March 13, 2003

TESTIMONY

W/O Zoning Hearing
March 13, 2003
6:30 P. M.
Suite 220

D. C. Zoning Commission
Suite 210
441 4th Street, N.W.
Washington, DC 20001

CASE NO. 02-42

To: Hon. Carol J. Mitten, Commission Chairperson

I. INTRODUCTION & IDENTIFICATION OF PARTIES & REAL PROPERTY

1. We thank the Zoning Commission for the opportunity to testify and to appear in person before it tonight.

2. This written testimony has been prepared by counsel T. Rodney Oppmann, Esq., Attorney at Law, D. C. Bar No. 148338, 1701 Preston Road, Alexandria, VA 22302, who will also appear personally on behalf of his clients, who are the parties to this Testimony: BRW, INC., T/A Capt. White's Seafood City; THE WHARF, INC.; C. & F. EVANS SEAFOOD, INC. and STAN EVANS SEAFOOD, INC., both T/A Jessie Taylor Seafood; and, EVANS BROTHERS SEAFOOD, INC., T/A Custis and Brown Seafood.

3. The parties trade under Retail Marine licenses and Deli Licenses, as well as Food Products Licenses, at the Municipal Fish Wharf, which is situated on federal property at 1100 Maine Avenue, S.W., Washington, DC 20024

4. The Municipal Fish Wharf and 1100 Maine Avenue, S.W. are also known as and are also described as Lots 846 and 847 in Square 473 of the Real Property Books of the District of Columbia.

5. Record title to the aforesaid Municipal Fish Wharf, also described as Lots 846 & 847 in Square 473, is vested in "the United States of America..." [see attached copy of Report of Title, Case No. 507062, District-Realty Title Insurance Corporation, of October 24, 1985, consisting of three (3) pages].

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ZONING COMMISSION
District of Columbia
Case 02-42
Exhibit 27

ZONING COMMISSION
District of Columbia
CASE NO.02-42
EXHIBIT NO.27

II. REQUEST FOR WRITTEN CONFIRMATION THAT THE PROPOSED W/O ZONING CHANGE UNDER REVIEW TONIGHT WILL NOT AFFECT LOTS 846 & 847 IN SQUARE 473, ALSO KNOWN AS THE MUNICIPAL FISH WHARF, BECAUSE THIS IS FEDERAL PROPERTY

1. It is our understanding that any changes to existing zoning in the District of Columbia, including any changes to proposed W/O zoning, which may result from matters under review tonight will not affect Lots 846 & 847 in Square 473, because this real property is owned by the federal government.

2. The undersigned parties hereby respectfully request that the Commission confirm that any changes resulting from tonight's hearing will not apply to Lots 846 & 847 in Square 473, owing to federal ownership of this land.

3. We respectfully request that a very brief letter of confirmation be sent to them as follows: Municipal Fish Wharf Lessees, c/o T. Rodney Oppmann, Attorney at Law, 1701 Preston Road, Alexandria, VA 22302.

4. The parties and their counsel thank the Commission for the opportunity to submit this written testimony on the record of tonight's Hearing and to appear briefly in person before the Commission.

Respectfully submitted,

T. Rodney Oppmann
Attorney at Law
1701 Preston Road
Alexandria, VA 22302-2126
D. C. Bar No. 148338
(703) 998-1717

Attachment: Report of Title
Case No. 507062

District-Realty Title Insurance Corporation
1030 15th Street, N.W. / Washington, D.C. 20005 / 202-466-8600

REPORT OF TITLE

THIS REPORT OF TITLE IS ISSUED FOR THE EXCLUSIVE USE OF: T. Rodney Oppman, Esq.

Case No. 507062

THIS CORPORATION has caused to be examined the Land Records to the real estate described in Schedule "A" to the date below, and found record title to be vested in The United States of America by virtue of the Act of Cession by the State of Maryland, 1788, C.46 (effected 1791) (See Morris vs. U. S., Vol. 174, U.S. Report page 196) whose estate or interest is ☒ fee simple ☐ leasehold, and found to be free from recorded objections except as noted in Schedule "B".

SCHEDULE "A" (Description)

The area between 11th and 12th Street South of Main Avenue, formerly Water Street lying South of Square 329 on which is presently situated the Municipal Fish Wharf. (unassessed land)

SCHEDULE "B" (Objections)

1. Unpaid taxes, water rent, and assessments.
2. Such state of facts as would be disclosed by an accurate survey of the premises.
3. Building and zoning regulations in force in the District of Columbia.
4. Rights of parties in possession under unrecorded leases.
5. Urban Renewal Plan for the Southwest Urban Renewal Area recorded February 13, 1957, as Instrument No. 446, May 25, 1960, as Instrument No. 999, February 4, 1969 in Liber 12963, folio 358, September 10, 1969 in Liber 13030 at folio 575, October 2, 1974 as Instrument No. 22582, February 14, 1975, as Instrument No. 3084 and/or Instrument No. 22582 among the Land Records of the District of Columbia. Boundaries include subject property. Subject to the provisions of Title 5, Section 705(d) of the 1967 District of Columbia Code and any other regulations of the District of Columbia Redevelopment Land Agency pertaining to any new construction or remodeling of properties located in Urban Renewal Areas.

   NOTE: While the Municipal Fish Wharf is situated within the boundaries of the Urban Renewal Project area, it is listed as one of the properties in said project area that is exempt from being acquired by the District of Columbia Redevelopment Land Agency.

   NOTE: Said Urban Renewal Plans also list the Municipal Fish Wharf as being under the "jurisdiction" of the District of Columbia, but nothing of record indicates that Legal Title has been transferred to said entity.

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NOTE: Instruments creating the interest to be insured must be noted and recorded by this corporation before a policy can be issued.

CERTIFIED this 24th day of October 19 85

District-Realty Title Insurance Corporation

By, Joseph L. Williams
Joseph L. Williams, Title Officer

No liability is assumed by District Realty Title Insurance Corporation unless and until a Binder and Policy is issued by this Corporation.

SCHEDULE "B" (OBJECTIONS)

REPORT OF TITLE

continues:

6. Possible unrecorded 20 foot wide pedestrian easement for a walkway along the bulkhead between the Municipal Fish Wharf and Fort McNair. The above Urban Renewal Plan's on page 5 - 13, Sect. 542.254 state that said Easement "shall be established", for the aforementioned purpose. However, there is no Easement of record. Said section of the Urban Renewal Plan's also specifies that the redeveloper of site "F" on the Plan shall improve, develop and maintain the area subject to such easement as a pedestrian walkway open to the public at all times and that said walkway may be covered by a canopy or appropriate shelter, subject to approval by the District Commissioners.

7. Prior to any conveyance or encumberance a proper mates and bounds description of the above described property must be furnished this corporation and inserted in any proposed instruments.

8. Compliance with the Tax Deficit Reduction Act of 1984 as to withholding tax on disposition of property interests in the United States by foreign persons, foreign corporations, non-publicly traded domestic corporations which are a real property holding corporation as defined in said Act.

9. Rights of Tenants under the Rental Housing Conversion and Sales Act of 1980 and Regulations adopted thereunder.

NOTE I: See Morris vs. U. S. Reported in Volume 174 United States Reports October 1898 term of the Supreme Court of the District of Columbia wherein it is stated that from the first conception of the Federal City, the establishment of a public street, bounding the city on the south, and to be known as Water Street, was intended, and such intention has never been departed from; and it follows that the holders of lots and squares, abutting on the line of Water Street, are not entitled to riparian rights, nor are they entitled to rights of private property in the waters or the reclaimed lands lying between Water street and the navigable channels of the river, unless they can show valid grants to the same from Congress, or from the City on the authority of Congress, or such a long protracted and notorious possession and enjoyment of defined parcels of land, as to justify a court, under the doctrine of prescription, in inferring grants. No riparian rights belonged to the Lots between 7th Street West and Twenty-seventh Street West.

NOTE II: On March 2, 1797, President Washington, by his act, requested and directed Thomas Beall and John M. Gantt, the trustees, to convey all the streets in the city of Washington, as they were laid and delineated in the plan of the city thereto attached, and also the several squares, parcels and lots of ground appropriated to the use of the United States, and particularly described, to Gustavus Scott, William Thornton and Alexander White, commissioners appointed under the act of Congress. This was subsequently done under President Adams on July 23, 1798. The Rivers and Harbors Act approved March 3, 1881 made it the duty of the Attorney General to examine all claims of title to the premises to be improved under this appropriation, and to institute a suit or suits at law or in equity "against any and all claimants of title under any patent which, in his opinion, was by mistake or was improperly or illegally issued for any part of the marshes or flats within the limites of the proposed improvement. The Land Records of the District of Columbia reveal that by Deed recorded in Liber J.A.S. 40 at folio 342 on May 14, 1852, John W. Maury, et ux Isabel deeded the "Wharf located in front of said land" (Said land being Lots 2, 3 and 4 Square 329) to William R. Riley. However, this is the 1st mention of the Wharf property. Said Maury's predecessor had no title thereto.

See Deeds recorded in Liber W.B. 60, Folio 414, on December 20, 1836 and Liber W.B. 62 at folio 117 on November 1, 1836 for acquisition of property by said Maury. The instant case Morris vs. U. S. includes the claim of Elizabeth K. Riley in her own right and as executrix of William R. Riley, deceased). She was als the wife of said decedent. Under No. 7 on page 281, the court considered the claim of the above and others who claimed rights of property on the river between the "Long Bridge and the Arsenal and it was concluded that no riparian rights in the waters of the Potomac River belong to the owners of lots lying north of Water street, and that no presumption of grants in fee can arise, in these cases, from actual occupation of lands and water south of said street.

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SCHEDULE "B" (OBJECTIONS)

REPORT OF TITLE

continues:

NOTE III: This corporation has found no transfer of Jurisdiction of Water Street and/or the bed of the street thereunder and/or the abutting lands necessary to its support and maintenance to the District of Columbia or of the land south thereof on which caption is situated to said District of Columbia.

→ NOTE IV: An act approved June 4, 1934 Chapter 375 (48 Statutes at Large, page 836 authorizes the Secretary of Interior with the approval of the National Capital Park and Planning Commission and the Attorney General of the U. S. to make equitable adjustments of conflicting claims between the U. S. and other claiments of land along the shoresof the Potomac River, Anacostia River and Rock Creek in D. C.,..... the Secretary of Interior is authorized to make and accept on behalf of the U. S. by way of compromise when deemed to be in the public interest, such conveyances including deeds of QC and rest and collateral covenants of the land in dispute as shall be also approved by the National Capital Park and Planning Commission and the Attorney General of the U.S. This act is furnished for information to hopefully settle any conflicts between the U. S. A. and others involving caption.