia government and therefore do not receive due process protections under the Constitution against actions of the District of Columbia. *Williams v. Baltimore, 289 U.S. 36, 40, 77 L. Ed. 1015, 53 S. Ct. 431 (1933); Bowen v. State Comm'n of Correction, 104 A.D.2d 238, 484 N.Y.S.2d 210, 212 (N.Y. App. Div. 1984).*

[**35]