DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

RLA Revitalization Corp.
applicant

v. BZA Application #17232

Kelsey Temple Church of God in Christ, *et al.*
intervenors

MOTION TO STRIKE FROM APPLICATION #17232 CASE FILE THE CONFIDENTIAL SETTLEMENT PROPOSAL LETTER FILED BY JENNIFER BUDOFF AND ANY TESTIMONY FROM JENNIFER BUDOFF

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Kelsey Temple Church of God in Christ ("Kelsey Temple Church") and the Temple Church Building & Economic Development Corporation ("TCBEDC"), the two intervenors, move to strike from the Application #17232 case file certain testimony and a confidential settlement letter filed in the record on about December 21, 2004, by RLA Revitalization Corporation ("RLA") and one of its witnesses, Ms. Jennifer Budoff, the development manager for the National Capital Revitalization Corporation ("NCRC").

DISCUSSION

On December 21, 2004, during a contested hearing in this case, RLA introduced the testimony of Ms. Jennifer Budoff, who as the development manager for RLA's parent corporation, NCRC, appeared as a witness in support of RLA's application for a variance and a special exception. However, at the start of Ms. Budoff's testimony, and over the strenuous objection of Kelsey Temple Church and TCBEDC,

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Ms. Budoff testified about a confidential settlement proposal from Kelsey Temple Church and TCBEDC. The two intervenors, at the invitation of NCRC and RLA, shared this proposal in confidence with the two corporations. Kelsey Temple Church and TCBEDC memorialized this confidential settlement proposal with a letter addressed to a Mr. Kevin Warner, a vice-president of NCRC.[1] Kelsey Temple Church and TCBEDC prepared the confidential settlement letter at the express and persistent invitation of NCRC and RLA, and Kelsey Temple Church and TCBEDC delivered this settlement proposal as a confidential communication between the parties solely for the purpose of attempting a resolution of this action.

However, at the December 21, 2004 contested hearing in this case, Ms. Budoff, with the apparent support of RLA and its counsel, filed the confidential settlement letter in

[1] The letter explicitly provided for copies to be delivered to Mr. Norman Glasgow, the lawyer for RLA, to Mr. Michael Hentrell, the deputy general counsel for NCRC, and to Ms. Jennifer Budoff, the NCRC manager who organized the private settlement talks between Kelsey Temple Church and TCBEDC, on one side, and NCRC, RLA, and the Development Corporation of Columbia Heights, on the other side. The private settlement talks took place at the NCRC headquarters at 1801 K Street, N.W., on December 14, 2004, although the confidential settlement letter mistakenly describes the meeting as taking place on December 21 (the day of this Board's four hour hearing in this case). A number of people participated in this settlement meeting at the NCRC offices. For example, Mr. Lloyd Levermore, the senior project manager for RLA, Mr. Robert Moore, the president of the Development Corporation of Columbia Heights, Mr. Kevin Warner, a vice-president of NCRC, Mr. Benjamin Dalley, a development associate for NCRC, and Mr. Thomas Ruffin, the lawyer for Kelsey Temple Church and TCBEDC, participated in these confidential discussions, along with others who included Ms. Budoff and Messrs. Glasgow and Hentrell.

the Application #17232 public case file. Also, Ms. Budoff, despite persistent objections from Kelsey Temple Church and TCBEDC, testified about the contents of this confidential settlement letter. In fact, after the Board chairperson questioned the relevance of the letter, Ms. Budoff continued to testify about the contents of the letter.

Clearly, she did so in order to prejudice Board members while they presided over this case and decided the outcome of RLA's application. Ms. Budoff and RLA hoped that, by prejudicing the Board against the interests and the arguments of Kelsey Temple Church and TCBEDC, the Board would become so biased that it would rule against the two intervenors and in favor of the RLA application. However, the confidential settlement letter merely examined case law and a number of settlement terms that Kelsey Temple Church and TCBEDC believed reflected their interests and the interests of local businesses and residents facing hardship as a result of the RLA application in this case.

Yet, as for the facts and the elements that must be established by RLA before this Board, the confidential settlement proposal has no probative value. In fact, the confidential settlement proposal makes no statement relevant or material to the adjudication of this case. Moreover, when Ms. Budoff repeated again and again what the

confidential settlement letter stated, her testimonial remarks became unnecessarily redundant.

Hence, this testimony from Ms. Budoff, and the confidential settlement letter, should be stricken from the record. This Board should order the outright removal of the letter from the Application #17232 public case file. In this vein, the District of Columbia Administrative Procedures Act rules that "every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence".[2] Also, the regulations governing these proceedings demand that this Board "exclude unduly repetitious or irrelevant testimony" and "take any other action authorized … or necessary under these rules".[3]

In this case, RLA has repeatedly abused the adjudicative process employed by this Board for the resolution of this case. RLA has misrepresented the gross and cellar floor area material to a proper calculation of off-street parking requirements for the DC USA Mall, for which RLA filed its application in this case. RLA has also misrepresented the off-street parking obligations that it must comply with in this case. In addition, RLA, through Grid Properties, Inc., has participated in "several" ex

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[2] **D.C. Code, section 2-509(b).**
[3] **11 DCMR 3117.3(k)** and **(l).**

parte communications with this Board's chairperson. Finally, and as stated earlier in this motion, RLA filed in the public case record the confidential settlement proposal that it solicited from Kelsey Temple Church and TCBEDC. These acts of RLA misconduct should not be tolerated.

WHEREFORE, Kelsey Temple Church and TCBEDC ask this Board to strike from the record of these proceedings and from the Application #17232 case file the testimony of Ms. Jennifer Budoff and the confidential settlement letter that she filed on about December 21, 2004.

Respectfully submitted,

Thomas Ruffin

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Certificate of Service

I, Thomas Ruffin, Jr., certify that, on January 7, 2005, I mailed a copy of this motion to the offices of Norman M. Glasgow, Jr., Esquire, and Kyrus L. Freeman, Esquire.

Thomas Ruffin

Thomas Ruffin, Jr.