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August 21, 2000

BY HAND-DELIVERY

Ms. Sheila Cross-Reid, Chairperson
Board of Zoning Adjustment
441-4th Street, N.W.
Room 210
Washington, D.C. 20001

'00 AUG 21 P2:57
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Re: BZA Application No. 16559, The Field School

Dear Chairperson Reid and Members of the Board:

On August 10, 2000, NAFG, through counsel, requested permission to file a sur-rebuttal in this case or, in the alternative, to strike the testimony of Steve Sher and James Long since they did not represent true rebuttal witnesses.

On August 17, 2000, the Field School, through counsel, filed an opposition on the grounds that the Board's rules do not provide for sur-rebuttal and NAFG's response is merely a "rehash" of its prime arguments. Further, the School argues, Mr. Sher who was listed as a potential witness, presented testimony on rebuttal only in contradiction to NAFG's testimony in opposition; and Mr. Long's testimony was presented to rebut the contentions of NAFG's highway expert. The School concedes that Mr. Long was not listed as a potential witness in the pre-hearing statement, because the issue of the entrance did not arise until long after the School's pre-hearing submission was filed.

NAFG submits that the School cannot have it both ways. Since it did not list Mr. Long as a potential witness according to the Board's rules, his testimony should be struck. Mr. Slade was certainly available to contradict NAFG's expert's (Mr. Hanscom's) testimony, but counsel chose not to do so, presumably because Mr. Slade has lost credibility in that he has submitted four different and conflicting traffic analyses. In the alternative, NAFG's counsel has requested permission to file its sur-rebuttal to indicate that Mr. Long's testimony contradicts rather than supports Mr. Slade's testimony, but nevertheless, still does not comply with AASHTO standards. Under these circumstances, that is, the introduction of an expert witness on rebuttal who was never named in the School's pre-hearing statement, sur-rebuttal is certainly warranted.

BZA
Case No. 16559
Exhibit No. 476

Board of Zoning Adjustment
District of Columbia
CASE NO.16559
EXHIBIT NO.476

Mr. Sher did not testify on direct, but only on rebuttal, in an attempt to prevent NAFG from having sufficient time to review and comment on his statistical analysis.[1] Further, Mr. Sher's school report relied on only one school that NAFG used, which is not a true rebuttal. Our review, which is contained in our sur-rebuttal, indicates serious errors in Mr. Sher's school report in that some schools were urban schools that had no playing fields (Burke and the current Field), one school was not even a junior high or high school (Sheridan), other schools had or were looking for additional land for playing fields (Washington International School and Maret) and the population of one high school was listed as almost double that of what it really was (Washington International School). All the schools had good to excellent public transportation.

The procedure taken by the School in this case has been highly unusual in that the Board never even heard testimony on the FOURTH and last traffic report of Gorove Slade, only to be confronted with a fifth report from Mr. Long. The fourth report of Gorove Slade was submitted after the school's case in chief was concluded solely to coincide with the comments made by DPW.

All things considered, the Board should strike the Sher and Long testimony or in the alternative allow the sur-rebuttal that NAFG has submitted.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

By Hand
cc: Phil T. Feola, Esq.

[1] The Board should note that the School had access to Mr. Woodcock's school report since the July 10, 2000 ANC meeting, whereas NAFG had only a few minutes to review and cross examine Mr. Sher on his school report.

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