ZONING COMMISSION CASE NO. 03-16
(Watergate Hotel Conversion)

RESPONSE OF WATERGATE EAST COMMITTEE AGAINST HOTEL CONVERSION TO CO-OP APARTMENTS to "Rebuttal, Closing Remarks and Post-Hearing Submission of the Applicant Monument Residential, LLC, on behalf of BRE/Watergate, LLC" ("Rebuttal")

This opponent Committee adopts and incorporates herein the Response of Watergate West, Inc. (based on review of a draft of its Response), with the exception of some "distinctions from Watergate West."

The following subjects are addressed in this opponent Committee's response:

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I. DISTINCTIONS FROM WATERGATE WEST

This opponent Committee notes the following distinctions between its position and understanding of the facts and Watergate West's response:

A. Watergate West's response, page 5, states "The Hotel was constructed in 1967, immediately after the first apartment building (Watergate East) and joined to the first office building, on land partly owned by East (for which East has been offered $4,250.00, conditioned on its support for the application)."

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Under the proposal offered by Monument, Watergate East would not transfer its ownership in the portion of its land which it owns in lot 806 on which part of the Watergate Hotel is built. The facts are:

1. The property that Monument Residential wants to buy from Watergate East (WEi) is 46,277 Sq.F. of space in and/or adjoining the Hotel building.

2. The 46,277 Sq.F. of hotel space sits on about 23,000 square feet of land that WEI owns in lot 806.

3. The 46,277 Sq.F. of space in the hotel building that they want to buy is basically on two levels and is comprised of the following:

Lower lobby or B-1 level

Ballroom

Riverview Room (adjacent to Ballroom)

Boardroom (on other side of Ballroom)

Crescent Bar-Lounge (across hall form Ballroom)

Hallways, etc.

Level below lower lobby - B-2 level

Former location of Jean Louis (Palladin) restaurant - currently offices

Former space of Democratic Club (adjacent to Jean Louis space)

Halls and stairway, etc.

Some adjacent parking space

4. WEI's 23,000 Sq.F. of land in Lt 806 on which the 46,277 Sq.F. of building space is located is real estate taxable to Watergate East, Inc.

5. Monument Residential LC does not want to buy 23,000 Sq.F. of land from WEI; it would buy only the 46,277 Sq.F. of building space.

6. Monument Residential LLC would not pay real estate taxes on the 23,000 Sq.F. of land.

7. As owner of the 23,000 Sq.F. of land, WEI would have the legal obligation, and financial burden, of paying taxes forever on this land, while permanently forfeiting any control over its use.

This is one of the reasons that half (more or less) of Watergate East owners do not want to sell and do not want the conversion.

B. Watergate West's response, page 16, states: "The only contrary testimony was by persons at Watergate East who had committed to assist the Applicant when accepting his offer of $4,250,000 for title to land under part of the hotel currently leased."

As noted in "A" above, title to land is not involved in Monument's proposal to Watergate East. More significantly, to the writer's knowledge, Monument's offer has not been accepted by Watergate East. Destruction of the ballots which purportedly approved the sale by a margin of less than 1%, necessitates a re-vote. (Com vs. Co-Op Exhibits 1-9) So, a co-op conversion of the Hotel which relies in part on availability of hotel space on land owned by Watergate East for parking and other uses is by no means reasonably probable. Even if the proposed sale were ultimately approved by Watergate East, the Applicant's Rebuttal contention, page 21, "It is clear from the lease that the landlord does not have a right to require hotel use" does not dispose of the

reasonable argument that paragraph 11 of the 1990 lease (Exhibit D to Applicant's Rebuttal) does confine the use to hotel use:

> Recognizing that the Hotel Facilities Premises is an integral part of the Hotel and cannot be severed from the operations of the Hotel, Hotel Lessee's interest under the Lease shall not be assigned, conveyed or otherwise transferred except to a transferee of the Hotel. (Applicant's Rebuttal, Exh. D, the 1990 lease, paragraph 11, p. 6)

Applicant's use of the word "apparently" in its Rebuttal, page 23 ("This provision would apparently prohibit a transfer of the leasehold interest in the underground premises to WEI, unless it was also the buyer of the hotel") demonstrates the ambiguities of the leases which are ripe for court interpretation. In any event, the record herein does not clearly demonstrate that the applicant would have the legal ability, with or without an agreement with Watergate East, to legally provide the parking necessary to allow conversion to co-op.

C. Watergate's Response, page 22, states in regard to "Affordable Housing." "This offer also pales in comparison to the $4,250,000 offered to Watergate East for fee simple title to an underground leasehold for parking purposes." The nature of the "leasehold" is described above at "A." It should also be noted that the hotel space in contention would also be used for other purposes. Much of the space has window views of the Potomac River and hardly qualifies as "underground."

II. CREDIBILITY

The evidence presented by the applicant conflicts in many instances with that presented by the opponents.

Each side presented some evidence. Credibility and burden of proof must be addressed in making a determination of whether or not the applicant has proven its case. It is submitted that it has not.

A. The Law

It is, of course, one of the Zoning Commission's duties to assess credibility of the witnesses and the evidence. In *Rafferty v. District of Columbia Zoning Commission*, 583 A.2d 169 (D.C. App. 1990), the D.C. Court of Appeals noted: "Except in unusual cases, we will not second guess credibility determinations by the agency. *Citizen's Association of Georgetown, Inc. v. District of Columbia Zoning Commission,* 402 A.2d 36, 42 (D.C. 1979) . . . credibility is to be determined by the finder of fact, who is not confined to a cold paper record but has the opportunity to observe the demeanor of the witnesses. *Harris v. District of Columbia Comm's on Human Rights*, 562 A.2d 625, 631 (D.C. 1989); *see In re T.M.*, 577 A.2d 1149, 1154 (D.C. 1990)."

A useful guideline for fact-finding panels, whether juries, judges, or quasi-judicial bodies such as the Zoning Commission, is found in the **Standardized Civil Jury Instructions for the District of Columbia**, 2002 Revised Ed., LexisNexis

§ 3.01 JURY TO DETERMINE CREDIBILITY OF WITNESSES

§ 3.01[l] Evaluating the Witnesses

[1]-Instruction 3-1

> In evaluating the evidence and deciding what the facts are, you must consider and weigh the testimony of all the witnesses who have appeared before you. You are the sole judges of the credibility of the witnesses. In other words, you alone are to determine whether to believe any witness and to what extent any witness should be believed. If there is any conflict in the testimony between a witness's testimony and other evidence, it is your function to resolve the conflict and to determine where the truth lies.

In deciding the credibility of any witness, you may consider any matter that may have a bearing on the subject. You may consider the appearance and the behavior of the witness on the witness stand; whether the witness impresses you as a truthful individual; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case; or whether the witness has any friendship or animosity toward other persons concerned in this case.

You may consider the reasonableness or unreasonableness, and the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or corroborated by other credible evidence.

If you believe that any witness has shown himself to be biased or prejudiced, either for or against either side in this trial, you may consider and decide whether that bias or prejudice has colored the testimony of the witness so as to affect the witness's desire and capability to tell the truth.

You should give the testimony of each witness as much weight as in your judgment it is fairly entitled to receive.

3.03 **Expert Opinion**

[1] - Instruction 3-3

Expert testimony should be judged just as any other evidence. You may accept it or reject it, or give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, the expert's credibility and all the other evidence in the case.

B. Application

Here are a few illustrative testimonies that should be scrutinized in the light of the law on credibility:

Mr. Darby, managing partner of Monument Residential, LLC testified regarding the "health club." He wouldn't concede that admittance to the area that would house the exercise equipment that he called a "health club" would be by card key (Public Hearing March 1, 2004 Tr., p. 112-114).

Please contrast Mr. Darby's testimony with the proposed Agreement of sale and Applicant's Rebuttal.

Proposed Agreement 3.1.4 "The health club square footage will be smaller because Purchaser will eliminate the front desk (members will access the club by key card) and will eliminate some of the offices currently being used by the health club operator." The unvarnished truth of the representations regarding a health "club" and a restaurant is stated in Applicant's Rebuttal, pages 25-26:

> "In recognition of the concerns of the residents of the existing Watergate apartment buildings, the Applicant has proposed to retain the two uses which are claimed to be the most important and of the most value, the health club and a restaurant. The Applicant will provide the facilities for those two uses in the areas designated on the plants."
>
> * * *
>
> The management, levels of service and operation of those uses will be determined by the future owners of the new apartment house.

Emphasis added.

Mr. Darby even denied knowing whether $450 a foot is considered "affordable housing" although he testified he builds "affordable housing" in other places. (Public Hearing, March 1, 2004 Tr., p. 120-121).

On March 1, Mr. William Stein, representing BRE/Watergate (the Watergate Hotel) denied, under oath, on cross-examination that he had received recent inquiries from luxury hotel groups:

> Mr. Olender: Is it true, Mr. Stein that you, meaning the hotel and owners of the hotel, have in recent weeks received, inquiries from one or more luxury hotel groups to buy the hotel, but you've been unable to deal with them because you're tied up with Monument?

Mr. Stein: No.

Mr. Olender: Is that true?

Mr. Stein: No.

(Public Hearing Tr. March 1, 2004, p. 124, ln. 6-14)

However, at the March 4 hearing, Mr. Alpheus Jessup, owner/resident of Watergate West testified under oath:

> Mr. Jessup: I'm Alpheus Jessup. I am a resident of 2700 Virginia Avenue, Northwest. My wife and I have been shareholders at Watergate West since 1969. At the hearing last Monday, I was told that the testimony of Mr. Stein, the President of the hotel and owner, that no one has shown any interest in acquiring it. I knew otherwise. I had known for some time -
>
> Chairperson Mitten: You're going to need to wrap it up. I'll give you one more minute.
>
> Mr. Jessup: I know a group who wants to acquire the Watergate Hotel. The organizers and manager, a group of managers of the hotel, they have been unsuccessful in pursuing it. I had asked them for some documentation. They faxed me today a copy of a letter to Mr. Stein from their bankers asking for a serious discussion about acquisition possibility. I am quoting from the letter that was dated December 5, 2003. There was no response to that letter.
>
> They made repeated efforts over recent months up until very recently, to get into conversation with the owners and they were told finally that there would be no discussion as long as the deal with Monument was open.

(Public Hearing Tr. March 4, 2004, p. 36, ln. 5 to p. 37, ln. 2)

In addition, Mr. William Deidrich, owner/resident of Watergate East testified under oath, at the March 5 hearing:

> Mr. Deidrich: Hi, my name is William Diedrich. I'm a resident, a shareholder in Watergate East. My message is very brief. There's a consortium that's come into being to purchase the Watergate Hotel. It's on the West Coast. It was assembled by Rose Nava, who had to do with the assembling of consortiums to restore the Hay

> items [sic] to its former grandeur and to restore the Jefferson Hotel. That's all I have to say.
>
> (Public Hearing Tr. March 4, 2004, p. 78, In. 4-12)

Thereafter, on March 5, Mr. Stein testified as part of the applicant's rebuttal case. He neither contradicted Mr. Jessup's and Mr. Diedrich's sworn testimony nor corrected his own March 1 testimony. The fair inference of Mr. Stein's silence, we suggest, is that he could not rebut the two gentlemen's sworn testimony. The fair inference, we suggest, is that the hotel wants to get the deal over with Monument and be done with it. Under these circumstances, can we reject the veracity of the owner/residents who testified?

It is interesting that Applicant's Rebuttal Certificate of Service was signed by Steven E. Sher, Director of Zoning and Land Use Services, Holland and Knight, LLP. Holland and Knight, of course, is applicant's counsel and Mr. Sher testified as their expert witness. It reminds me of one of the jury instructions above, "whether the witness has any interest in the outcome of the case," etc.

"The Watergate PUD has included a hotel from the beginning. The nature of that hotel may have been conceived to be more of an apartment style hotel, contemplating stays of a month or more. In any event, a hotel has been a part of the project since the original approval." Applicant's Rebuttal, page 2. With the same degree of record authority, we could postulate, "The nature of that hotel may have been conceived to be more of a rest and recreation stop for visiting Martians, contemplating stays of a month or more." Arguments not based on the record should be out of bounds.

III. BURDEN OF PROOF

"The applicant shall have the burden of proof to justify the granting of the application according to these standards." 11 DCMR § 2403.2. *See also, Cathedral Park Condominium Committee v. District of Columbia Zoning Commission*, 743 A.2d 1231, 1247 (D.C. 2000).

> The Zoning Regulations require that in decision concerning P.U.D. applications, the Commission "shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered . . . and any potential adverse effects according to the specific circumstances of the case." *Id.* at 1246 (quoting 11 DCMR § 2403.8).

A project may qualify for approval by being strong in a few categories, but must be acceptable in all categories and superior in many. *Id.* at 1247. "The applicant has the burden of proof in this regard." *Id.*

The **Standardized Civil Jury Instruction for the District of Columbia** explanation of the applicable burden of proof (substitute "applicant" for "plaintiff") is helpful in weighing the conflicting evidence:

§ 2.08 BURDEN OF PROOF

§ 2.08[1] Standardized Civil Jury Instructions for the District of Columbia

[1]-Instruction 2-8

> The party who makes a claim has the burden of proving it. This burden of proof means that the plaintiff must prove every element of [his] [her] claim by a preponderance of the evidence. To establish a fact by a preponderance of the evidence is to prove that it is more likely so than not so. In other words, a preponderance of the evidence means that the evidence produces in your mind the belief that the thing in question is more likely true than not true.
>
> If, after considering all of the evidence, the evidence favoring the plaintiff's side of an issue is more convincing to you, and causes you to believe that the probability of truth favors the plaintiff on that issue, then the plaintiff will have succeeded in carrying the burden of proof on that issue.

The term "preponderance of the evidence" does not mean that the proof must produce absolute or mathematical certainty. For example, it does not mean proof beyond a reasonable doubt as is required in criminal cases.

Whether there is a preponderance of the evidence depends on the quality, and not the quantity, of evidence. In other words, merely having a greater number of witnesses or documents bearing on a certain version of the facts does not necessarily constitute a preponderance of the evidence.

If you believe that the evidence is evenly balanced, on an issue the plaintiff had to prove, then the plaintiff has not carried the burden of proof and your finding on that issue must be for the defendant.

IV. CONCLUSION

The application should be denied. Applicant has not met its burden of proof with clear evidence that the zoning should be changed over substantial opposition from the adjoining owner/residents. Thank you for your consideration.

Respectfully submitted,

Watergate East Committee Against Hotel Conversion to Co-Op Apartments

By _____

Jack H. Olender
888 17th Street, NW, 4th Floor
Washington, DC 20006
(202) 879-7777

CERTIFICATE OF SERVICE

I hereby certify that on April 29th, 2004, a copy of the foregoing Response of Watergate East Committee Against Hotel Conversion to Co-op Apartments to "Rebuttal, Closing Remarks and Post-Hearing Submission of the Applicant Monument Residential LLC, on behalf of BREI Watergate LLC ("Rebuttal") was served by First Class U.S. Mail on the following persons or organizations:

Monument Residential
c/o Norman M. Glasgow, Jr., Esq.
2099 Penn. Ave., NW
Suite 100
Washington, D.C. 20006

Advisory Neighborhood Commission 2A
c/o Dorothy Miller
Chairperson
Apartment D206
2440 Virginia Ave., N.W.
Washington, D.C. 20037

D.C. Office of Planning
c/o Mr. Joel Lawson
Suite 400
801 North Capitol Street, N.E.
Washington, D.C. 20002

Watergate West, Inc.
c/o Richard L. Aguglia, Esq.
Hunton & Williams
1900 K St., N.W., Suite 1200
Washington, D.C. 20006

Committee of Concerned Owners
c/o Audrey and William Wolfe, Jr.
2510 Virginia Avenue, N.W.
Apt. #702/3-North
Washington, D.C. 20037

Jack H. Olender
Watergate East Committee Against Hotel Conversion to Co-op Apartments

April 14, 2004

Mr. William Condrell
President, Watergate East, Inc.
2510 Virginia Avenue, NW
Washington, DC 20037

Dear President Condrell:

Would you kindly provide us with the number of apartments that voted for the Hotel sale and the number of apartments that voted against the Hotel sale?

Would you also provide us with the number of owners who voted for the hotel sale and the number of owners who voted against the hotel sale?

Thank you for your courtesy.

Sincerely,

WATERGATE EAST COMMITTEE AGAINST HOTEL CONVERSION TO CO-OP APARTMENTS

BY: _____

Jack H. Olender
Watergate East, Apartment 1203S

PLAINTIFF'S EXHIBIT
Com. Vs. Co-Op 1

April 19, 2004

President Daniel Sheehan
Watergate East Inc.
Washington, DC 20037

Dear President Sheehan:

Would you kindly provide us with the number of apartments that voted for the Hotel sale and the number of apartments that voted against the Hotel sale?

Would you also provide us with the number of owners who voted for the hotel sale and the number of owners who voted against the hotel sale?

Herewith is a copy of my letter of April 14 to then President Condrell requesting this information. I understand he did not have an opportunity, while he was still president, to convey this request to the auditor. I request you do so promptly and request a prompt compliance as was done following the previous vote. I need this information by next Tuesday, April 27, 2004 so that I can include it in a filing due at the Zoning Commission April 29. If you do not provide it timely, I will reference it in my filing and argue the inference that the majority of apartments and individuals voting against the sale was considerably larger than the majority who voted against the sale at the previous meeting.

The information can be provided to me by delivery to my mailbox at Watergate East South Desk, by fax to (202) 393-2245, or by email at jhopc@olender.com.

If you require payment for this service, please advise me promptly of the amount so that I can submit payment to you in a form acceptable to you prior to your turning over the information.

I have tried to express that time is of the essence.

Thank you for your anticipated cooperation.

Sincerely,

WATERGATE EAST COMMITTEE AGAINST HOTEL CONVERSION TO CO-OP APARTMENTS

BY: _____

Jack H. Olender
Watergate East, Apartment 1203S

cc: Board of Directors

PLAINTIFF'S EXHIBIT
tabbies
Com. vs Co-Op 2

April 22, 2004

Dear Watergate Neighbors:

An Outrage Has Been Committed -- Our Voting Records Destroyed!

Most Watergate members felt that the April 12 vote on the sale of our property to Monument Realty would put an end to the flood of communications that had been circulated on this subject. Unfortunately, an important event occurred after this meeting casts such a dark shadow on the vote that we believe you should know about it and be offered the possibility of taking an immediate measure for remedying it.

We were shocked to hear that the first action of the new WEI President was to order the destruction of our April 12 voting records, including the ballots, the proxies and the computer tabulation.

This was done after legitimate questions and concerns were promptly communicated to him -- not about the vote outcome -- but about the vote count, its accuracy and the integrity of the process whereby data were entered into the computer. It was absolutely essential to preserve the paper record of the original ballots and proxies, and the computer tabulation, especially in view of the fact that the margin of victory was about one half of one percent of the total vote.

The new WEI President allegedly justified his action because of the membership's objection (at the end of the April 12 meeting) to allowing members to change their written vote before the count. This objection has nothing whatsoever to do with ensuring the integrity of counting the vote , once the vote was cast. Counting correctly the votes already cast, and preserving their paper and computer record, are elementary considerations of fairness and respect for all WEI members as well as the integrity of the voting process.



The destruction of the paper and computer record of the vote has raised serious doubts on the very outcome of the vote. In the light of these new circumstances, as the April 12 vote record has been irremediably destroyed, we have no other option than request that a new vote be taken, without delay, at a special meeting of WEI members. We trust that you will join us in this request, irrespective of your vote on the sale of WEI's properties, because we all have a common interest in preserving the integrity of the deliberation process by the WEI membership.

* * *

Cesar Caceres, , William Diedrich,
Jack Olender, Alex Radin,
Maurizio Ragazzi, Sol Shalit

William K. Condrell
2510 Virginia Avenue, N.W.
Washington, D.C. 20037

April 22, 2004

Membership of Watergate East

For those of you who were able to attend our membership meeting a few days ago, and I think we may have had an almost record turnout, thank you for attending and for your participation. In light of the almost completely even split in our membership's feelings on the Hotel sale, I am gratified that the meeting was cordial and am grateful for the many comments about the fairness given to each side by the other.

Subsequently, the new Board met and elected Dan Sheehan, President. It was a brief meeting. No other officers were elected and no other business conducted except to recognize that the next regular meeting of the Board would be April 28. (It is now set for April 27.) I will continue as a member of the Board.

As I believe almost everyone knows, the result of the balloting at our membership meeting was 35,040 in favor of the proposed sale and 34,548 against. The vote on Board members was not nearly as close and a new member of the Board was elected, Mr. Harry Trines. Both Audrey Wolf and John Baring were returned to the Board. Support for each of them was substantial and bodes well for their role in the proceedings of the new Board. Those of us remaining on the Board welcome them and wish them well as we look forward now to the challenges we face together with a renewed sense of optimism and cooperation.

Our objective, **to make Watergate East the best place in Washington to live**, remains our objective and one deserving of the Board's intense continuing dedication.

In the midst of our optimism unfortunately, one disturbing item has to do with the disposition of the ballots and proxies after our voting on April 12. Apparently within a few days after the vote, the auditor, who had kept the voting records in his possession, destroyed them and did so in spite of questions being raised at the time from members concerned about the recording of their vote. (See copy of a brief memo from Dr. Eaton attached)

Some of us will seek a special meeting of the Board as soon as possible to determine the full circumstances.

Cordially,

William K. Condrell
Immediate Past President--WEI

PLAINTIFF'S EXHIBIT
Com. vs Co-Op 4

ATTACHMENT

This memo on Tuesday April 20 was sent by Dr. Judith Eaton to those attending a small session to honor Dr. Caceres for his past Board service of many years.

* * *

"Folks, I confirmed some very disturbing information about the April 12 vote on the hotel sale and the election of directors a short while ago and want to share this with you. I spoke at some length with Bruce Drury, WEI auditor who, with his colleague, Irina, entered the ballots and proxies for the hotel sale and the board election.

Bruce informs me that, "at the direction of the board," he has destroyed all ballots and proxies for the sale and the election of directors and deleted the software program used to enter and tabulate the votes. I asked Bruce whom "at the direction of the board" included - indicating that, as one board member, I had not been consulted about this. Bruce said that he was told by Dan Sheehan and Que to do this. He said he received phone calls from a total of four or five people, some of the twice. He could not recall the names of the other people.

I asked Bruce not only about the appropriateness of this action in general, but especially about such action given the closeness of the hotel sale vote, with fewer than 500 shares between those who voted for the sale and those who voted against (of approximately 70,000 shares voted). Bruce indicated that he was "fearful of doing" this and had "angst and fear" about it, but felt very pressured by the calls. He also said that he was "muzzled." He said that he was told that the board met and had a new president (Dan Sheehan) and that he (Bruce) was ordered to destroy the ballots, proxies and software program.

There was an organizational meeting of the board on Wednesday, April 14. It was called on only several hours notice. Jim Lewis, Bettye Wood, Lester Schlitz and I were unable to attend. Bill Condrell, who did attend, tells me that there was no discussion about such an order to Bruce at the organizational meeting.

Those of us of the now-defunct majority (Bill Condrell, Judith Eaton, Jim Lewis, Lester Schlitz, Bettye Wood) had a small gathering last night to thank and honor Cesar Caceres for his six years of fine work on the board. This is where we first heard of ballots and proxies being destroyed. Bill Condrell immediately called Dan Sheehan. Dan said that this was not true. However, as the above indicates, when I contacted Bruce Drury today, I heard something far different.

Why would anyone want to destroy the ballots, proxies and software program for one of the most important votes that WEI has ever held and a vote that was decided by fewer than 1% of total shares?

Thank you.

TELEPHONE: (202) 965 2900
FAX: (202) 333-8585

Watergate East 2500 VIRGINIA AVENUE, N.W. WASHINGTON, D.C. 20037-1901

April 23, 2004

To: Membership Watergate East

From: Dan Sheehan, President

1. I had hoped that my first message to you would be focused on reconciliation, reconstruction, and moving forward. Unfortunately, there have been allegations concerning my role in the destruction of the ballots and records of the April 12th vote.

I want to categorically and unequivocally state I did not direct nor order the destruction of the ballots. I was introduced to Bruce Drury the auditor at the January meeting and the April meeting. Outside of those membership meetings, I have never engaged in a conversation with him in person or in writing.

Nor did I instruct anyone else to tell him to destroy the ballots. The only instruction I ever gave, and this was through our general manager, came about when some candidates and individuals directly contacted the auditor after the vote and demanded to know how certain apartments voted. I said any questions about the results should be referred to the board, what I considered to be an appropriate response to inappropriate inquiries.

2. Concerning the finality of the vote, I would urge members that perhaps did not attend or that did not stay through the end of the meeting to review the transcript of the membership meeting. The members clearly voted that this was to be the final vote and it was to be decided that night. President Condrell had not provided specific instructions to the auditors with respect to the process to be followed but suggested several from the floor. These proposals were soundly defeated because he basically proposed that individuals could check their vote for accuracy after the result was tallied, which clearly presented a potential of changing it by declaring that is not how I voted. The decision was clear that this was to be the final vote.

I append a brief portion of the transcript,

This concerns the finality of the vote;

"JUDGE SCHLITZ: It's insanity. Who ever heard of an election that is over but it's not over, that you can change the results of it and if people are called and they can change their minds, nothing can stop them from changing their minds, we will have a whole campaign over again trying to get people to change their votes.

PLAINTIFF'S EXHIBIT
tabbies
Com vs. Co-Op 5

When you have an election you have an election. We have got proctors to see that everything is fair and just. Both sides have people looking at the ballots. We have an Auditor there that we paid to come in and be impartial and to count the votes. To say we will write you a letter telling you how you voted and ask you is that right is ridiculous in my judgment. And is illegal, to tell the truth. (Applause)."

There was discussion about the process and procedure and the following was recorded.

"MR. MAURIZIO RAGAZZI: I move that the vote close tonight.
MR. CONDRELL: Is there a second to that?
FROM THE FLOOR: I second it.
MR. CONDRELL: I'm assuming that it carried. All those in favor of the motion be decided tonight, please raise your hand. (show of hands) I assume that did it. Thank you."

There was additional discussion concerning how shares were voted;

"MR. CONDRELL: We have a motion on the floor though. The motion on the floor was to accept the ballots on their face. Is that correct? And that the Auditor is authorized to treat the ballots as a ballot of integrity, as a document of integrity, and take the shares of votes as shown on the ballot. Is that the motion?
FROM THE FLOOR: Yes,
Mr. CONDRELL: It has been seconded. All of those in favor of that motion raise your hands. (show of hands) it is so recorded.
FROM THE FLOOR: how do we know how many shares are recorded?
MR. CONDRELL: All those opposed(sic)? (None) Is there anything else to be discussed....."

I would urge folks that are interested to read the entire debate.

3. I know that this will not be the end of the issue, and truly the only folks happy about this continuing are the owners of the small copy shop down on the plaza. I just received in my Box the petition for holding a special meeting, presumably to revote, a meeting which will cost you the shareholders about $4000.00. I would make a comment about that having attended the totality of the membership meeting; there is no question in my mind that the membership clearly decided, after significant debate, that the vote being taken and reported the evening of April 12th was final. No appeals, no recounts, no checking of ballots-it was over. The issue concerning the destruction of the ballots and records is to my mind a red herring, intended to re-raise an issue, which I had hoped, whatever the outcome, we could put behind us and move on. On a personal note you should know that four days after the vote I did contact Judge Schlitz, Dr. Eaton, Mr. Condrell, Mrs. Wood and Mr. Lewis, expressing my hope that we could move forward. I still am hopeful that can be achieved. I also prepared a letter that I asked to be cosigned by Mr. Condrell, thanking Dr. Caceres for service as a board member.

TELEPHONE: (202) 965 2900
FAX: (202) 333-8585

Watergate East 2500 VIRGINIA AVENUE, N.W. WASHINGTON, D.C. 20037-1901

April 23, 2004

Jack H. Olender, Esq.
Watergate East Committee
Against Hotel Conversion to Co-op Apartments
2500 Virginia Ave., N.W., Apt. 1203-S
Washington, DC 20037

Dear Mr. Olender:

I am in receipt of your letter dated April 19, 2004 requesting certain information concerning the results of the April 12, 2004 vote by WEI members concerning the proposed sale of WEI space.

You made the following request,

"Would you kindly provide us with the number of apartments that voted for the Hotel sale and the number of apartments that voted against the hotel sale?

Would you also provide us with the number of owners who voted for the hotel sale and the number of owners who voted against the hotel sale?"

The result of the vote, as attested to by the auditing firm hired by WEI to count and certify the votes, was as follows;

For	35,040 "shares"
Against	34,548 "shares"

These are the only relevant results of the vote and the only record WEI now has. You will recall that at the April 12 meeting of the members, a vote was taken on procedures that might be followed to allow members to verify the accuracy of the counting of their votes. The membership then voted to accept the auditors' final count

The notice of the meeting set the voting standard, as approved by the Board of Directors in conformity with the decision of the Delaware Chancellor, as the majority of shares of cast by those present in person or voting by proxy. The number of apartments that voted for or against is not a relevant number similarly; the number of individual owners who voted their shares one way or another is not a relevant number.

Sincerely,

Daniel Sheehan



LAW OFFICES

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OF COUNSEL
HARLOW R. CASE, D.C.
ROBERT S. CHABON, M.D., J.D.

April 26, 2004

Mr. Dan Sheehan
President, Watergate East, Inc.
2500 Virginia Avenue, NW
Washington, D.C. 20037-1901

Dear Mr. Sheehan:

Receipt of your letter of April 23 is acknowledged. In it, you advise that 35,040 shares "for" and 34,548 shares "against" is "the only record WEI now has."

We need the following information by close of business Wednesday, April 28, for inclusion in our filing of April 29 with the Zoning Commission. If it is not provided us, we will argue the adverse inferences from your failure to produce all information.

Regarding the property sale vote:

1. Were the ballots and proxies destroyed?

2. If so, when? By whom? At whose direction? How?

3. Was any legal advice requested or obtained prior to the destruction? If so, when? By whom? From whom? What advice was received?

4. Were the computer programs and data pertaining to the vote destroyed? If so, when? By whom? At whose direction? How? Who has possession of any hard drives, server hard drives, back-up media (including, but not limited to tapes, floppy disks, CD Rom disks, and DVD disks) relevant to the votes?

5. What board members had conversations about the destruction prior to, during, and after? When, with whom, and what was the substance of the

PLAINTIFF'S EXHIBIT
tabbies
Cem vs. Co-Op 7

conversations?

6. Name all persons who talked with Mr. Drury about destroying the votes, before, during and after.

7. Do you allege that Mr. Drury destroyed the ballots and proxies on his own without instructions from WEI officers, board members or General Manager?

8. Does the General Manager have now, or has ever had a copy of the ballots, proxies, or computer program, including hard drives, server hard drives, back-up media (including, but not limited to tapes, floppy disks, CD Rom disks, and DVD disks)? If so, what has happened to them?

9. What has the General Manager informed you and Board members as to his involvement, if any, in conversations and/or acts regarding destruction of the ballots, proxies or computer information, hard drives, server hard drives, back-up media (including, but not limited to tapes, floppy disks, CD Rom disks, and DVD disks)?

10. Did you, or any members or spouses of board members, General Manager, or others, to your knowledge, consult with Monument personnel or Monument counsel about the destruction or receive their advice on destruction? If so, give details.

11. Will you and other board members agree, without court order, to submit to examination under oath about these matters in the next thirty (30) days or submit your resignations?

The questions above need prompt and forthright answers.

The feelings of most Watergate East members is illustrated by an email I received Saturday from a person I do not know. "I don't want to believe it, but the pressure to approve, and then the mysterious destruction of the ballots and software, even to the uninitiated, raises more questions than answers." He says he is "a concerned owner" and gives his name.

Very truly yours,

Watergate East Committee Against Hotel Conversion to Co-op Apartments

By: _____
JACK H. OLENDER

JHO:bls
Encl. April 26 letter from Sheehan to Olender
cc: Board Members

TELEPHONE: (202) 965 2900
FAX: (202) 333-8585



atergate East 2500 VIRGINIA AVENUE, N.W. WASHINGTON, D.C. 20037-1901

April 23, 2004

Jack H. Olender, Esq.
Watergate East Committee
Against Hotel Conversion to Co-op Apartments
2500 Virginia Ave., N.W., Apt. 1203-S
Washington, DC 20037

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Sincerely,

Daniel Sheehan

April 26, 2004

Mr. Dan Sheehan
President, Watergate East, Inc.
2500 Virginia Avenue, NW
Washington, D.C. 20037-1901

Dear Mr. Sheehan:

Herewith are signed Petitions by more than fifty (50) members of WEI requesting a special meeting be called for a date no later than forty-five (45) days from today for the purpose of re-voting on the sale of WEI's properties to BRE/Watergate, LLC, and Monument Residential, LLC. We request the date of the meeting be given to members promptly after the next meeting of the Board, which we understand is tomorrow.

We request you take no action to consummate the proposed "Agreement" with BRE/Watergate, LLC, and Monument Residential, LLC., unless and until a re-vote authorizes proceeding with this "Agreement."

Very truly yours,

Cesar Caceres
William Diedrich
Jack Olender
Alex Radin
Maurizio Ragazzi
Sol Shalit

By: /s/ William Diedrich
William Diedrich

Enclosures: Petitions
cc: Board members (with Petitions)
WEI Membership (without Petitions)

PLAINTIFF'S EXHIBIT
tabbies
Com vs Co-Op 8

PETITION

We the undersigned, in accordance with paragraph 25 of the Watergate East, Inc. (WEI) bylaws, request that a special meeting of members be called by the WEI President within 45 days of the delivery of this petition to him for the purpose of re-voting on the proposed sale of WEI properties to BRE/Watergate, LLC., and Monument Residential, LLC.

PLEASE RETURN THIS PETITION WITH YOUR SIGNATURE TO:

William Diedrich, Apt. 503-N, by 6:00 p.m. Monday, April 26, 2004.

Signed at _____a.m./p.m., this _____ day of _____, 2004

_____ _____

Member Signature Apt. Number

_____ _____

Member Signature Apt. Number

* * *

