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By Hand Delivery

Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210 South
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Appeal No. 17285
Appeal of Patrick Carome
(4825 Dexter Terrace, N.W.)

Dear Chairman Griffis and Board Members:

On behalf of the property owners, I hereby object to the May 19, 2005 supplemental brief filed by the National Park Service (NPS) for the following reasons:

1. The supplemental brief was filed 2 days late with no request for an extension of time based on reasonable cause.

2. By filing late, NPS had the advantage of receiving and rebutting the property owner's brief, timely filed on May 17, 2005 as required by the Board.

3. NPS has offered 2 affidavits of park officials as part of its supplemental brief, thereby denying us the right to cross examine them at the last hearing. The Board did not intend to allow new additional testimony as part of a "supplemental brief." Indeed, NPS introduced Mr. Chmura at the last hearing but decided that he should not testify and now offers his affidavit to avoid cross examination under the guise of a "supplemental" brief.

If the Board is inclined to allow this submission, we request permission to file the following rebuttal:

BZA
Case No. 17285
Exhibit No. 82

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 82

A. The affidavit of Joseph Kish identified the property on which his affidavit is based as 4225 Dexter Terrace throughout that affidavit. Since the subject property in this case is 4825 Dexter Terrace, N.W., that affidavit is worthless.

B. Mr. Chmura's affidavit concedes that at the time of the 2004 "dependent resurvey" of the parkland near the retaining wall, the two iron pipes marking the boundway line were obstructed (affidavit at page 2, paragraph 6), reinforcing the property owners position and testimony that the original NPS boundary stakes were farther from the wall before construction began. Thus, there was reasonable reliance on those stakes that the wall would not encroach onto federal parkland, either above or below grade.

C. NPS supplemental brief is based entirely on a false assumption that the underground leveling pads are also referred to as a "footer". Note that the NPS' so called expert did not refer to the leveling pads as "footers." Compare Mr. Pinciotti's written testimony to the NPS brief at 3, both attached for reference. The reference to the "leveling pad" as a "footer" is inserted in brackets by the author of the NPS supplemental brief, which appears to be Mr. David Murphy signing off for NPS counsel Jeffrey Bernstein, and cannot be attributed to NPS' expert. The difference is substantial. The "footers" for the wall are the mesa blocks below grade, which protrude only a few inches from the wall totally on the owner's property as sworn to by the wall designer, Doug Statler. See our supplemental brief of March 29, 2005, affidavit of Doug Statler, attached for convenience. Footers are not leveling pads, which are nothing more than gravel compacted to provide a level surface for the footers (the mesa blocks), and have no binding content (see attached exhibit) and simply became part of the soil.

Respectfully submitted,

HUNTON & WILLIAMS LLP

By: Richard L. Aguglia
Richard L. Aguglia

By Hand Delivery and by E-Mail

cc: Patrick Carome, Esq., appellant

By E-Mail and By Fax

Lisa Bell, Esq.,
counsel for Toye Bello, Zoning Administrator

By Fax and E-Mail

Jeffrey Bernstein, Esq.
counsel for Department of Interior/NPS

By Fax and By Mail

Alma Gates, Chair
ANC 3D

NPS Brief
5/19/05
at 3

On April 26, 2005, I was present on site to assist in the sampling and classification of the soils in 7 exploration borings. The purpose of this test was to determine whether the leveling pad [also referred to as a "footer"] was indeed located on NPS property and, if so, whether it met the Mechanically Stabilized Earth (MSE) design prepared by Ryan Associates. The initial boring, designated Boring T, was used as a control test and was located several feet away from the property line and the potential zone of construction activity. The other 6 borings, designated Borings A through F were located approximately 8 inches on the park side of the property line.

In all 6 of the borings adjacent to the property line we encountered fill from the ground surface down to a depth of 2.5 to 3.5 feet . . . . In Boring D and Boring F we encountered crushed stone, approximately 6 and 7 inches thick, respectively. The crushed stone is part of the leveling pad for the MSE structure. There was a sheet of heavy plastic on top of the crushed stone in Boring F. From these borings we were able to confirm that portions of the leveling pad are located on park property. This finding is not inconsistent with the MSE design and boring analysis conducted by the Economides engineers.

The NPS has determined that the structure has encroached onto parkland. Counsel for the Economides suggests that the encroachment is somehow NPS's fault. NPS disagrees.[1]

[1] The Econmides' May 17, 2005, filing states in part that "with respect to the alleged encroachment of the underground gravel leveling pads of the wall in Mr. Pinciotti's statement, we note that NPS did not rebut our testimony (Hugo Ardon) that Joseph Kish, the park service boundary line specialist, monitored the construction of the wall from start to finish and found no encroachment." On the contrary, while the

when it is constructed with a slope of less than 2 horizontal to 1 vertical. The inclusion of reinforcement, such as geogrid, in the compacted soil mass increases the stability and allows the structure to be constructed to a steeper slope. It should be noted that the geogrid depends on 95 percent compaction to provide the frictional component and the passive pressure on the cross section of the web of the geogrid that is necessary to keep the geogrid from pulling out of the soil mass.

The City of Gaithersburg owns an MSE structure similar to the Economides and a comparison of these structures is informative. In Gaithersburg, two lakes are so close to each other that the downstream slope of the dam embankment forming the upper lake was constructed of MSE so as to minimize the encroachment of the dam on the lower lake. In this case the geogrids were stepped back with the slope and geoweb was anchored to the surface to reduce the potential for movement of the surface soils. This dam demonstrates that an MSE structure, like the Economides structure, need not incorporate a walled venire in order for it to be a functional retaining structure. Indeed, in temporary applications, MSE structures have been built with nearly vertical faces by wrapping the geogrid around the front face of the fill. In such applications, it is necessary to place a geotextile or other material between the soil and the geogrid to keep the soil from falling out from between the grid.

Next, I will address the MSE design and the soil borings conducted by the Economides' engineer as part of the infiltration trench study. (Attachement C of Mr. Aguglia's brief) According to these documents the leveling pad, at the design depth, would have to be 48 inches to 72 inches wide, 12 inches to 18 inches thick and reinforced with 2 or 3 layers of geogrid. Thus, the pad should extend 18 to 30 inches beyond the face of the wall. A plat drawing showing a 1 foot plus or minus buffer between the face of the MSE structures outer wall and the park boundary was also part of the permit package (Appendix 51 of Appellants Brief). When the plat is read together with the MSE design and the boring information, it should have been clear that the leveling pad would extend beyond the approximate 1 foot buffer and onto NPS property. Pinciotti written testimony on 5/10/05

On April 26, 2005, I was present on site to assist in the sampling and classification of the soils in 7 exploration borings. The purpose of this test was to determine whether the leveling pad was indeed located on NPS property and, if so, whether it met the MSE design prepared by Ryan Associates. The initial boring, designated Boring T, was used as a control test and was located several feet away from the property line and the potential zone of construction activity. The other 6 borings, designated Borings A through F were located approximately 8 inches on the park side of the property line. The exact location of the borings were determined to be on park property and were recorded by Leon Chmura , Land Surveyor with the Bureau of Land Management, U.S. Department of the Interior.

In all 6 of the borings adjacent to the property line we encountered fill from the ground surface down to a depth of 2.5 to 3.5 feet. Generally, the fill consisted of silty sand and sandy silt, similar to the native soil of the area. Occasionally, it consisted of silty clay. In Boring D and Boring F we encountered crushed stone, approximately 6 and 7 inches

AFFIDAVIT OF DOUG STATLER

Affiant, being first duly sworn under oath, deposes and says as follows:

1. My name is Douglas K. Statler. I am an adult citizen of the United States of America of sound mind and body.

2. I am a General Manager working for the engineering firm of Ryan and Associates. William K. Ryan is a registered engineer in the District of Columbia, No. 10946. I have worked at this position for five and a half years.

3. I was responsible for compiling the Final Design for a Mesa site retaining wall for the Economides residence at 4825 Dexter Terrace, N.W., Washington, D.C., identified as Exhibit No. 24 to Patrick Carome's appeal in BZA case number 17285.

4. In response to the statement of the National Park Service (NPS), which has intervened in that case on the side of Mr. Carome, I have the following information:

A. NPS Statement (March 14, 2005 letter to BZA) at 3.

> "However, it appears that a portion of parkland ranging from at least 7.4 feet to 9.6 feet wide and paralleling the face of the wall may be subject to this illegal constructive easement.
>
> This estimate is based on the engineering specification's prohibition on operation of equipment with wheel loads in excess of 150 pounds per square foot within 10 feet of the face of the wall. Specifications for Segmental Retaining Wall System at 8."

Response

The correct citation to this information is found at Section 3.13A of the Final Design Plans and refers only to "heavy paving or grading equipment . . . not being operated within 10 feet of the face of the retaining wall during construction adjacent to the wall." (Emphasis supplied). This section means that there was to be no heavy equipment in the rear yard of the

Economides house next to the wall (above/behind it) while it was being constructed and has no reference to the other side of the wall (face side- below the wall) fronting on federal parkland and does not mean that the retaining wall needs "support" from the parkland for construction purposes.

Statement of NPS (March 14, 2005 letter to BZA) at 2

"The DCRA was obligated to read the engineering specification, to recognize that the walled structure was supported by parkland, and to conclude therefore that the footer extended well into NPS property. Ultimately, the DCRA should have reached the conclusion that it could not permit the structure.

A footer is a foundation supporting a structure. The footer supporting the massive structure at issue is comprised of two components, 1) a gravel base that extends in front of the wall, and 2) United States Park property that the wall relies on for structural support. The following examines the size of the encroachment onto federal property by the footer[2].

The outer-wall of the structure ranges from between approximately 4 inches and 2.5 feet from the Park boundary. The blocks of the wall extend below ground "a minimum of 1 inch buried for every one foot of wall exposed." Specifications for Segmental Retaining Wall System at 5; Carome Brief Exhibit 24. Thus, at the tallest point of the wall there are at least 32 inches of block buried below ground. The blocks stack-slope toward parkland. Id. The greater the slope the closer the blocks below ground are to Park property. Id. Additionally, the specifications for the wall indicate that the gravel component of the footer extends approximately 6 inches from the last buried block toward Park property. Since at least some portions of the wall are within inches of the boundary, it is clear that at least some of the gravel component of the footer is on Park property.

The second component of the footer is the earth down slope of the wall that is largely within the Park. The specifications for the wall provide that:

> The owner or owner's representative is responsible for ensuring that construction adjacent to the wall by others does not disturb the wall or place temporary construction loads on the wall that exceed design loads, including loads such as water pressure, temporary grades, or equipment loading. . . .

Specifications for Segmental Retaining Wall System at 8; Carome Brief Exhibit 24. Thus, the wall clearly relies on NPS property for its stability.[3]"

Response

The Mesa wall is a structure comprised of blocks, geogrid, gravel and compacted soils. It is a "unified mass" exerting pressure downward onto the Economides property. The 1 inch

buried per 1 foot of exposed wall height relates to vertical depth into the soil beneath the wall and not horizontal protrusion toward the Park. The embedment (below grade blocks) on this wall varies from 1.33' (two courses) to 3.00' (four and a half courses). Therefore, with a batter (setback) of 5/8" (.625") per course the forward extension on this wall should range from 1.25" (.104') to 2.81" (.234').

Further affiant sayeth not.

Douglas K. Statler

Douglas K. Statler

Subscribed to and sworn before me this 29 day of March, 2005.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
CLARE R. ELDER, Notary Public
Boro of Chambersburg, Franklin County
My Commission Expires Jan. 9, 2009

My commission expires:

Aggregate Industries- Rockville quarry
April 1, 2005

Economides Development
4825 Dexter Terrace NW, 20007

AGGREGATE
INDUSTRIES

Re: CR-6

Dear Sir,

This is to certify that our crushed stone aggregate identified as CR-6 is made out of virgin rock (Crushed Blue Stone) and natural minerals inherent in it. No chemicals or additives have been blended in the mix. If you need any other information please feel free to call me. Thanking you.

Indra Kumar

Jeff A. Greene
Director of Technical Services
Aggregate Division, Mid Atlantic

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