DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington D.C. 20001

In re: RODUT ASSOCIATES OF DC, LP, Appellant,	)	Appeal No. 17430

DISTRICT OF COLUMBIA'S
MOTION FOR SUMMARY JUDGMENT

The District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") issued Certificate of Occupancy Number 100692 to 1150 Investors, Inc. on July 5, 2005. The Certificate of Occupancy documented DCRA approval for 1150 Investors to use the building located at 1150 K Street, NW, Washington, DC as a "Condominium 121 Units and Parking Garage." By documents dated September 9, 2005, Rodut Associates of DC, LP ("Rodut") appealed the issuance of that Certificate of Occupancy. Rodut's appeal alleges one reversible error regarding the issuance of the Certificate of Occupancy.[1] Allegedly DCRA approved two principal structures on one Record Lot in violation of Zoning Regulation 11 DCMR 3202.3. This allegation is fatally flawed. The official records of the District of Columbia Office of the Surveyor prove that the two structures in question are located on two separate Record Lots.

The District of Columbia moves this Board for Summary Judgment and dismissal of the appeal.

[1] While only one issue is in dispute in this appeal, Rodut and an entity related to 1150 Investors, Inc., are currently contesting several other issues regarding the building sited at 1150 K Street, NW and the building sited at 1108 K Street before the Superior Court of the District of Columbia. That case is titled, *Rodut Associates v. 1108 K Street, LLC*, Civil Action No. 05-405.

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A. Summary Judgment is Appropriate in This Matter Because No Material Fact are in Issue.

Summary judgment "is appropriate in cases where there are no material facts in issue . . . ." *Willis v. Cheek*, 387 A.2d 716, 719 (D.C. 1978) (citations omitted). Moreover, motions for summary judgment are appropriate before this Board. *See Appeal No. 17066 of Judy and Clarke Brinckerhoff, Susan Buck, and David Price* (Feb. 2, 2006) at 2.

This is a very simple matter. Only two material facts are before the Board. The parties agree that DCRA issued Certificate of Occupancy Number 100692 on July 5, 2005. *See* Exhibit 4.[2] The only question is whether the buildings sited at 1150 K Street, NW ("1150") and 1108 K Street, NW ("1108") are located within the same Record Lot.[3] As explained below and in the Affidavit and exhibits attached to this Motion, the assignment of 1150 and 1108 into separate Record Lots is a matter of public record and not subject to dispute.

B. The 1150 and 1108 Properties are Located in Separate Record Lots.

Record Lot 25 was recorded in Book 194, Page 104 of the Office of the Surveyor on February 28, 2001. *See* Subdivision Square 317, Feb. 28, 2001, attached as Exhibit 1. This lot, with a 125.08 foot boundary extending eastward from 12th Street, NW along K Street, NW, was formed by combining, "Lots 23 and the remainder of Lot 9 in Square 317 (Book 169 Page 40), Lot 24 in Square 317 (Book 177 Page 26) and the remainder of Lot 7 in Square 317 (Book 30 Page 66) into one Lot . . . ." *Id.*

For purposes of assessment and taxation, Record Lot 25 was apportioned into Tax Lots 834, 835, and 836 on May 6, 2003. *See* Assessment and Taxation Plat 3810-H, attached as

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[2] Exhibits 1-4 referenced in this motion are within the Affidavit of Roland Dreist, which is attached as Exhibit A.
[3] All property relevant to this appeal is located within Square 317 of the District of Columbia. "The 1108 K Property and 1150 K Property are part of a Single Lot Development of the underlying Record Lot 25 . . . ." Statement in Support of Appeal, at 1.

Exhibit 2. However, this apportionment did not affect the properties' lot of record, only the way the property was taxed. While not impacting upon the Record Lot designations of the properties, the apportionment does assist the visualization of the current placement of principal buildings. Tax Lot 834 was assigned the first 100.04 feet of Record Lot 25 extending eastward from 12th Street, NW. This Tax Lot, along with Tax Lot 836, is now occupied by 1150. Tax Lot 835 was assigned the remaining 25.04 feet of Record Lot 25 extending eastward from 12th Street, NW. This Tax Lot is now occupied by 1108.

Record Lot 25 was subdivided on January 24, 2005. *See* Subdivision Square 317, Jan. 24, 2005, attached as Exhibit 3. With the recordation of that subdivision, the portions of Record Lot 25 composing the property recorded as Tax Lots 834 and 836 were separated from the remainder of Record Lot 25 and designated as Record Lot 26. The building sited at 1150 K Street, NW occupies this property designated as the new Record Lot 26.[4] The property recorded as Tax Lot 835 survives as the Remainder of Record Lot 25. This Remainder of Record Lot 25 is the property occupied by 1108.

As of the January 24, 2005 subdivision, the buildings currently addressed as 1150 K Street, NW and 1108 K Street, NW were not located within the same Record Lot.

C. The Certificate of Occupancy was Issued in Accordance with the Municipal Regulations.

Municipal Regulation 11 DCMR 3202.3 codifies the general principle that only one principal building may be erected on a Record Lot. The full regulation reads:

> Except as provided in § 2516 and § 5 of An Act To amend an Act of Congress approved March 2, 1893, entitled "An Act To provide a permanent system of highways in that part of the District of Columbia lying outside of cities, and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Official Code *5* 9-101.05(2001)(formerly codified at D.C. Code § 7-114 (1995

[4] Though not relevant to the instant appeal, Record Lot 26 was later combined with other property located within Square 317 to form Record Lot 27. *See* Subdivision Square 317, May 6, 2005, attached as Exhibit 5.

Repl.))), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

11 DCMR 3202.3 (Emphasis added).

DCRA issued Certificate of Occupancy Number 100692 on July 5, 2005. While Appellant Rodut alleges as a material fact that both 1150 and 1108 were located within Record Lot 25 at the time the Certificate of Occupancy was issued, the allegation is contravened by the official records of the Office of the Surveyor. The official records prove that at the time the Certificate issued, 1150 and 1108 were located on separate lots of record. Because these principal structures were located on separate lots of record, the dictates of section 3202.3 were satisfied, and instant appeal must fail.

D. Conclusion

Because no material facts remain in issue before the Board and because DCRA issued Certificate of Occupancy Number 100692 in accordance with the laws and regulations of the District of Columbia, the District's Motion for Summary Judgment should be GRANTED, and Rodut's Appeal should be DENIED.

Respectfully Submitted,

Isabel Pacheco, Esq. (D.C. Bar No. 428014)
Assistant Attorney General
Dennis M. Taylor, Esq. (D.C. Bar No. 479856)
Assistant Attorney General
Dept. of Consumer and Regulatory Affairs
941 N. Capitol Street, NE, Suite 9400
Washington, DC 20002
(202) 442-8199

March 13, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing District of Columbia's Motion for Summary Judgment was served by first class mail, postage prepaid, this 13th day of March 2006, to the following:

John Patrick Brown, Esquire
Stephanie A. Baldwin, Esquire
Greenstein DeLorme & Luchs, P.C.
1620 L Street, NW, Suite 900
Washington, DC 20036-5605

Bill Crews
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 9600
Washington, DC 20002

David Rubenstein, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002

Dennis M. Taylor

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington D.C. 20001

In Re Rodut Associates of DC, LP 1108 K Street, N.W.	Appeal No. 17430

AFFIDAVIT OF ROLAND DREIST

I am the surveyor for the District of Columbia. I have been employed in that capacity for the last seven years. As the surveyor for the District of Columbia, I am responsible for recording official surveys and subdivisions of real property in the District of Columbia. I am the custodian of all official surveys and subdivisions of real property in the District of Columbia. I oversee boundary surveys and wall examinations, the control of the boundaries of the squares, the establishing of monumentation and reference points or markers pertaining to real property. I further oversee the applications to close streets and alleys, dedicate streets or alleys, and the transfer of jurisdiction between the District of Columbia and the Federal government.

I supervise the preparation of building plats required by building permit applicants, Board of Zoning Adjustment relief, plats for the subdivision of property, plats

EXHIBIT
tabbies
A

for street alleys closed or acquired by dedication, condemnation or purchase, plats for transfer of jurisdiction between government agencies; plats for changes in the Plan of the Permanent System of Highways, and the preparation of certified copies of plats.

In addition, I provide advice on matters related to surveying in the District of Columbia, interpretation of the records on file in the Office of the Surveyor, as well as the requirements of laws and regulations. I was the first licensed professional land surveyor in the District of Columbia, and I am also licensed in the Commonwealth of Virginia.

At the request of the Office of the Attorney General, I conducted a thorough search of all documents available in the Office pertaining to the real properties located in the area of 12th and K Streets, N.W. The search revealed the following:

On February 28, 2001, at 9:50 am, I reviewed and recorded a plat in subdivision book 194, page 104, which created record lot 25. See exhibit 1. On May 6, 2003, record lot 25 was divided into 3 tax lots, 834, 835, and 836 by a plat produced by the Office of Tax and Revenue and filed in the Office of the Surveyor in Assessment and Tax Book 3810, page H. See exhibit 2.

On January 24, 2005, at 3: 50 pm, I reviewed and recorded a plat in Book number 199, page 22. The plat effected the subdivision of record lot 25, square 317 (Book 194, Page 104) and part of the Public Alley closed (Book 199, Page 15) into one record lot. See exhibit number 3. Former record lot 25 legally became record lot 26. The remaining portion of the former lot 25 became OF-25 or "remainder of 25" known for assessment and tax purposes as lot 835. Therefore the properties located at 1108 and

1150 K Street, NW, are separate lots and were separate lots on June 5, 2005.

Respectfully Submitted

Roland Dreist, Surveyor
Building and Land Regulation Administration
941 North Capitol Street, N.E. Second Floor
Washington, D.C. 20002

Subscribed and Sworn to before me on this 13th day of March, 2006.

NOTARY PUBLIC
Reita T. Evans
My Commission Expires
January 31, 2009

SUBDIVISION
SQUARE 317

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property; that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby combines Lots 23 and the remainder of Lot 9 in Square 317 (Book 169 Page 40), Lot 24 in Square 317 (Book 177 Page 26) and the remainder of Lot 7 in Square 317 (Book 30 Page 56) into one Lot and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

OWNERS

1108 K STREET LIMITED LIABILITY COMPANY

JOHN J. POHANKA, PRESIDENT

POHANKA VIRGINIA PROPERTIES L.L.C.

JOHN J. POHANKA - MANAGING MEMBER

Subscribed and sworn before me this 20th day of DECEMBER 20 00

Notary Public

9/13/04
My Commission Expires

ROBERT MITCHELL NOTARY PUBLIC MY COMMISSION EXPIRES 9/13/04 MONTGOMERY COUNTY, MD

NUMBER OF TRUSTS: One

ASSENT BY TRUSTEES:

Gerald P. Grossberg

Linton W. Hengerer

SURVEYOR'S OFFICE, D.C.

Made for: WILKES, ARTIS, HEDRICK & LANE

Drawn by: L.E.S. Checked by: EG

Record and computations by: F. SLEEM

Recorded at: 9:50 A.M. February 28, 2001

Recorded in Book 194 Page 104 S.O. 9839

Scale: 1 inch = 20 feet File No.

DEPARTMENT OF FINANCE AND REVENUE

2/8/, 2001

I certify that the following statements relating to this subdivision are correct.

1 Ownership agrees with our records: 2/8/2001 KB

2 Real estate taxes are paid to: 3/31/2001 AR

3 There are no unpaid assessments: 2/8/2001 KB

Associate Director, Office of Real Property Tax

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

2/13, 2001

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: DD/C-3C

Zoning Administrator

2/16, 2001

HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

February 28, 2001

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.

K STREET, N.W.

12th STREET, N.W.

EAST 125.08

25

14,396.0 SF

NORTH 122.083

100.0 SOUTH

39.58 WEST

22.083 SOUTH

PUBLIC ALLEY

85.50 WEST

29.17'

DATE 3/14/2006

I certify that this is an exact reproduction of Property recorded in the Office of the Surveyor of the District of Columbia

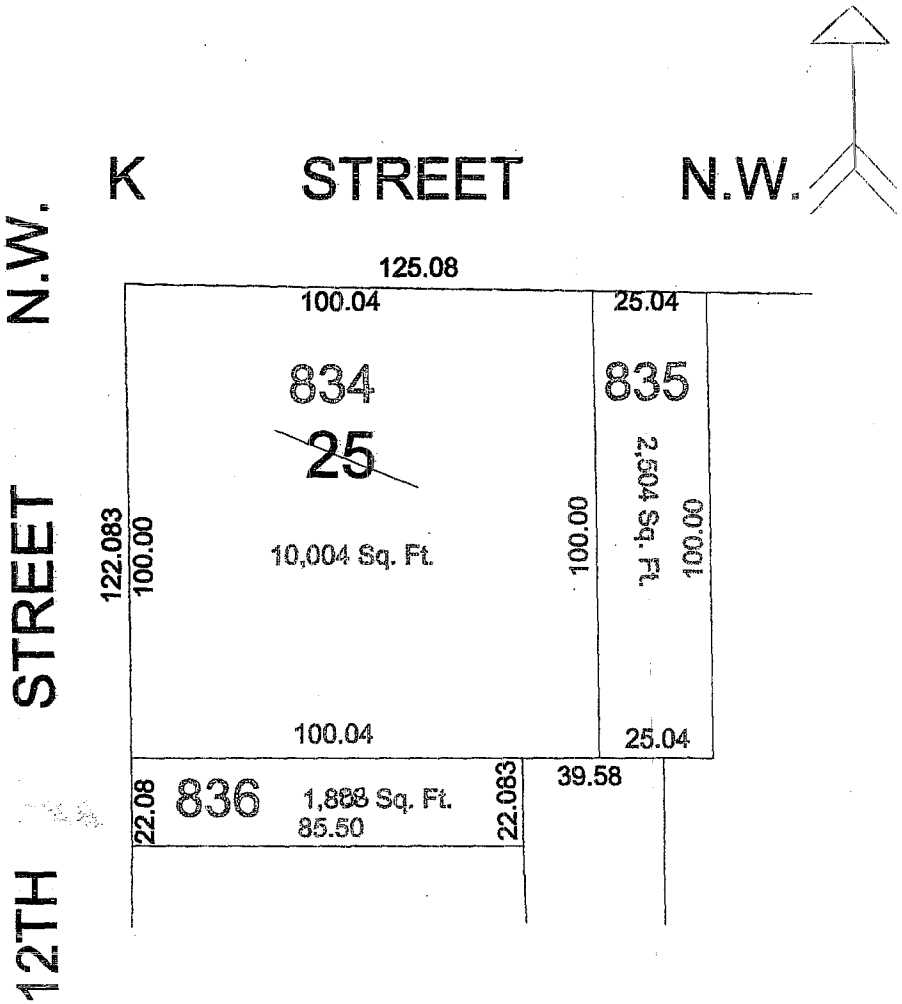
Surveyor, D. C.

O CE OF TAX AND REVENUE
ASSESSMENT DIVISION

S 'C-H

EXHIBIT 2

ASSESSMENT AND TAXATION PLAT
SQUARE 317



DATE 3/10/06
I certify that this is an exact reproduction of Art Plat recorded in the Office of the Surveyor of the District of Columbia

Surveyor, D. C.

R.E. Brown A.O. 73375 5/6/03
Draftsman Reference Date

Scale, 1 inch 9 ft.

The Office of Surveyor of the District of Columbia shall admit this plat to record under the provisions of Chapter 7 of Title 47, District of Columbia Code, Designation of Real Property for Assessment and Taxation, and for other purposes.

Mary Short Davis
Chief Assessor, Office of Tax and Revenue

FP-120 (Rev. 5/98)
J-93451

SUBDIVISION
SQUARE 317

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property; that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivide Lot 25, Square 317 (Book 194 Page 104) and part of Public Alley closed (Book 199 Page 15) into one Lot and request that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

Sandra E. Potter

OWNERS

1108 K STREET LIMITED LIABILITY COMPANY

RONALD E. WALTON, AUTHORIZED AGENT

Sandra E. Potter

JJR RESIDENTIAL, L.L.C.

RONALD E. WALTON, MANAGING MEMBER

Subscribed and sworn before me this 14th day of January 2005

Notary Public

My Commission Expires May 31, 2008

NUMBER OF TRUSTS: 0

ASSENT BY TRUSTEES:

SURVEYOR'S OFFICE, D.C.

Made for: MADDOX ENGINEERING

Drawn by: L.E.S. Checked by: MB

Record and computations by: F. SLEEM

Recorded at: 3:50PM JANUARY 24, 2005

Recorded in Book 199 Page 22 S.O. 15802

Scale: 1 inch = 20 feet File No. 04-14166

OFFICE OF TAX AND REVENUE

1/24, 2005

I certify that the following statements relating to this subdivision are correct.

1. Ownership agrees with our records: 1/24/05 AB
2. Real estate taxes are paid to: 3/31/05 AB
3. There are no unpaid assessments: 1/24/05 AB

for Mary O Short Davis Jr

Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405.

Freda Hobar

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

1/27, 2005

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: DD/C3C

JOE E. BERNARD

Zoning Administrator

Jan. 18, 2005

J Brockett

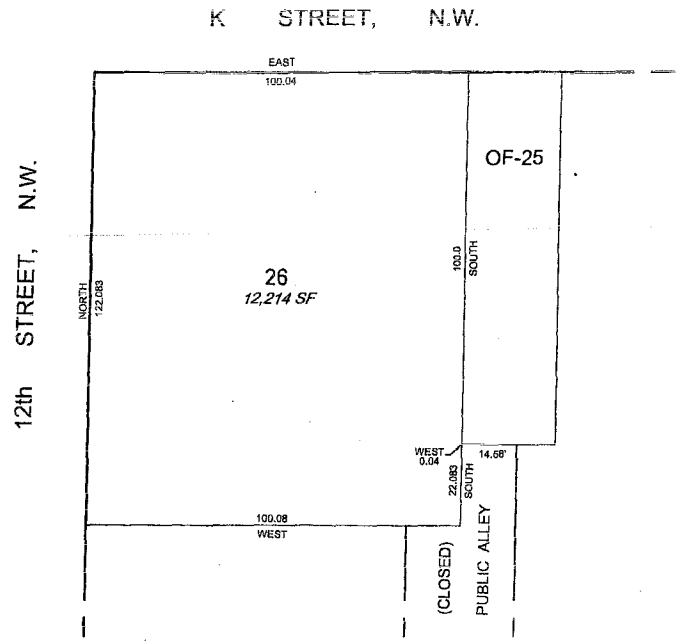
HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

January 24 2005

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.



DATE 3/10/2006

I certify that this is an exact reproduction of SUBDIVISION recorded in the Office of the Surveyor of the District of Columbia

Surveyor, D. C.

2004/SUBS/SO-15802-SQ.317

EXHIBIT 3

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street N.E. room 2100
Washington D.C. 20002
Tel. (202) 442-4470 Fax (202) 442-4862

Government of the District of Columbia
ELRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 100692

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 7/5/2005

ADDRESS :	FLOOR(S):	PRCLID :
1150 K ST NW L	**BASEMENT 2ND.THRU 14TH FL.,P1-P4**	(square) (lot) WARD : ZONE :

PERMISSION IS HEREBY GRANTED TO :	TRADING AS:
CORPORATION : 1150 INVESTORS INC. ID No.: 242807	**1150 K STREET CONDOMINIUM**

APPROVED USES :	PREVIOUS USES :
APARTMENT BUILDING	**OTHER - SEE DESCRIPTION**

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
NEW C/O		**166,675**	**121**	**NONE**

DESCRIPTION OF USE:
CONDOMINIUM 121 UNITS AND PARKING GARAGE

FEE :

FEE :

$33.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark DIRECTOR	PERMIT CLERK: **THINGOC MACXOAN**

COPY

EXHIBIT 4