Summary of ZA-WECA Communications: 8/14 - 9/5/02

D.C. OFFICE OF ZONING
2002 SEP 23 AM 9:45

- Wed. 8/14 (i.e., before publication of the Zoning Order and before DCRA issuance of a CofO), fax - WECA sent a fax to DCRA alerting DC of GWU's noncompliance (**Attachment B1**)

- Thurs. 8/15, phone - ZA confirmed receipt of WECA's 8/14 fax; ZA said that GWU/Charles Barber had (inaccurately) stated that the Foundation was not yet set up and, thus, GWU was unable to pay the money to the Foundation; WECA clarified that, in fact, the Foundation was incorporated months ago and that the Foundation Board has held several meetings; ZA asked WECA to e-mail a copy of WECA's latest e-mail to GWU; ZA said GWU believes that the Zoning Order permits GWU to pay the money later on the same day of issuance of the CofO vs concurrently; ZA will talk to DCRA Counsel and Corporation Counsel/Alan Bergstein, author of the Order, to interpret the Order and the Commission's intent since ZA reads the Order to require concurrent payment

- Thurs. 8/15, e-mail - as requested, WECA sent ZA an e-mail and again asked DCRA not to issue a CofO until compliance (**Attachment B2**)

- Fri. 8/16, e-mail - WECA sent GWU an e-mail (cc ZA) asking for proof of its compliance (**Attachment B3**)

- Mon. 8/19, e-mail - WECA sent ZA an e-mail advising of WECA letter to follow on 8/20

- Tues. 8/20, letter - WECA sent a letter to DCRA and ZA (**Attachment A**)

- Thurs. 8/22, phone - ZA stated that DCRA has not yet issued a CofO; ZA stated that yesterday he spoke to GWU's outside counsel/Phil Feola, explaining that GWU "needs to put money where it can be put to use ... in a Foundation account;" ZA does not want to control any Escrow Account; ZA goal is "to get money to the Foundation ... this is what has to happen;" ZA met with Corporation Counsel/Alan Bergstein who explained the Order's intent; ZA asked WECA to fax a copy of the Zoning Order since GWU only provided one page of the Order

- Thurs. 8/22, fax - as requested, WECA faxed ZA the full Order and thanked ZA for his agreement that GWU needs to write a check payable to the Foundation (**Attachment B4** is a copy of the fax coversheet)

- Mon. 8/26, e-mail - WECA sent ZA via e-mail an electronic copy of a GWU Hatchet article revealing that students had already moved in, i.e., before issuance of a CofO (**Attachment B5** is a copy of the e-mail and the start of the article)

- Mon. 8/26, phone - ZA acknowledged receipt of WECA's 8/26 e-mail which he forwarded to DCRA Counsel Grant Moy; all DCRA inspectors are out today but ZA

BZA
Case No. 16950
Exhibit No. 6

Board of Zoning Adjustment
District of Columbia
CASE NO.16950
EXHIBIT NO.6

stated that a citation would be issued tomorrow (8/27), stating that GWU needed to pay the money to the Foundation or be fined $500 per day; ZA stated that his goal is for the Foundation to get the money; ZA agreed to recall GWU

- Tues. 8/27, phone - ZA stated that no citation has yet been issued because of the illness of a DCRA staff member (Yvonne Rocket) but a citation will be issued tomorrow (8/28); ZA has not yet spoken again to GWU but will do so later today; ZA's goal "is to get the Foundation the money" and get the rest of compliance too

- Wed. 8/28, 1st phone conversation - ZA just learned that, without his knowledge, someone in DCRA issued a CofO on 8/16 even though GWU was in violation of the Zoning Order; ZA had not yet spoken again to GWU; ZA stated that DCRA Counsel Grant Moy said that DCRA needs to issue a citation for GWU's noncompliance with the Order; ZA is preparing a written message to GWU and will recall WECA later today

- Wed. 8/28, 2nd phone conversation - ZA just sent GWU/Charles Barber an e-mail stating that GWU is out of compliance/in violation and that DCRA will issue a citation tomorrow (8/29) but ZA was advised by DCRA Counsel that he could not provide WECA with a copy so he read the e-mail to WECA; ZA informed WECA that it had earlier sent GWU an e-mail that he would not serve as an Escrow Agent; WECA then orally filed a FOIA; ZA advised that the maximum fine after the end of the appeals process is $500 and then a daily fine thereafter; ZA stated that he sought to coordinate the CofO and GWU's check to the Foundation but since this coordination did not happen, GWU is in violation and DCRA will take immediate enforcement steps as a priority for its Inspector

- Wed. 8/28, e-mail - WECA filed an electronic FOIA request (**Attachment E**)

- Thurs. 8/29, e-mails - ZA and WECA exchanged e-mails (**Attachment B6**)

- Thurs. 8/29, phone - ZA stated that DCRA has still not issued a citation even though a DCRA inspector attempted to issue one on 8/28; however, ZA stated that he doubted a citation would ever be issued due to a telephone call from a Member of the Foundation Board insinuating that he was speaking on behalf of the Foundation; WECA stated that the call was from a GWU employee (x-DCRA Director David Watts), who was not authorized to speak for the Foundation; additionally, ZA stated that Watts claimed that the maximum fine could only be $20; ZA stated that Watts argued that the deposit in a new Riggs account was in "good faith;" ZA stated that he's still trying to get the money payable to the Foundation

- Tues. 9/3, phone - ZA stated that GWU wrote that it disagreed with DCRA's interpretation of the Zoning Order and that ZA's response is being reviewed by Corporation Counsel; ZA doubted that DCRA will ever issue a citation; ZA spoke with

OZ Director/Jerrily Kress who thought the Order was "crystal clear" and Corporation Counsel/Alan Bergstein who agreed that the Order clearly stated that the money needs to be payable to the Foundation

Thurs. 9/5, 1st phone conversation - ZA stated his confidence that the Foundation will get the money; WECA stated that, after its legal research, it will otherwise file an Appeal and that DCRA fines are not discretionary, only the amount of the fines are discretionary

Thurs. 9/5, 2nd phone conversation - ZA stated Corporation Counsel Lori Gilbert is still word-smithing DC's letter to GWU, WECA and the Foundation (c/o the registered agent on Vermont Avenue); because GWU is worried that some funds may be spent for administrative purposes since a program is not yet in place, ZA stated that it may ask the Foundation to provide an operating plan; WECA stated that ZA cannot legally add such a condition, especially on a non-Party to the Order