BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

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IN THE MATTER OF	*	
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1308 – 1314 POTOMAC AVENUE, SE WASHINGTON, DC	*	BZA Appeal No. 16791
	*	
	*	
CITIZENS FOR SMART DEVELOPMENT, INC., APPELLANT	*	

STATEMENT OF THE DISTRICT OF COLUMBIA ZONING ADMINISTRATOR IN OPPOSITION TO THE INTRODUCTION OF A REPORT OF THE OFFICE OF PLANNING

On February 5, 2002 the Chairman of the Board of Zoning Adjustment advised the parties that he would be requesting a report from the Office of Planning (DCOP). This was in response to the "awful lot of information that has come up" regarding the Comprehensive Plan and the Ward Six Plan (collectively "the Plans"). Appellant has argued, among other things, that the Zoning Administrator's decision to issue four building permits for new construction at 1308-1314 Potomac Avenue, SE was in error because it is inconsistent with the Plans.

The District of Columbia respectfully objects to the introduction by the Board of Zoning Adjustment of a report of the DCOP on the issue of the Plans. As more fully stated below, the Comprehensive Plan does not supercede the Zoning Regulations in effect in the District of Columbia and, therefore, the Zoning Administrator is constrained to abide by the Zoning Regulations. Further, the Zoning Administrator, charged with enforcing the Zoning Regulations, is to be given interpretive deference thereto.

The Comprehensive Plan Is Irrelevant To The Issue Before The Board

It is well-established law in the District of Columbia that the Home Rule Act and the Comprehensive Plan do not impose a moratorium on matter of right development and that the

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Zoning Commission is the exclusive forum for addressing issues of inconsistency under the Comprehensive Plan. *Tenley and Cleveland Park Emergency Committee v. BZA,* 550 A.2d 331, 334 (D.C. 1988). The purpose of the Comprehensive Plan is to provide a statement of policy to guide future land-use decision-making. Recognizing that there may be inconsistencies between the elements of the Comprehensive Plan and the Zoning Regulations, the D. C. Court of Appeals held that the Comprehensive Plan is not self-executing and does not directly regulate the development of private property in the District of Columbia. *Id.* The Court affirmed the decision of the BZA that

> [t]he 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. *Id.* at 333

in concluding that the Zoning Commission is the exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with the Comprehensive Plan. *Id.* at 340

The Agency Is Charged With the Interpretation Of Its Own Regulatory Provisions

An administrative agency is afforded considerable deference in the interpretation of a statute that it administers except when the interpretation is plainly wrong or inconsistent with the legislature's intent. *Long v. District of Columbia,* 717 A.2d 329, 331 (D.C. 1998), *Jackson v. District of Columbia Police and Firefighters Retirement & Relief Board,* 717 A.2d 904, 906 (D.C. 1998).

In reviewing an agency decision interpreting a statutory provision, a reviewing body "must give weight to any reasonable construction of a regulatory statute that has been adopted by the agency charged with its enforcement" and "unless the agency's interpretation is plainly wrong or inconsistent with the statute, (the reviewing body) will sustain it even if there are other constructions which may be equally reasonable." *National Geographic Society. v. D.C. Dept. of Employment Services*, 721 A.2d 618, 620 (D.C. 1998) (quoting *Lee v. D.C. Dept. of Employment Services*, 509 A.2d 100, 102 (D.C. 1986)).

Here there is a question as to how zoning should be regulated in light of the Plans. It is unequivocal that while the Comprehensive Plan may be used by the Zoning Administrator as a guide in rendering decisions about zoning in the District of Columbia, the Zoning Regulations control any decision to be made.

For the foregoing reasons, the District of Columbia objects to the introduction of a DCOP report as irrelevant to the matter before the BZA.

Respectfully submitted,

ROBERT R. RIGSBY
Corporation Counsel, D.C.

SHARON STYLES-ANDERSON
Senior Deputy Corporation Counsel
Public Protection and Enforcement



CHARLOTTE W. PARKER #186205
Acting Deputy Corporation Counsel
Civil Division

MARIE-CLAIRE BROWN #394122
Assistant Corporation Counsel
441 4th Street, NW, Room 450N
Washington, DC 20001
202-727-3500

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Statement of the District of Columbia Zoning Administrator in Opposition to the Introduction of a Report of the Office of Planning were faxed and mailed postage prepaid this 22nd day of February, 2002 to Phil T. Feola and Martin P. Sullivan, Shaw Pittman, LLP, 2300 N Street, NW, Washington, DC 20037-1128, Andrea C. Ferster, Esq., 1100 –17th Street, NW, 10th Floor, Washington, DC 20036 and Kenan P. Jarboe, ANC 6B 921 Pennsylvania Avenue, SE, Suite 108, Washington, DC 20003.

Marie-Claire Brown
Assistant Corporation Counsel