Virginia L. Major, Commissioner
Advisory Neighborhood Commission 8C -07
3301 5th Street, SE
Washington, DC 20032
(202) 561-2837 * Fax (202) 561-8204

RE: Application No.16729

August 5, 2001

Ms. Jerrily Kress
Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

Dear Ms. Kress:

This is to followup my letter of July 26, 2001 concerning Application No. 16729, Wayne Place Senior Complex. Enclosed is a copy of the letter from the Office of the Corporation Counsel related to ANC 8C June 27, 2001 meeting which states (page 2)

> **"the result of the ANC's failure to comply with the statutory requirement of two forms of notice is that no official action may be taken at the meeting. Therefore, any action taken by the ANC at the June 27, 2001 meeting is invalid."**

I would appreciate your Office/the Board's decision on this information at your earliest convenience.

Sincerely,

Virginia Major

Virginia Major, Commissioner 8C-07

BZA
Case No. 16729
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16729
EXHIBIT NO.43

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL



Office of Government Operations
Legal Counsel Division

August 1, 2001

Virginia L. Major
Commissioner, ANC 8C
3301 5th Street, S.E.
Washington, D.C. 20032

Re: Notice of June 27, 2001 Advisory Neighborhood Commission Special Meeting

Dear Commissioner Major:

This responds to your letter of July 20, 2001. You request advice regarding the Advisory Neighborhood Commission (ANC) 8C special meeting held on June 27, 2001. You state that you never received any written notice of the meeting, nor did you receive an agenda. The Chair states in a letter to the Board of Zoning Adjustment that the notice of the special meeting was made by: 1) verbal announcements at the end of the June 6, 2001 meeting, and at the end of a June 21, 2001 site visit; and 2) the posting of notices. You ask whether the meeting was an official meeting under ANC law.

Notice of ANC meetings is governed by section 14(c) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.11(c), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 ("ANC Reform Act"), effective June 27, 2000, D.C. Law 13-135.

> Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, 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 **must include,** but is not limited to**, at least 2 of the following**:
>
> (1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;
>
> (2) Publication in a city or community newspaper;
>
> (3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and

(4) In any other manner approved by the Commission.[1]

(Emphasis added.) If, as the Chair describes, notice of the meeting was given by verbal announcements at the end of a prior meeting and gathering, and the posting of notices, then the notice was inadequate under the law. The ANC Reform Act does not provide for verbal announcements as a form of notice. Therefore, in order for a verbal announcement to qualify as notice under the law, it would have to have been approved by the Commission as a form of notice. There is no indication that the Commission has ever formally approved verbal announcements as an alternative form of notice.[2] The result of the ANC's failure to comply with the statutory requirement of two forms of notice is that no official action may be taken at the meeting. Therefore, any action taken by the ANC at the June 27, 2001 meeting is invalid.

The ANC should take steps to bring its notice procedures into compliance with the statutory requirement of two forms of notice in order to avoid challenges to the legality of future meetings. If the ANC desires to use verbal notice as an alternative form of notice, it should either amend its by-laws or pass a resolution approving verbal notice as a form of notice under the ANC Reform Act.

If you have any further questions with regard to this matter, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division at 724-5537.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel

Darryl G. Gorman

By: DARRYL G. GORMAN
Senior Deputy Corporation Counsel
for Government Operations
Legal Counsel Division

DGG/abe
(AL-01-505)

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[1] Section IV of ANC 8C's by-laws requires that notice of regular meetings be given "by posting written announcements in at least two conspicuous places in each single-member district." As was pointed out to you in a February 13, 2001 letter from this Office, because of the passage of the ANC Reform Act ANC 8C's by-laws are now out of date and should be revised to include posting in 4 locations in each single member district, rather than 2, and to add an additional form of notice (either publication, a mailing list, or another form of notice approved by the ANC).

[2] A letter from Mary Cuthbert, Chairperson, ANC 8C, dated July 31, 2001 to this Office indicates that notices were placed "in several location [sic] within 8C boundary". It is not clear from this statement whether notices were posted in 4 locations in each single member district, as statutorily required. Thus, it is not clear that the posted notice itself was sufficient under the law.