BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal by Wagtime, LLC of the Zoning Administrator's March 2, 2005, Notice of Revocation of Certificate of Occupancy No. CO69395, authorizing Wagtime, LLC to use the premises 1412 Q Street, NW, (Square 0209, Lot 0878) for 24-Hour Dog Boarding and Grooming and Accessory Retail Sales.	) BZA No. 17325

INTERVENOR'S MOTION TO DISMISS WAGTIME'S APPEAL AND OPPOSITION TO WAGTIME'S MOTION TO STAY ENFORCEMENT OF C of O REVOCATION

Introduction

Intervenors Stephanie Mencimer, Erik Wemple, John Weaver, Forrest Smith, Gary Ridley, Mark Rabbage, and Mid-City Development Company, who are individuals and entities who either own property or reside near the 1400 block of Q Street, N.W.,[1] hereby file this motion to dismiss the appeal filed by Wagtime, LLC ("Wagtime") of the Notice of Revocation of Certificate of Occupancy ("C of O") No. CO69395, issued by Zoning Administrator Toye Bello on March 2, 2005. The Appeal should be summarily dismissed as an untimely collateral attack on this Board's decision in BZA Appeal Number 17092, that is barred by established principles of administrative *res judicata*, ripeness, and failure to exhaust its administrative remedies. Further, Wagtime's motion for a stay of the Notice of Revocation should be denied as Wagtime

[1] A motion for party status is filed simultaneously herewith. Each of the Individual Intervenors were Appellants in BZA Appeal No. 17092, and Intervenor Mid-City Development Corporation was an intervenor in BZA Appeal No. 17092.

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Board of Zoning Adjustment
District of Columbia
CASE NO. 17325
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cannot satisfy any of the factors that must be met in order to justify this extraordinary interim remedy.

Factual Background

On October 15, 2004, this Board granted the appeal of Stephanie Mencimer, Erik Wemple, John Weaver, Forrest R. Smith, Gary Ridley, and Mark Rabbage, in BZA Appeal No. 17092, which challenged the decision of the Zoning Administrator to issue a certificate of occupancy to Wagtime for "24-hour Dog Boarding and Grooming and ancillary retail sales." The Board found that Certificate of Occupancy No. CO69395 was issued in error because "dog boarding as a principal use is not permitted as a matter of right in the C-3-A/Arts zone district." Appeal of Wagtime, Attachment 5. Wagtime participated in the appeal and was represented by counsel throughout the lengthy proceedings, which included three days of testimony and arguments, and written submissions by all parties.

The Board's Order in BZA Appeal No. 17092 became final on October 15, 2004, when it was served on the parties. 11 DCMR § 3125.6. Wagtime did not seek reconsideration or rehearing of the decision or a stay enforcement of the Board's order within the 10-day period specified by this Board's rules for requesting this relief. Id. § 3126.2. As a result, the Board's order in BZA Appeal No. 17092 became effective on October 25, 2004, ten days after it became final. See 11 DCMR § 3125.9. Wagtime has filed a petition to review this Board's order with the D.C. Court of Appeals, which petition is presently pending before the Court. See Wagtime, LLC v. D.C. Board of Zoning Adjustment, Case No. O4-AA-1405 (D.C., filed Nov. 17, 2004).

On November 12, 2004, the Zoning Administrator served on Wagtime and its owner, Lisa Schreiber, a notice of proposed revocation of Certificate of Occupancy No. CO69395, a

copy of which was also sent to Wagtime's counsel. See Appeal of Wagtime, Attachment 3. On November 18, 2004, WagTime's counsel delivered a letter to Toye Bello, Zoning Administrator, in Suite 2000, with a copy to the Office of the Attorney General, described as "our challenge to the Notice of Proposed Revocation of Certificate of Occupancy Number CO 6939." Id., Attachment 2. However, no letter was either mailed or hand-delivered to the Office of Administrative Hearings ("OAH") within 10 days of the notice of proposed revocation. The OAH has specifically advised Intervenor Gary Ridley, in response to Mr. Ridley's request for copies of all communications received by OAH relating to the proposed notice of revocation, that "there are no documents responsive to this request in the possession of OAH other than the Notice of Proposed Revocation." Letter to Gary Ridley from Barbara Madden, OAH (March 3, 2005), attached hereto as Exhibit 1.

On December 8, 2004, Wagtime filed a Motion with this Board in Appeal No. 17092 to Stay Enforcement of the Proposed Revocation of its Certificate of Occupancy. Wagtime failed to serve the Appellants or Intervenor with this motion. By letter to Wagtime's counsel dated December 14, 2004, Jerrily Kress, Director of the Office of Zoning, returned the motion to stay enforcement of the proposed revocation, noting that the record in the appeal had closed and that the motion had not been served on all parties to the appeal. See BZA Appeal No. 17092, Exhibit 100.

On March 2, 2005, the Zoning Administrative issued to Wagtime a Notice of Revocation of Certificate of Occupancy Number CO69395, stating that "your Certificate of Occupancy is revoked ten (10) days from the date of service of this notified unless you are notified by the Zoning Administrator that the revocation is rescinded." See Appeal of Wagtime, Attachment 1.

Wagtime thereupon filed the instant appeal with Board of the now-final Notice of Revocation, asserting that "the Zoning Administrator's reliance on [BZA Order 17092] is in error because the Board never made a factual finding that the dog boarding services provided by this business was its principle use." Wagtime also requested that this Board stay the effectiveness of Notice of Revocation, arguing that Wagtime will suffer "irreparable injury" because, "[i]f allowed to stand, Wagtime will likely be forced out of business."

Discussion

II. Wagtime's Appeal Should Be Summarily Dismissed.

A. Wagtime's Appeal Is Barred By Principles of Administrative Res Judicata

Wagtime's "appeal" of DCRA's revocation of its certificate of occupancy must be dismissed based on principles of administrative *res judicata.* Principles of collateral estoppel or *res judicata* apply not only to judicial adjudications, but also to determinations made by agencies other than courts, when such agencies are acting in a judicial capacity. Wilson v. Hart, 829 A.2d 511 (D.C. 2003). In the context of BZA proceedings, the courts have held that the principle of administrative *res judicata* or claim preclusion "prevents the same parties from re-litigating the same claim, including any issue that either was or might have been raised in the first proceeding." Towles v. District of Columbia Bd. of Zoning Adjustment, 578 A.2d 1128 (D.C. App. 1990) (Towles). As the Court in Towles explained, "[g]enerally, once a claim has been finally adjudicated, the doctrine of claim preclusion, or res judicata applies." Towles, 578 A.2d at 1130.

The threshold inquiry for administrative *res judicata* to apply is whether (1) the earlier proceeding was the essential equivalent of a judicial proceeding, and (2) the second application (or appeal) is for the same or substantially similar claim. Rhema Christian Ctr. v. District of

Columbia Bd. of Zoning Adjustment, 515 A.2d 189, 193 (D.C. App. 1986) (Rhema). The doctrine of claim preclusion or *res judicata* can be avoided only if there has been a "material change of circumstances affecting the merits of the" appeal. Towles, 578 A.2d at 1130-31. As the Court explained, "If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeing to uphold the zoning plan." Rhema, 515 A.2d at 194.

Here, the doctrine of *res judicata* plainly applies to Wagtime's "appeal" of the Zoning Administrator's notice of revocation. Wagtime was a party to the prior appeal, and this current "appeal" on its face makes clear that Wagtime's quarrel is with this Board's finding in BZA Appeal No. 17092, asserting that "the Board never made a factual finding that the dog boarding services provided by this business was its principle use, nor was there any evidence of record in Appeal Case No. 17092 to support such a finding." Appeal of Wagtime, at 1. Indeed, Wagtime does not even attempt to articulate any error by the Zoning Administrator, other than the fact that the Zoning Administrator "relied on the decision of the" Board in BZA Appeal No. 17092. Appeal of Wagtime, at 1. As a result, the appeal is plainly a challenge to this Board's administratively final decision in BZA Appeal No. 17092.

Even if Wagtime were able to show that there were errors in the Board's reasoning in BZA Appeal No. 17092, any such allegation of error "either was or might have been raised in the first proceeding." Towles, 578 A.2d at 1130. Nowhere in its "appeal" does Wagtime offer any new evidence or new information or even attempt to make the showing required by Towles to overcome the doctrine of administrative *res judicata,* namely, that there has been "a material

change in conditions such that the reasons for the previous denial no longer apply." Towles, 578 A.2d at 1131. Instead, Wagtime purports to rely on the "uncontroverted information" that it claims is already in the record of BZA Appeal No. 17092 that purports to demonstrate that "dog boarding is only a small percentage of its business and thus does not rise to the level of a principle use." Appeal of Wagtime, at 1.[2]

Accordingly, Wagtime does not even claim to argue that there has been a material change in circumstances but instead makes clear that this "appeal" relies on evidence that it claims was previously before the Board. In other words, this argument is nothing more than an untimely request for reconsideration asserting error in this Board's decision. As such, this Board lacks jurisdiction to entertain this argument, even in the guise of a new "appeal."

Accordingly, as Wagtime can demonstrate no changed circumstances, its "appeal" should be dismissed summarily and without further proceedings. Otherwise, there will be no finality to BZA orders; instead, parties could endlessly prolong the enforcement of BZA orders by filing new "appeals" of enforcement actions accompanied by requests for stays, consisting of nothing

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[2] It is worth noting that Intervenors have diligently searched the record, and can find absolutely no evidentiary basis in the record for this assertion. Notably, Wagtime's own proposed findings of fact and conclusions of law do not even propose a factual finding that "dog boarding is only a small percentage of its business and thus does not rise to the level of a principle use." However, the point is that even the evidence that Wagtime fabricates does not constitute a "material change of circumstances," as Towles requires, but is merely a fabrication of the record before the Board at the time of its decision. Therefore, even if this purported "uncontroverted information" had been submitted to this Board, it would not be a proper basis for re-opening an administratively final decision long after the time for seeking reconsideration has lapsed.

more than untimely arguments that either were or should have been raised before the order became final.[3]

B. Wagtime's "Appeal" Is Not Ripe for Judicial Review.

Even assuming that Wagtime is seeking to introduce new evidence or changed circumstances demonstrating that its principal use is no longer "24-hour dog boarding," Wagtime's "appeal" of the revocation of the certificate of occupancy authorizing 24-hour dog boarding as its principal use is not the appropriate vehicle for raising this issue. The argument that Wagtime's principal use is no longer "24-hour dog boarding" has not been properly raised before the Zoning Administrator. Wagtime has not applied for a new certificate of occupancy at the premises specifying a principal use other than "24-hour dog boarding," the use that was identified as Wagtime's principal use in Appeal No. 17092. Nor has the Zoning Administrator been given an opportunity to verify whether Wagtime's claimed change in principal use is *bona fide*.

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[3] Indeed, even if Wagtime had asserted this challenge to the Board's finding in a motion for reconsideration or rehearing, and filed such a motion within 10 days "from the date of issuance of a final written order by the Board," as required by this Board's rules (11 DCMR § 3126.2), Wagtime sets forth no legitimate basis for reconsideration or rehearing. Under this Board's rules, "[n]o request for rehearing shall be considered by the Board unless new evidence is submitted that could not reasonably have been presented at the original hearing." 11 DCMR § 3126.6.

Instead, before this Board can address this issue, Wagtime must first apply for a new certificate of occupancy identifying a use other than "24-hour dog boarding" as the principal use of the premises.[4] However, it is entirely premature for this Board to address this issue until such time as Wagtime applies for a new certificate of occupancy identifying a principal use that is matter-of-right in the C-3-A/Arts zone. Indeed, it is possible that the Zoning Administrator may decide to issue a new certificate of occupancy that is acceptable to Wagtime. However, this Board lacks jurisdiction to resolve this issue unless and until the Zoning Administrator makes a final determination to issue or deny Wagtime a new certificate of occupancy based on this new information.

C. Wagtime Failed to Exhaust Its Administrative Remedies.

Even assuming, solely for purposes of argument, that Wagtime had been able to articulate some new evidence or change in circumstances that would potentially call into question the appropriateness of applying this Board's decision in BZA Appeal No. 17092 to revoke Wagtime's certificate of occupancy, Wagtime has waived its right to make this argument by its failure to exhaust administrative remedies by exercising its right to appeal the Notice of Proposed

[4] However, Intervenors question whether dog boarding could be approved as a subsidiary and ancillary use to the dog grooming and retail sales activity conducted on the premises. Unlike veterinary and pet shops, permitted uses where animals normally stay overnight, dog grooming and retail sale of pet supplies do not require overnight stays of animals, and therefore dog boarding could not be considered ancillary to these principle uses.

Revocation of Certificate of Occupancy Number CO69395, issued by the Zoning Administrator on November 12, 2004, within the time and manner specified by that Notice.

Where an administrative appeal is provided to resolve disputes, the prescribed administrative remedy must be exhausted before review may be sought. Dano Resource Recovery Inc. v. District of Columbia, 566 A.2d 483, 485 (D.C. 1989); See also Appeal of American Tower, Inc., BZA Appeal No. 16990, at 4 (June 25, 2003). Here, the Zoning Administrator afforded Wagtime an opportunity to request a hearing before the Office of Administrative Hearings on the proposed revocation of the certificate of occupancy. The Notice of Proposed Revocation specifically advised Wagtime that the proposed revocation could be appealed by filing a "written request for a hearing to the Office of Administrative Hearings, 941 North Capitol St, N.E., Suite 9100, Washington, D.C. 20002, within ten (10) calendar days of your receipt of this notice." Appeal of Wagtime, Attachment 3. This Notice further advised that "if you do not request a hearing within the time and manner specified in this notice, or fail to appear at a scheduled hearing, such failure will result in the immediate revocation of your Certificate of Occupancy without a hearing." Id. While Wagtime sent a two-sentence letter to the Zoning Administrator to "challenge the Notice of Proposed Revocation of Certificate of Occupancy Number CO69395," Wagtime never filed a request for a hearing with the Office of Administrative Hearings. See Exhibit 1.

There is no excuse for Wagtime's failure to exhaust the administrative remedy afforded for a hearing before the Office of Administrative Hearings. The procedures for requesting a hearing were plainly stated in the Notice of Proposed Revocation, including the consequences of failing to "request a hearing within the time *and manner* specified in this notice." Appeal of

Wagtime, Exhibit 3 (emphasis added), Accordingly, Wagtime failed to exhaust its administrative remedies for raising any defects in the Notice of Revocation of Certificate of Occupancy Number CO69395," and cannot do so now. See Siler v. D.C. Dept. Of Employment Services, 525 A.2d 620 (D.C. 1987).

D. Wagtime's "Appeal" is Without Merit.

Even if Wagtime were able to overcome the hurdles of administrative *res judicata*, ripeness, and exhaustion, Wagtime's appeal has absolutely no merit. First, Wagtime is incorrect in asserting that the Zoning Administrator erred when he "relied on the decision of the" Board in BZA Appeal No. 17092. Appeal of Wagtime, at 1. Rather, the Zoning Administrator's reliance on this Board's decision in BZA Appeal No. 17092 to revoke Wagtime's certificate of occupancy was entirely appropriate. This Board's decision in BZA Appeal No. 17092 expressly granted the Appellants' timely appeal of the issuance of Certificate of Occupancy No. C057903, previously issued to Wagtime and pursuant to which Wagtime was conducting 24-hour dog boarding activities, based on the Board's conclusion that "dog boarding as a principle use is not permitted as a matter of right in the C-3-A zone district." The Zoning Administrator therefore properly responded to BZA Decision No. 17092 by instituting proceedings to revoke Wagtime's certificate of occupancy. ("Any certificate of occupancy previously issued . . . *shall* be revoked by the Director, after notice, if it is found to have been issued in error.") (emphasis added).

Thus, contrary to Wagtime's suggestion, the Zoning Administrator was obligated to revoke the certificate of occupancy issued to Wagtime, which authorized '24-hour dog boarding and grooming." It is well established that "rules created during agency adjudication . . . traditionally apply retroactively, at least to the immediate parties to the dispute." Reichley v. D.C.

Department of Employment Services, 531 A.2d 244, 249 (D.C. 1987). While there are limited circumstances under which an agency may decide that a rule adopted through adjudication should not be give retroactive applicability, at no time during the course of the lengthy proceedings in BZA Appeal No. 17092 did Wagtime ever request that this decision should either not apply to Wagtime or be give purely prospective applicability. The Board's order therefore on its face applies to the certificate of occupancy issued to Wagtime, and the Zoning Administrator was legally required to enforce this Board's decision by revoking Wagtime's certificate of occupancy.

Moreover, even if Wagtime were correct that there is "uncontroverted" evidence demonstrating that "dog boarding is only a small percentage of its business and thus does not rise to the level of a principal use," this evidence would not have been relevant to this Board's decision in BZA Appeal No. 17092. Regardless of Wagtime's actual operations, the Certificate of Occupancy which was the basis of BZA Appeal No. 17092 plainly authorizes Wagtime to operate a "dog boarding" business as its principal use. Thus, the Board appropriately based its decision on the activities authorized by the certificate of occupancy itself and did not make any findings concerning Wagtime's actual operations (on which Wagtime presented no testimony or evidence at the hearing). As noted above, this "uncontroverted evidence" only becomes relevant if and when Wagtime applies for a new certificate of occupancy identifying a use other than "24-hour dog boarding" as the principal use of the premises.

Accordingly, this appeal should be summarily dismissed. Summary dismissal of this appeal is particularly important here, to ensure that the pendency of this "appeal" does not discourage the Zoning Administrator from taking the appropriate and necessary action to shut down Wagtime's unauthorized operations, which continue unabated notwithstanding the

revocation of its certificate of occupancy. As discussed in more detail below, these continued operations result in irreparable harm to abutting neighbors, and are contrary to the public interest.

III. Wagtime's Request for A Stay of Enforcement Should Be Denied.

A. Wagtime's Request for A Stay Is Also Barred By Principles of Administrative Res Judicata.

Principles of administrative *res judicata* and exhaustion of administrative remedies apply with even greater force to bar Wagtime's untimely request for a stay of enforcement of BZA Decision No. 17092. As noted above, Wagtime already filed a motion with this Board seeking to stay enforcement of the BZA's Decision in Appeal No. 17092, which motion was not accepted because it was not timely submitted. See BZA Appeal No. 17092, Exhibit 100. Motions for a stay of enforcement should be submitted no later than ten days after the issuance of a final order, or by October 25, 2004. Wagtime chose not to file a request for a stay of enforcement prior to October 25, 2004, as required by this Board's rules, nor did Wagtime choose to file a stay in its pending petition for review of BZA Decision in Appeal No. 17092.

Wagtime's previous attempt to request a stay of enforcement of BZA Decision No. 17092 was made nearly two months after the time period for filing post-decision motions had expired, and was properly rejected. The present attempt is even more substantially out-of-time. Wagtime should not be permitted to use the artifice of its new "appeal" to evade the time limits for post-decision filings. Accordingly, this request for a stay is untimely and must be rejected.

B. Wagtime Does Not Satisfy The Standard for Granting A Stay.

To prevail on a motion for a stay, "a movant must show that he or she is likely to succeed on the merits, that irreparable harm will result of the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors granting a stay." BZA Application No. 15434, at 4 (Nov. 10, 1992) (quoting Barry v. Washington Post Company, 529 A.2d 319, 320-21 (1987)). None of these factors favor the granting of a stay in this case

1. Wagtime Cannot Demonstrate A Likelihood of Success on the Merits.

As noted above, Wagtime does not possess a substantial likelihood of success on its appeal. Nor is the Zoning Administrator's enforcement action "selective and discriminatory," as Wagtime suggests. Rather, as noted above, the Zoning Administrator's revocation of Wagtime's certificate of occupancy was directly in response to this Board's decision in a specific case – BZA Appeal No. 17092 – and was the legally required response to that decision. See 12 DCMR § 110.5.3. In any event, the fact that unspecified establishments in unspecified zones, upon Wagtime's "information and belief," conduct dog boarding as an accessory use to certificates of occupancy listing the principal use as a "pet shop" does not constitute evidence of "selective and discriminatory" enforcement of a decision finding dog boarding to be impermissible as a principal use in the C-3-A/Arts district. Appeal of Wagtime, at 5. To the contrary, this Board specifically found that "dog boarding as an accessory use at a veterinary hospital or pet shop would have a much lesser external impact upon a neighboring community." BZA Decision No. 17092, at 5 (Oct. 15, 2004). Wagtime's use of the premises does not involve either a veterinary hospital or a pet shop. Thus, the Zoning Administrator did not engage in "selective and

discriminatory" enforcement by failing to revoke certificates of occupancy issued to these unidentified "pet shops."

2. Wagtime Cannot Demonstrate Irreparable Harm

Wagtime cannot demonstrate that it will be irreparably injured unless a stay is issued. Wagtime's claim that "[i]f [the order is] allowed to stand, Wagtime will likely be forced out of business" is without support. Appeal of Wagtime, at 1. Nothing in BZA Order No. 17092 bars Wagtime from conducting dog grooming and retail sales on the premises – the business that it now claims is its principal use. Wagtime's claim that it might be forced to shut down its business if BZA Order No. 17092 is enforced simply cannot be reconciled with Wagtime's claim that there is "uncontroverted" evidence demonstrating that "dog boarding is only a small percentage of its business." Id. If, in fact, dog boarding is only a small percentage of Wagtime's business, then Wagtime' s theoretical[5] inability to continue this activity while this appeal is pending should not impose a financial hardship, much less force Wagtime out of business.

3. The Harm to Intervenors of A Stay Outweighs the Harm to Wagtime

Wagtime's suggestion that a stay would result in no harm to "appellants," presumably referring to the Appellants in BZA Appeal No. 17092, is particularly outrageous. At any given time, Wagtime keeps up to 20-30 dogs on the premises, for "cageless," "indoor/outdoor" dog boarding directly abutting a residential neighborhood and residential properties. By practice, Wagtime cleans the backyard by hosing down excrement and urine into the alley behind its

5 As noted above, this injury is extremely theoretical, in view of the fact that Wagtime has continued its dog boarding operations, unabated, notwithstanding the revocation of its certificate of occupancy more than three months ago.

property, abutting residential homes, and the smell and streams of waste from Wagtime's operations unreasonably and negatively affect the homes and property of residents in the area. As the unrebutted evidence submitted in BZA Appeal No. 17092 demonstrates, an average dog produces approximately 1 liter of urine and one half pound of feces per day. Pre-hearing Submission in BZA Appeal No. 17092, at 12 n. 14. Therefore, Wagtime when boarding approximately 20 dogs per day, produces 140 liters of urine and 70 pounds of fecal matter per week. *Id.* The smell of urine was so overpowering that Wagtime itself alerted the Hazardous Material Unit of the D.C. Fire and Emerency Services department. *Id.* Attachment 11.

As the unrebutted record in BZA Appeal No. 17092 also demonstrates, noise measurements taken at various times over a month-long period at Wagtime's facility documented noise levels from between 80 and 90 dBA. Prehearing Submission in BZA Appeal No. 17092, Attachment 15. At levels ranging from 80 to 100-plus dBA, dog barking noise levels exceed even DC's maximum permissible noise level of 70 dBA in the Industrial (M) zone. *Id.*, at p.15 n 19. The unrelenting noise and smells emanating from Wagtime's operations have made living in the neighborhood unbearable for the Intervenors. This irreparable injury outweighs Wagtime's desire to continue its unregulated, unrestricted, and irresponsible operations.

3. The Public Interest Would Not Be Served By A Stay.

Finally, the public interest would not be served by staying enforcement of BZA Decision No. 17092.. As the Board determined, "the zoning regulations do not intend a dog boarding use to be authorized as a matter of right, without any restrictions, particularly if it is adjacent to a residential property." BZA Decision No. 17092, at 7. As noted above, Wagtime's operations have resulted in repeated and persistent violations of the D.C. Noise Control Act. See Exhibit 2. In addition, Wagtime's operations violate the D.C. Animal Control Act, D.C. Mun. Regs. tit. 24 § 900.1 (2005) (the "D.C. Animal Control Act"), which provides that no "person shall own or keep a dog that, by barking or in any other manner, disturbs the quiet of any neighborhood or any person." To use Wagtime's own words, "the public has an interest in ensuring that laws and regulations are enforced." Appeal of Wagtime, at 7. Unrestricted and unlicensed kennel operations, particularly the irresponsible operations conducted by Wagtime, simply have no place abutting a residential district.

Moreover, Wagtime continues to irresponsibly and unlawfully operate its dog boarding business without a certificate of occupancy, in violation of the law. See D.C. Code § 6-641.09 ("in the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained."); 11 DCMR § 3203.1. See Exhibit 3. As this Board has pointed out, "This Board does not treat lightly the apparent indifference of the Applicant to the Board's orders." BZA Decision in Application No. 13766 of Dolores Conrad (Dec. 3, 1982)

(ruling that the Applicant's failure to obtain a required license, in violation of prior Board orders, constitutes "unclean hands" that warrant dismissal of the application).

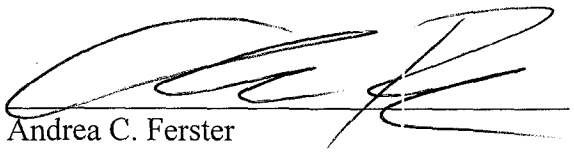
Further, Wagtime had had multiple outstanding fines, each in excess of $100, owed to the DC government as a result of civil infraction notices issued by DCRA for Wagtime's violations of zoning and business licensing regulations. As of June 14, 2005, default judgments entered against Wagtime, three of which remained unpaid and outstanding according to DCRA's Office of Civil Infractions. A recent example of one of these default judgments is attached as Exhibit 4. Accordingly, Wagtime is not entitled to the extraordinary equitable remedy of a stay given its outlaw conduct with respect to not only the laws but the explicit orders of the D.C. government.

Wagtime provides no support for its assertion that a stay of enforcement would benefit "the animal -owning public." Appeal of Wagtime, at 7. Wagtime provides no evidence that dog boarding would be unavailable at "any location in the District of Columbia." *Id.* Contrary to Wagtime's unsubstantiated assertion, nothing in BZA Appeal No. 17092 prohibits dog boarding as an accessory use to legitimate pet shop and veterinary hospitals located in the C-2, or as a principle use in less restrictive manufacturing zone districts, which are subject to the standards on external effects. While allowing Wagtime to operate without restriction or regulation or regard for the rights of abutting residents and property owners might be advantageous to Wagtime's owners, this purely private interest does not by any stretch serve the public interest.

Conclusion

For the foregoing reasons, this motion to dismiss should be granted, and Wagtime's motion to stay revocation should be rejected.

Respectfully submitted,



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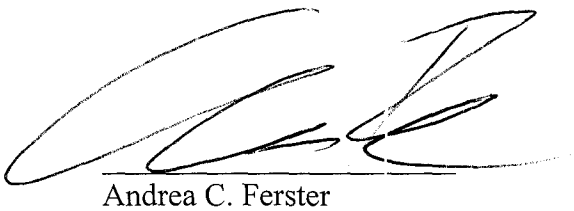
CERTIFICATE OF SERVICE

I hereby certify that, on June 14, 2005, a copy of the foregoing Opposition to Motion to Dismiss was served by mail on, or as otherwise indicated:

Bennett Rushkoff
Assistant D.C. Attorney General
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Andrea C. Ferster

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

March 3, 2005

Via U.S. Mail and Email

Gary A. Ridley
Smarteam Communications, Inc.
1612 U Street, NW
Suite 401
Washington, DC 20009-6210

Re: Freedom of Information Act Request

Dear Mr. Ridley:

This letter is in response to your written requests for information pertaining to certain cases before the Office of Administrative Hearings ("OAH"). We received your requests on February 9, 2005, and we have treated your request as a Freedom of Information Act ("FOIA") request under D.C. Code §§ 2-531, *et seq*. It is my understanding that Lisa Coleman of our office telephoned you on Wednesday, February 23, 2005 to inform you that information responsive to your requests was available to you. This letter is to confirm that your request has been fully processed and granted.

You requested a copy of all written and electronic communication received by OAH in relation to the Notice of Proposed Revocation of Certificate of Occupancy Number CO69395 issued on November 12, 2004. There are no documents responsive to this request in the possession of OAH other than the Notice of Proposed Revocation, a copy of which was attached to your request.

You also requested a copy of records received during the same time frame from any of the following parties: Wagtime, LLC, Lisa Schreiber, Alan Popovsky, Ofer Khal, Edward L. Donohue, Esq., Steven E. Sher, Esq., Holland & Knight, LLP, Former DCRA Director David Clark, DCRA's Office of the General Counsel, Julie Lee, or any other party not listed who communicated with OAH in reference to the Notice of Proposed Revocation, any appeal of the Notice of Proposed Revocation. As referenced above, there are no documents responsive to this request in the possession of OAH other than the Notice of Proposed Revocation.

You also requested a copy of all written and electronic communication received by OAH in relation to the NOI # CR-I-05-S100095 or any other Notice of Infraction issued to Wagtime, LLC or Lisa Schreiber between November 17, 2004 and February 8, 2005. All documents responsive to this request were made available to you on February 23, 2005, and it is my understanding that you made copies of documents you selected at OAH's office on February 25, 2005.

Finally, you requested a copy of records received during the same time frame from any of the following parties: Wagtime, LLC, Lisa Schreiber, Alan Popovsky, Ofer Khal, Edward L. Donohue, Esq., Steven E. Sher, Esq., Holland & Knight, LLP, Former DCRA Director David Clark, DCRA's Office of the General Counsel, Julie Lee, or any other party not listed who communicated with OAH in reference to NOI # CR-I-05-S100095 or any appeal of the Notice of Infraction. Again, all documents responsive to this request were made available to you on February 23, 2005, and it is my

Exhibit 1

understanding that you made copies of documents you selected at OAH's office on February 25, 2005.

We have granted fully your request and have responded with all responsive documents in the possession of OAH. However, if you feel that your request has been denied in whole or in part, you may appeal this decision in accordance with D.C. Code § 2-537 and other applicable law.

Should you have any questions, please do not hesitate to contact me at (202) 724-5475.

Sincerely,

/s/

Barbara Madden
Executive Director and
FOIA Officer

cc: Lisa Coleman, General Counsel, OAH

LAW OFFICES OF
ANDREA C. FERSTER
1100 SEVENTEENTH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036
(202) 974-5142
(202) 331-9680 (fax)

February 19, 2004

Anthony Williams, Mayor
District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 600
Washington, DC 20004

Dear Mayor Williams:

DC Municipal Noise Control Regulations--WagTime, LLC

This letter is written on behalf of many residents of the 1400 block of Q Street, NW, and on behalf of Mid-City Development Company, LLC, (collectively "Q Neighborhood Coalition") concerning the numerous and continuing violations of the District of Columbia's Noise Control regulations (DCMR Title 20, section 2700 et seq.) committed by WagTime, LLC, at its leased premises at 1412 Q Street, NW. These violations have been repeatedly brought to the attention of the District government and to the attention of WagTime, LLC, as well as to the property owner, Mr. Paul Reneau of 1412 Que St, LLC (see Attachments 1 and 2), yet no action has been taken by the District government to enforce the Noise Control Act, nor by Reneau Real Estate or WagTime to halt these ongoing violations. As you can see from my clients' web log documentation of these noise problems (Attachment 3), the violations have continued on a frequent basis since July 2003, and they continue to this day.

Accordingly, the purpose of this letter is to notify you and the copy recipients of this letter, which include WagTime, LLC and Mr. Reneau, pursuant to section 2714.2 of my clients' intent to avail themselves of the civil enforcement procedures specified in section 2714 of the Noise Control Regulations unless the District government commences and diligently prosecutes either the issuance of civil infraction notices or civil action in a court of competent jurisdiction in respect of these violations within ten (10) days of the receipt of this formal notice letter.

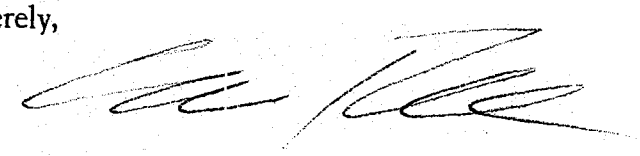
Due to the District government's failure to respond to these complaints and take appropriate steps to enforce the legal noise limits, my clients retained Miller, Beam, Paganelli, Inc., a qualified acoustical engineering company registered as a professional engineer by the District, in order to document the noise. In late November 2003, Miller, Beam, Paganelli, Inc. installed a noise meter at 1414 Q Street, NW (the contiguous residential-zoned property to the west) near the boundary line with 1412 Q Street, NW, WagTime's premises, in accordance with the noise measurement provisions (sections 2900 et seq.) of the DC Noise Control regulations. Approximately 70 measurements were taken between November 26, 2003, and December 22, 2003, at various times of day.

Exhibit 2

According to Miller, Beam, Paganelli, the measurements document that noise from WagTime's facility routinely exceeds – by significant margins -- the maximum noise levels established by the Noise Control Act (see Attachment 4: Miller Beam Paganelli's summary report of January 5, 2004; and Attachment5: Miller, Beam Paganelli's detailed noise data report from the tests). On 54 instances over a 17-day period (or more than three times per day on average), the noise level emanating from WagTime's premises exceeded the maximum noise limit of 60 decibels permitted in a residential zone pursuant to section 2701.1 of the DC Noise Control regulations. In the majority of these instances the noise level measured between 80 and 90 decibels; on ten occasions over the 17-day period, the noise level reached or exceeded 90 decibels.

This excessive noise emanating from WagTime's premises at 1412 Q St., NW, causes severe distress and damage to my clients, and these violations of the noise limits continue on a daily basis. My clients therefore request that the District government take immediate action to enforce the DC Noise Control regulations by issuing citations and/or notices of infraction to WagTime, LLC, and the property owner, and by imposing appropriate penalties in accordance with 20 DCMR § 2713.. Unless appropriate enforcement and corrective action is taken within ten (10) days of receipt of this letter, as required by Section 2714.2, my clients intend to seek civil enforcement of the provisions of the DC Noise Control regulations against the District of Columbia, the property owner (Mr. Paul Reneau, via 1412 Que St., LLC) and/or the business (WagTime, LLC), pursuant to section 2714.

Sincerely,



Andrea C. Ferster,
Counsel for Q Neighborhood Coalition

Attachments

cc: Mr. Robert Bobb, Deputy Mayor/City Administrator, Executive Office of the Mayor
Ms. Lisa Schreiber/Mr. Ofer Khal, WagTime, LLC
Mr. Paul Reneau, 1412 Que St., LLC
Ms. Alissa Leonard, Reneau Real Estate, LLC
Mr. David Clark, Director, DCRA
Ms. Theresa Lewis, Deputy Director for Operations/Chief of Staff, DCRA
Mr. Denzil Noble, Administrator, Building and Land Regulation Administration, and Acting Zoning Administrator, DCRA
Mr. Bruce Mosley, Neighborhood Stabilization Program, DCRA
Chief Ramsey, DC Metropolitan Police Department
Commander Larry McCoy, 3rd District, Metropolitan Police Department

Captain Diane Groomes, 3rd District, Metropolitan Police Department
Lieutenant Michael Smith, 3rd District, Metropolitan Police Department
Honorable Jack Evans, Member Ward 2, DC Council
Honorable Sharon Ambrose, Chair, DC Council Committee Consumer & Regulatory Affairs
Honorable David Catania, Member At Large, DC Council
Honorable Phil Mendelson, Member At Large, DC Council
Honorable Carol Schwartz, Member At Large, DC Council
Mr. Cary Silverman, Chairman, Advisory Neighborhood Commission 2F
Mr. Jim Brandon, Advisory Neighborhood Commissioner 2F02
Ms. Miriam Trimble, Advisory Neighborhood Commissioner 2F03
Ms. Helen Kramer, Advisory Neighborhood Commissioner 2F04
Mr. Thomas Funk, Advisory Neighborhood Commissioner 2F05
Mr. G Robert Hinterlong, Advisory Neighborhood Commissioner 2F06
Mr. Clark Ray, Executive Office of the Mayor, Neighborhood Services Coordinator, Ward 2

Notification of noise problems by Q Street residents to the District government

On numerous occasions Q Street residents have notified the District government (DCRA, MPD and/or the Executive Office of the Mayor: Neighborhood Services) of the ongoing noise problem created by dogs barking at WagTime's premises:[1]

- On August 24, 2003, dog-barking noise emanating from WagTime's premises was reported by Ms. Mencimer to MPD's non-emergency (311) number (Attachment 3). Officer Kennedy of the 3rd District responded and informed residents that the noise was a regulatory matter that needed to be taken up with DCRA.

- On August 25, 2003, both Mr. Denzil Noble and Deputy Director Lewis of DCRA were notified in writing by Stephanie Mencimer of the dog-barking noise emanating from WagTime's premises at 1412 Q Street (the letter is appended at the end of this attachment). A copy of that notification was also sent to MPD 3rd District (Lt. Groomes and Sgt. Fitzgerald), to the Neighborhood Services Coordinator for Ward 2, Mr. Clark Ray, and was forwarded to Mr. David Clark, Director of DCRA. Director Clark informed Q Street residents that DCRA would send an inspector out to the premises to take noise readings and that citations for noise violations would be issued to WagTime if it remained non-compliant (the e-mail from Director Clark is appended at the end of this attachment). Q Street residents have received no subsequent information from DCRA regarding what, if any, noise readings were taken and/or citations were issued to WagTime in respect of its noise. No response from Mr. Noble to her letter was ever received by Ms. Mencimer.

- On September 23, 2003, dog-barking noise emanating from WagTime's premises was reported by Ms. Mencimer to MPD's non-emergency (311) number (Attachment 3). The dispatcher refused to send an officer, insisting that this noise was not a police matter. Ms. Mencimer then reported the noise to the Mayor's citywide call center, which transferred her to Mr. Mosley of DCRA (Neighborhood Stabilization Program) who stated that he would look into the matter. No subsequent information or response was received from DCRA.

- On October 7, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Mr. Mosley of DCRA (Attachment 3). No response was received from DCRA.

- On October 10, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Mr. Mosley of DCRA (Attachment 3). No response was received from DCRA.

- On November 3, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Mr. Mosley of DCRA (Attachment 3). In

[1] See also Attachment 3 for the original web log record of these notifications.

contradiction of Director Clark's statement to residents on August 25, 2003, that DCRA would monitor and enforce the noise regulations with respect to WagTime, Mr. Mosley informed Ms. Mencimer on November 3, 2003, that "dog barking is a police matter; there is nothing in our regulations that governs dogs making noise". Mr. Mosley passed Ms. Mencimer on to a DCRA noise inspector who also stated that he had no authority to do anything about dog noise but that the police have the authority to issue a citation. (Ms. Mencimer pointed out to both Mr. Mosley and the DCRA noise inspector that the police had stated that the dog barking noise is a DCRA matter; neither Mr. Mosley nor the DCRA noise inspector offered any response to this information). Ms. Mencimer then reported the noise to MPD's non-emergency (311) number. The dispatcher said an officer would be sent but no officer arrived and Ms. Mencimer heard nothing further from MPD.

- On November 5, 2003, dog-barking noise emanating from WagTime's premises was reported by Mr. Weaver to Clark Ray, the Mayor's Neighborhood Liaison officer for Ward 2 (Attachment 3). Mr. Ray said his office would do nothing about the noise and suggested this was a police matter. Mr. Weaver informed Mr. Ray that the police had been unresponsive and had already indicated that they would not issue noise citations to WagTime, as this was not their responsibility. Mr. Ray did not offer to resolve the issue of which agency – DCRA or MPD -- is responsible for enforcement.

- On November 11, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Mr. Mosley of DCRA (Attachment 3), together with (a) the information that Director Clark of DCRA had stated that DCRA would monitor and enforce DC's Noise Control regulations with respect to WagTime; and (b) a request that Mr. Mosley follow up on the noise complaints that had been reported to him. No response was received from DCRA.

- On November 18, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to MPD's non-emergency (311) number (Attachment 3). The dispatcher said that an officer would be sent; no officer arrived but later an officer called Ms. Mencimer to ask questions about the nature of the business and stated that the complaint would be referred by the officer to Animal Control.

-----Original Message-----
From: Stephanie A. Mencimer [mailto:smencimer@earthlink.net]
Sent: Monday, August 25, 2003 4:19 PM
To: denzil.noble@dc.gov
Cc: DGROOMES@mpdc.org; WFITZGER@mpdc.org; psa309lt@hotmail.com; fitz503@yahoo.com; clark.ray@dc.gov; Lewis, Theresa (DCRA)
Subject: Police response to Wagtime dog noise

Dear Mr. Noble,

As you know, we on Q Street have been having some trouble with a recent arrival to our block, Wagtime, a dog day care and boarding operation at 1412 Q Street NW. I live directly next door to the business. Yesterday, the noise from the dogs there was frankly unbearable. Every time I went out in my yard to sweep up leaves or even to eat lunch on the patio, my husband and I were beseiged with a new round of barking.

The extremely loud noise continued throughout the day and well into the night, as Wagtime employees closed up shop and left the dogs unattended. The dogs barked, inside the building, loudly enough to be heard in my dining room, for two solid hours, until we'd finally had enough and at 9 p.m., called the police nonemergency number to report the problem.

Officer R.W. Kennedy came to our door sometime later, while the dogs were still barking and asked what the problem was.When we explained that a number of dogs had been barking very loudly for hours, Kennedy said, "What do you want me to do about it?"

Of course, we hoped he'd issue some kind of noise citation as an inducement to get Wagtime to address the problem. But Kennedy, after determining that there were no Wagtime employees in the building, told us there was nothing he could do and that this was a regulatory matter we needed to take up with DCRA.

Clearly, this breakdown in responsibility is a problem for us, as the police don't seem willing, able, or even aware of the need to enforce the city noise ordinances when it comes to Wagtime, and DCRA has claimed not to responsible for it either. We already know from Wagtime's own sound engineers that the noise of their operation inside a building exceeds 100 dBa (see attached letter), a figure that is higher than most nightclub levels. (You may recall that Wagtime was evicted from its previous location because of exactly this noise problem.)

Q Street residents would like to hear hear from you what we should do about this situation, one which severely affects our quality of life here. Wagtime has clearly been in violation of the law--not just the noise ordinance, but also the nuisance statute regarding dogs, which are considered under the DC code a de facto nusiance when they're barking regardless of how loudly.

Now that your office has said that this business has a matter of right to be in our residential neighborhood, I think neighbors have a matter of right to see all the appropriate laws enforced to regulate Wagtime's existence here. I hope you will give us some guidance as how best to ensure that this enforcement takes place. Thank you for your consideration.

Sincerely,

Stephanie Mencimer

****

Stephanie Mencimer
1414 Q St. NW
Washington DC 20009
(202)332-7025
smencimer@earthlink.net

MBP MILLER, BEAM & PAGANELLI, INC.
CONSULTANTS IN ACOUSTICS, VIBRATION & AUDIOVISUAL SYSTEM DESIGN

March 5, 2003

Lisa Chreiber
Wag Time
2104 18th Street NW
Washington, D.C. 20009

RE: NOISE LEVELS FROM DOG CARE

Dear Ms. Chreiber:

A site survey was performed on February 11, 2003 to address noise transmission issues from Wag Time to the second level apartment above. Simultaneous measurements were made to estimate the NIC (noise isolation class) rating of the existing construction. In our letter of February 13, 2003 we detailed our analysis and recommendations. However, we understand you also require the measured noise level in the apartment above. The noise level measured in the above apartment was 48 dBA when the level in Wag Time measured 101 dBA. Feel free to call regarding any questions on the above measurements.

Sincerely,

Kelton Mitchell
Consultant

5723 WHITTIER AVENUE, SUITE 101, McLEAN, VIRGINIA 22101 (703) 505-6005 (703) 505-6009 (FAX) www.millerbp.com

-----Original Message-----
From: Clark, David (DCRA) [mailto:Davida.Clark@dc.gov]
Sent: Monday, August 25, 2003 4:33 PM
To: Collins, Al
Subject: RE: Police response to Wagtime dog noise

We will send someone out to do some random noise level readings. By that I mean that we won't just go out once, and we won't go out announced. Once we get a set of good readings - the ambient noise levels are used in the calculation of the effect - then we will issue citations etc, from there. Not a problem - they will have to be in compliance with the law - and we'll start be getting some official readings.

Thanks!

Dave

-----Original Message-----
From: Al_Collins
Sent: Monday, August 25, 2003 4:23 PM
To: Davida.Clark@dc.gov
Subject: FW: Police response to Wagtime dog noise

Mr. Clark:

I'm interested in your comments on this matter as well.

Al Collins

-----Original Message-----
From: Stephanie A. Mencimer [mailto:smencimer@earthlink.net]
Sent: Monday, August 25, 2003 4:19 PM
To: denzil.noble@dc.gov
Cc: DGROOMES@mpdc.org; WFITZGER@mpdc.org; psa309lt@hotmail.com; fitz503@yahoo.com; clark.ray@dc.gov; Lewis, Theresa (DCRA)
Subject: Police response to Wagtime dog noise

Dear Mr. Noble,

As you know, we on Q Street have been having some trouble with a recent arrival to our block, Wagtime, a dog day care and boarding operation at 1412 Q Street NW. I live directly next door to the business. Yesterday, the noise from the dogs there was frankly unbearable. Every time I went out in my yard to sweep up leaves or even to eat lunch on the patio, my husband and I were beseiged with a new round of barking.

The extremely loud noise continued throughout the day and well into the night, as Wagtime employees closed up shop and left the dogs unattended. The dogs barked, inside the building, loudly enough to be heard in my dining room, for two solid hours, until we'd finally had enough and at 9 p.m., called the police nonemergency number to report the problem.

Officer R.W. Kennedy came to our door sometime later, while the dogs were still barking and asked what the problem was. When we explained that a number of dogs had been barking very loudly for hours, Kennedy said, "What do you want me to do about it?"

Of course, we hoped he'd issue some kind of noise citation as an inducement to get Wagtime to address the problem. But Kennedy, after determining that there were no Wagtime employees in the building, told us there was nothing he could do and that this was a regulatory matter we needed to take up with DCRA.

Clearly, this breakdown in responsibility is a problem for us, as the police don't seem willing, able, or even aware of the need to enforce the city noise ordinances when it comes to Wagtime, and DCRA has claimed not to responsible for it either. We already know from Wagtime's own sound engineers that the noise of their operation inside a building exceeds 100 dBa (see attached letter), a figure that is higher than most nightclub levels. (You may recall that Wagtime was evicted from its previous location because of exactly this noise problem.)

Q Street residents would like to hear hear from you what we should do about this situation, one which severely affects our quality of life here. Wagtime has clearly been in violation of the law--not just the noise ordinance, but also the nuisance statute regarding dogs, which are considered under the DC code a de facto nusiance when they're barking regardless of how loudly.

Now that your office has said that this business has a matter of right to be in our residential neighborhood, I think neighbors have a matter of right to see all the appropriate laws enforced to regulate Wagtime's existence here. I hope you will give us some guidance as how best to ensure that this enforcement takes place. Thank you for your consideration.

Sincerely,

Stephanie Mencimer

****

Stephanie Mencimer
1414 Q St. NW
Washington DC 20009
(202)332-7025
smencimer@earthlink.net

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intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and
are hereby notified that any disclosure, copying, or distribution of this
message, or the taking of any action based on it, is strictly prohibited.

Notification of noise problems by Q Street residents to the property owner and tenant

On numerous occasions Q Street residents have notified Reneau Real Estate (the property management company responsible for managing the property on behalf of the owner: 1412 Que St, LLC) and WagTime (the tenant) of the ongoing noise problem created by dogs barking at WagTime's premises:

- On September 23, 2003, dog-barking noise emanating from WagTime's premises was reported by Ms. Mencimer to Reneau Real Estate. In response, on September 24, 2003, Alissa Leonard of Reneau Real Estate wrote to Lisa Schreiber of WagTime warning her about WagTime's noise and requesting that WagTime desist from permitting dog-barking noise to disturb neighboring property owners. (Ms. Leonard's letter to WagTime is appended at the end of this attachment).

- On October 10, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Reneau Real Estate, together with a request to Reneau Real Estate to call their tenant, WagTime, about the noise (Attachment 3). No response was received from Reneau Real Estate.

- On October 18, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Reneau Real Estate (Attachment 3). No response was received from Reneau Real Estate.

- On November 5, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Reneau Real Estate (Attachment 3). No response was received from Reneau Real Estate. At 11:00 am on the same day another resident, Mr. John Weaver, complained about the noise to WagTime staff at their premises and asked them to stop the dog-barking noise; WagTime staff took no action and the dog-barking noise continued.

- On November 14, 2003, dog-barking noise emanating from WagTime's premises was again reported by Ms. Mencimer to Reneau Real Estate (Attachment 3). No response was received from Reneau Real Estate.

Attachment 2

Attachment (cont.)

RENEAU REAL ESTATE LI
1811 S Street N.W., Suite 100
Washington, DC 20009
TEL: 202-797-0852
FAX: 202-797-0772
Email: MrPReneau@aol.com

September 24, 2003

Lisa Scheiber
Wagtime, LLC
1412 Que Street, NW
Washington, DC 20009

Dear Ms. Scheiber:

Yesterday, I received a call from one of your neighbors concerning several hours of excessive barking in the rear yard. This tenant was in her home and I could hear the dogs very clearly and understand her annoyance with the situation..

We understand that this is a dog daycare and you must allow the dogs to run and get fresh air, but you must have consideration for your neighbors and allow them the quiet enjoyment of their home as you would want in yours. Therefore, we are requesting that you consider not releasing the dogs into the rear of the building for long periods of time, thereby not allowing the barking to disturb your surrounding neighbors.

Very truly yours,

Alissa D. Leonard

Alissa D. Leonard

cc: Surrouning Neighboirs

MILLER, BEAM & PAGANELLI, INC.
CONSULTANTS IN ACOUSTICS, VIBRATION & AUDIOVISUAL SYSTEM DESIGN

January 5, 2004

Mr Erik Wemple
Washington City Paper
2390 Champlain St. NW
Washington, DC 20009

RE: WAG TIME DOG BOARDING FACILITY
Noise Study Results

Dear Mr. Wemple:

Miller, Beam & Paganelli has participated in the measurement of barking dog noise from the Wag Time dog boarding facility (1412 Q St., NW Washington, D.C.) at the neighboring residence. The purpose of the measurements was to document that the noise emanating from the Wag Time facility exceeds the DC maximum allowable noise code levels in a residential zone which is 60 dBA during the daytime and 55 dBA during the nighttime.

An Extech Data logging sound level meter (model #407764) was used to periodically measure noise levels produced from barking dogs. The Extech meter meets ANSI standard for a Type 2 instrument and was calibrated prior to data collection. The meter was set for "fast" time weighting. Most measurements were made using the "A" frequency weighting though some were made using the "C" weighting. The data logger was programmed to measure and store the sound level readings at one second intervals. Measurements periods were typically between 30 seconds and 2 minutes.

Noise measurements were made at two locations: on the second floor rear fire escape and in the middle of the rear yard area (ground level) of the Wemple residence (1414 Q St., NW) adjacent to the Wag Time property. Approximately 70 measurements were made between November 26 and December 22, 2003 at various times of day.

The enclosed figure shows three measurement periods on the same graph. The horizontal axis represents the time in seconds and the vertical axis is the A-weighted sound pressure level (dBA). The top line is a measurement of dogs barking while in the outdoor area behind the Wag Time building. The loudest noise levels reach 90 dBA, while most noise levels are between 80 and 90 dBA . The middle line shows measured noise levels while the dogs were barking from inside the Wag Time facility. Here the loudest barks are 70 dBA with most of barking between 60 and 70 dBA. After about 60 seconds the barking stops. Note that this measurement was made after 10 pm when the noise code is more restrictive. The bottom line is ambient noise without dogs barking but with sirens from emergency vehicles traveling on nearby 14th Street. Maximum levels caused by the sirens were slightly above 60 dBA. Typical background noise levels were about 50 dBA.

Attachment 4

Attachment (cont.)

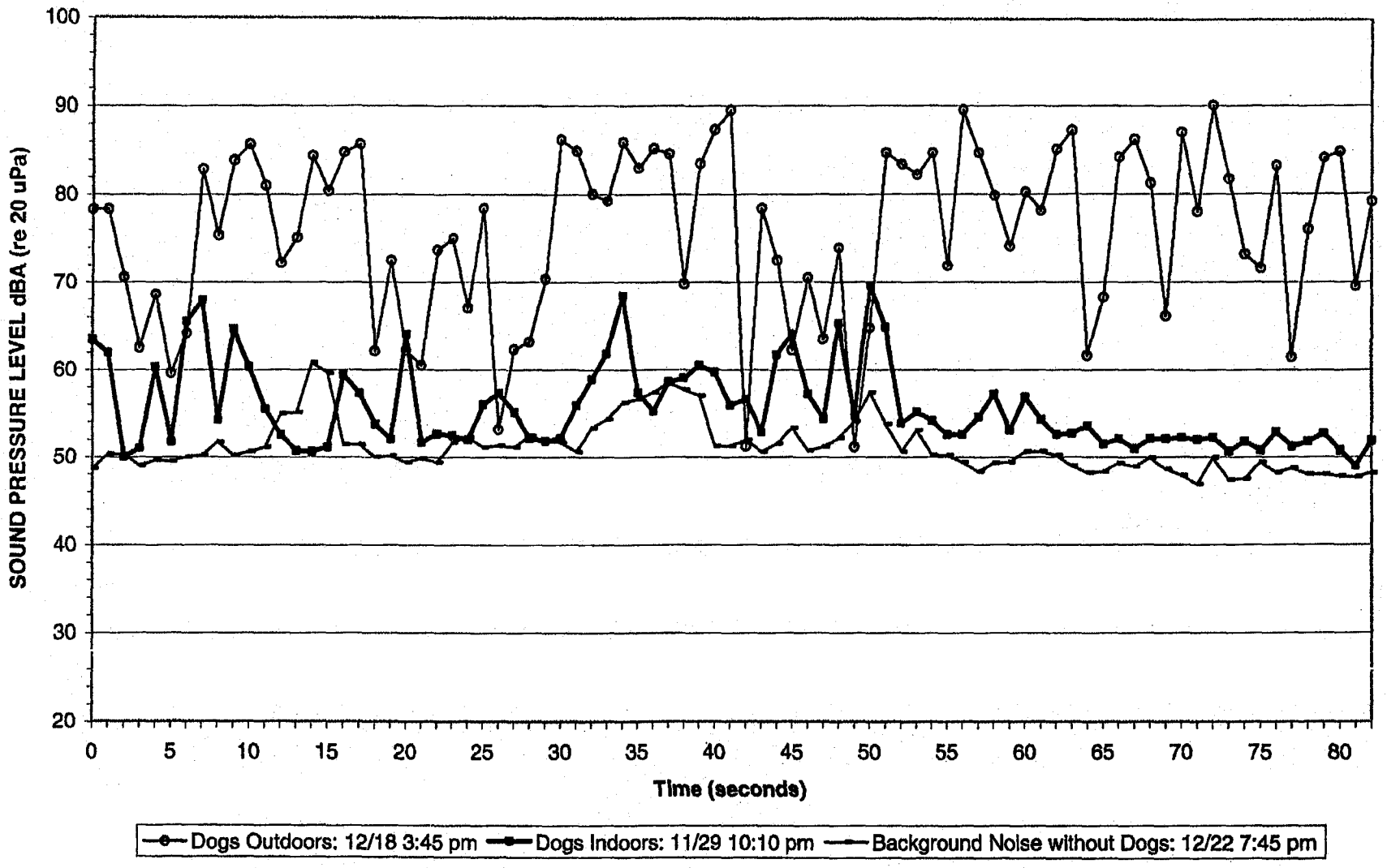
Thus, the noise from the barking dogs clearly exceed the DC noise code levels of 60 dBA during daytime hours and 55 dBA during nighttime hours. Though only two noise profiles are provided here, the many measurements made over nearly a month indicate repeated dog noise levels in excess of the DC noise code. Please call if you have any questions regarding the noise measurements.

Sincerely,

Douglas P. Koehn
Consultant

WAG TIME DOG BOARDING FACILITY

Noise Levels Measured at Neighboring Residence



Miller, Beam & Paganelli,
McLean, Vir

Attachment 4
Attachment (cont.)

MILLER, BEAM & PAGANELLI, INC.
CONSULTANTS IN ACOUSTICS, VIBRATION & AUDIOVISUAL SYSTEM DESIGN

January 27, 2004

Mr Erik Wemple
Washington City Paper
2390 Champlain St. NW
Washington, DC 20009

RE: WAG TIME DOG BOARDING FACILITY
Noise Study Data Graphs

Dear Mr. Wemple:

As requested, we are providing the data graphs of the sound levels measured at 1414 Q St. of dog barking noise at the neighboring Wag Time dog boarding facility at 1412 Q St., NW Washington, D.C.

Noise measurements were made using an Extech Data logging sound level meter (model #407764). The Extech meter meets ANSI standard for a Type 2 instrument and was calibrated prior to data collection. The meter was set for "fast" time weighting and most measurements were made using the "A" frequency weighting. The data logger measured and stored the sound levels at one second intervals. Measurements periods were typically between 30 seconds and 2 minutes.

Each graph shows the start and end time of each measurement on the horizontal axis and the decibel (dBA) sound level on the vertical axis. The date of the measurement is included below the graph along with my reference number for the data file. A horizontal line is shown at the 60 dBA level, which is the maximum allowable daytime noise level as defined in the DC noise code. Therefore, peaks in the graph above this 60 dBA line exceed the noise code.

In total, 54 data graphs are provide. They represent data collected on 17 different days between November 27 and December 19, 2003. Each graph shows multiple peaks above the 60 dBA noise level. From these graphs one can see that the noise code is exceed repeatedly, on weekdays and weekends, and at many times throughout the days.

Thus, the provided graphs should provide the documentation you require to show that noise from the Wag Time dog facility routinely exceeds the DC noise code levels. Please refer to my previous letter for a comparison of measured noise levels and background, or ambient, noise levels. Please feel free to call if you have any questions regarding the provided data.

Sincerely,

Douglas P. Koehn
Consultant

WAG TIME DOG BOARDING FACILITY
1412 Q St., NW Washington, D.C.

NOISE MEASUREMENTS

Date (2003)	# of data graphs
27-Nov	4
28-Nov	2
29-Nov	3
30-Nov	3
1-Dec	4
3-Dec	4
4-Dec	4
5-Dec	1
8-Dec	2
9-Dec	11
10-Dec	5
11-Dec	2
12-Dec	1
15-Dec	1
16-Dec	2
18-Dec	1
19-Dec	4
Total	54

From: Gary Ridley <garyr@smarteaminc.com>
To: <andrea@capitalpolicies.com>
Date: Tuesday, March 29, 2005 3:58 PM
Subject: Re: Enforcement of BZA Order No. 17092

-----Original Message-----
From: Bello, Toye (DCRA) [mailto:Toye.Bello@dc.gov]
Sent: Friday, November 12, 2004 6:41 PM
To: 'andrea@capitalpolicies.com'; Bello, Toye (DCRA)
Cc: Robert Bobb (E-mail); Clark, David (DCRA); Lewis, Theresa (DCRA); Noble, Denzil (DCRA); Kress, Jerrily (DCOZ); Clark Ray (E-mail); Lt. Michael. Smith (E-mail 2); Andrea Ferster (E-mail); Stephanie Mencimer (E-mail); Mark Rabbage (E-mail); Gary Ridley (E-mail); Erik Wemple (E-mail)
Subject: RE: Enforcement of BZA Order No. 17092

This is to inform you that a Notice of Proposed Revocation of Wagtime's C/O was issued today to the operator, Lisa Schreiber; copy to her attorneys. We have taken the extraordinary step of limiting the period within which the notice may be appealed to ten days in consideration of the circumstances. Such appeal may be taken to the Office of Administrative Hearings, located at 941 North Capitol street, N.E., suite 9400. Let me know if I can be of further assistance. Thank you.

Toye Bello
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
202-442-4576

Exhibit 3

From: Gary Ridley <garyr@smarteaminc.com>
Date: Tuesday, March 29, 2005 4:09 PM
Subject: Re: Enforcement of BZA Order No. 17092

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Mon, 6 Dec 2004 20:20:32 -0500
To: "'andrea@capitalpolicies.com'" <andrea@capitalpolicies.com>, "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Cc: "'Robert Bobb (E-mail)'" <oca.eom@dc.gov>, "Clark, David (DCRA)" <Davida.Clark@dc.gov>, "Lewis, Theresa (DCRA)" <Theresa.Lewis@dc.gov>, "Noble, Denzil (DCRA)" <Denzil.Noble@dc.gov>, "Kress, Jerrily (DCOZ)" <jerrily.kress@dc.gov>, "'Clark Ray (E-mail)'" <clark.ray@dc.gov>, "'Lt. Michael. Smith (E-mail 2)'" <psa307@hotmail.com>, "'Andrea Ferster (E-mail)'" <aferster@transact.org>, "'Stephanie Mencimer (E-mail)'" <smencimer@earthlink.net>, "'Mark Rabbage (E-mail)'" <markrabbage@yahoo.com>, "'Gary Ridley (E-mail)'" <garyr@smarteaminc.com>, "'Erik Wemple (E-mail)'" <ewemple@washcp.com>, "Parker-Woolridge, Doris (DCRA)" <Doris.Parker-Woolridge@dc.gov>, "Britt, Deborah (DCRA)" <Deborah.Britt@dc.gov>
Subject: RE: Enforcement of BZA Order No. 17092

Dear Ms Doughty,

I am informed by the General Counsel's office that Wagtime Inc. has requested a hearing (appeal) before the Office of Administrative Hearings (OAH), over the Notice of Proposed Revocation of subject Certificate of Occupancy. You may wish to contact that office at 202-442-8167 to determine the status of the hearing.

I further understand that Ms Britt is diligently working on your FOIA request. Ms Britt may be reached at 202-442-8475. Please let me know if I can be of further assistance. Thank you.

Toye Bello
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
202-442-4576

From: Gary Ridley <garyr@smarteaminc.com>
To: Toye Bello <Toye.Bello@dc.gov>
Bcc: Andrea Doughty <andrea@capitalpolicies.com>, "Stephanie A. Mencimer" <smencimer@earthlink.net>, "Joan D. Ferraris" <jdferraris@yahoo.com>
Date: Friday, February 25, 2005 5:56 PM
Subject: Wagtime/NOPR

Toye -

Thank you once again for taking the time to speak with me in person regarding the Notice of Proposed Revocation issued to Wagtime, LLC on November 12, 2004. As I stated today, my understanding is that Wagtime (or its representative) failed to notify the Office of Administrative Hearings (OAH) of their intention to appeal the NOPR, and subsequently failed to request a hearing from the OAH.

I have been in communication with Lisa Coleman, General Counsel for OAH, to verify that (as of today) their office had no record of a hearing request from Wagtime in response to the NOPR. Ms. Coleman has agreed to provide me with a written response confirming this early next week. She can be reached at (202) 724-5476.

Your timely response to this matter is greatly appreciated by myself and my neighbors on Q Street impacted by Wagtime. I look forward to your call Monday to discuss where this issue stands at DCRA.

Regards,

-Gary

Mobile Phone: (202) 262-6814

=-=-=-=-=-=-=-=-=-=-=-
Gary A. Ridley
President
Smarteam Communications Inc.
T: 202.518.9200 ext. 3
F: 202.518.7045
E: garyr@smarteaminc.com

"People come into our lives for a reason, a season, or a lifetime."
— Unknown

From: Gary Ridley <garyr@smarteaminc.com>
To: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tuesday, March 29, 2005 4:13 PM
Subject: Re: Wagtime/NOPR

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tue, 1 Mar 2005 19:25:40 -0500
To: "'Gary Ridley'" <garyr@smarteaminc.com>
Subject: RE: Wagtime/NOPR

Mr. Ridley,

Thanks for your patience. I am informed by our General Counsel that having confirmed that there is no stay associated with the Court of appeals appeal of the BZA decision upon which this revocation is predicated. Therefore, a final revocation letter will be served on Wagtime by COB tomorrow.

I apologize for the inconvenience to you and other concerned neighbors. Thanks.

Toye Bello

Zoning Administrator

Dept. of Consumer and Regulatory Affairs

941 North Capitol Street, N.E.

Suite 2000

202-442-4576

From: Gary Ridley <garyr@smarteaminc.com>
To: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tuesday, March 29, 2005 4:17 PM
Subject: Re: Wagtime - Status of NOR

-----Original Message-----
From: Gary Ridley [mailto:garyr@smarteaminc.com]
Sent: Thursday, March 10, 2005 2:40 PM
To: Toye Bellow
Subject: Wagtime - Status of NOR

Mr. Bello -

To follow up on our conversation last week regarding Wagtime, I'd like to ask:

1. If the final revocation letter was indeed served on Wagtime last Wednesday the 2nd? And if so, then
2. On what calendar day does the 10 day appeal period end for Wagtime?

There is some confusion amongst residents as to what is taking place so any information you can provide is most helpful. Also, in the event Wagtime or its representatives submit an appeal to you or to your office, would you please send inform me of this by either email or phone (202) 262-6814. I know this may be an unusual step for you to take but it helps to have some understanding of the current situation to minimize additional follow up by neighbors.

As for copies of the NOR and/or appeal, I have contacted Ms. Britt about amending my original FOIA request to and await her response.

Thank you for your assistance.

-Gary

=-=-=-=-=-=-=-=-=-=-=-
Gary A. Ridley
President
Smarteam Communications Inc.
T: 202.518.9200 ext. 3
F: 202.518.7045
E: garyr@smarteaminc.com

"You know when you've found it, because it hurts, when they take it away."
- Damien Rice

From: Gary Ridley <garyr@smarteaminc.com>
To: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tuesday, March 29, 2005 4:15 PM
Subject: Re: Wagtime - Status of NOR

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Thu, 10 Mar 2005 17:25:24 -0500
To: "'Gary Ridley'" <garyr@smarteaminc.com>
Subject: RE: Wagtime - Status of NOR

Mr. Ridley,

The revocation notice was indeed served. Wagtime's lawyer has indicated that the notice will be appealed to the BZA. I will glad to inform you about an appeal when the Office of Zoning notifies me.

The ten days toll from the date of receipt, including Saturday; hence the ten day notice period ends Monday, March 14, 2005.

Thanks.

Toye Bello

Zoning Administrator

Dept. of Consumer and Regulatory Affairs

941 North Capitol Street, N.E.

Suite 2000

202-442-4576

From: Gary Ridley <garyr@smarteaminc.com>
To: Gary Ridley <garyr@smarteaminc.com>
Date: Tuesday, March 29, 2005 4:18 PM
Subject: Re: Wagtime - Status of NOR

From: Gary Ridley <garyr@smarteaminc.com>
Date: Thu, 10 Mar 2005 18:07:44 -0500
To: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Bcc: Andrea Doughty <andrea@capitalpolicies.com>, "Stephanie A. Mencimer" <smencimer@earthlink.net>, "Joan D. Ferraris" <jdferraris@yahoo.com>
Subject: Re: Wagtime - Status of NOR

Mr. Bello -

Thank you for the information on Wagtime. Given that they are appealing the notice to the BZA, what procedure now takes precedence relative to the timing and enforcement of the revocation of Wagtime's Certificate of Occupancy? Specifically:

- Does the BZA appeal in effect postpone (potentially beyond March 14th) DCRA's enforcement of the revocation until such time that the BZA has ruled on the appeal, or
- Does DCRA expect that if the BZA has NOT ruled on the appeal by the 14th, then DCRA will enforce the revocation of Wagtime's C of O on Monday, March 14th, as stated in your notice?

Sorry for all the questions. Just trying to manage expectations on this end.

-Gary

=-=-=-=-=-=-=-=-=-=-=-
Gary A. Ridley
President
Smarteam Communications Inc.
T: 202.518.9200 ext. 3
F: 202.518.7045
E: garyr@smarteaminc.com

"People come into our lives for a reason, a season, or a lifetime."
— Unknown

From: Gary Ridley <garyr@smarteaminc.com>
To: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tuesday, March 29, 2005 4:20 PM
Subject: Re: Wagtime - Status of NOR

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tue, 15 Mar 2005 01:34:05 -0500
To: "'Gary Ridley '" <garyr@smarteaminc.com>
Subject: RE: Wagtime - Status of NOR

Mr. Ridley,

The appeal actually acts to stay final revocation until the BZA hears the case as the enforcement action itself is what is being appealed

Without sounding presumptious, the decision of the BZA will be summary, since the basis for the revocation is the BZA's own decision in a previous case before it.

I know it has been a long time coming for you the neighbors, but the door is closing and the options are dwindling. Please feel free to call or e-mail me anytime, I am not oblivious of the leadership role that you have played in this matter and I am appreciative. Thanks

From: Gary Ridley <garyr@smarteaminc.com>
To: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Tuesday, March 29, 2005 4:22 PM
Subject: Re: Wagtime NOR

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
Date: Sun, 20 Mar 2005 14:21:37 -0500
To: "'Gary Ridley'" <garyr@smarteaminc.com>
Subject: RE: Wagtime NOR

Mr Ridley,

I can appreciate the neighbor's position. Our General Counsel is reviewing the legal status considering that an appeal of the revocation notice has been filed and accepted by the BZA. I should have a response to your specific inquiries Monday or Tuesday latest. Thank you for your patience.

Toye Bello

Zoning Administrator

Dept. of Consumer and Regulatory Affairs

941 North Capitol Street, N.E.

Suite 2000

202-442-4576

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2005 FEB 14 P 4:26

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner, v. WAGTIME, LLC Respondent	Case No.: CR-I-05-S100095

NOTICE OF DEFAULT

The Government served a Notice of Infraction on December 27, 2004, charging Respondent(s) with the infraction(s) noted on the attached Notice of Infraction. Respondent(s) has failed to answer or respond as required by applicable law and the instructions contained on the Notice of Infraction. It now having been more than 20 calendar days since service was completed, it is therefore, this 14th day of February, 2005:

ORDERED, that in accordance with D.C. Official Code § 2-1802.02(f), Respondent(s) is in default in this matter; and it is further

ORDERED, that pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f), and as a result of the failure to timely answer the Notice of Infraction, Respondent(s) is subject to a statutory penalty, an amount equal to the total fine(s) listed on the attached Notice of Infraction. The penalty **is in addition** to any fine amounts for which Respondent may be liable; and it is further

Exhibit 4

ORDERED, that pursuant to the requirements of D.C. Official Code § 2-1802.02(f), the Government shall serve a second Notice of Infraction within 15 calendar days of the date of this Order; and it is further

ORDERED, that pursuant to the requirements of D.C. Official Code §§ 2-1802.02(e) and (f) and the instructions on the Notice of Infraction, Respondent(s) shall answer the second Notice of Infraction within 15 calendar days of service; and it is further

ORDERED, that the pre-scheduled hearing is hereby **CANCELED**.

Clerk / Deputy Clerk
Office of Administrative Hearings

Case No.: CR-I-05-S100095

Certificate of Service:

By U.S. Mail (Postage Paid):

WAGTIME, LLC
1412 Q STREET, NW
WASHINGTON, DC 20015

I hereby certify that on February 14th, 2005 this document was caused to be served upon the above-named parties at the addresses listed and by the means stated.

Clerk / Deputy Clerk

By Inter-Agency Mail:

James Aldridge
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE
Washington, DC 20002

Julie Lee, Esq.,
Office of the General Counsel
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE, Suite 9400
Washington, DC 20002

GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF INFRACTION

DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS

Notice No. S 100095

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA ☒ 1st ADMINISTRATIVE HEARINGS 12/27/04 Date of Service

☐ CFSA ☐ FEMS ☐ Other _____ ☐ 2nd NOTICE Date of Service P 2: 1 No. _____

1412 Q Street, NW

Location of Infraction: Type of Location: ☐ Vacant Lot ☐ Construction Site ☒ Occupied ☐ Other

Wagtime, LLC 202-258-2166

Business/Company Name Charge as Respondent (circle): YES NO Telephone Number

Individual Name (Last, First, Middle) Charge as Respondent (circle): YES NO Telephone Number

1412 Q Street, NW

Mailing Address

Washington, DC 20015

City State Zip Code

Business License/Permit Type CD-69395, Dog Boarding Business License/Permit No. _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the 18th day of Feb, 2005 at 1:00 AM / PM at the following location:

Office of Administrative Hearings, 941 N. Capitol Street, NE, Suite 9100, Washington, D.C. 20002

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
DC Official Code 29-399.25	$ 500.00	$

Nature of Infraction Foreign or Domestic Corporation Operating After revocation of Articles

Date of Infraction 12/1/04 Time of Infraction 2:55 pm Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY. (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
	$	$

Nature of Infraction _____

Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

Total fine amount due for all infraction(s) $ 500.00

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medicaid-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Chs. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.

C Dedrick C Dedrick 12/1/04 530

Inspector's/Investigator's Signature Print Name Date Badge/Identification Number

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature Print Name Date

OAH (WHITE) RESPONDENT (YELLOW) INSPECTOR (PINK) ENFORCEMENT (GOLDENROD)

Form OAH-412, Rev. 09-04

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street NE, Suite 9100
Washington D.C. 20002-4210

Case No(s). **S 100095**

Certificate of Service

Copy to:

Name and Address:

Wagtime, LLC
1412 Q Street, NW
Washington, DC 20015

I hereby certify that the attached document was served by **First Class Postage Prepaid,** to the party indicated above on **December 27, 2004**:

LaShelle Saunders 12-27-04
Signature Date

Name and Address:

LaShelle Saunders, Support Staff
Office of Civil Infractions
941 North Capitol Street, NE
Suite 9600
Washington DC 20002

WARNING: SUBMISSION OF A FALSE STATEMENT IS A CRIME PUNISHABLE UNDER D.C. OFFICIAL CODE § 22-2405.