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DC OFFICE OF ZONING
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September 18, 2006

Sharon Schellin
Secretary to the Zoning Commission
441 4th Street, N W., Suite 200
Washington, D.C. 20001

ZONING COMMISSION
District of Columbia

CASE NO. 04-11
EXHIBIT NO. 88

Re: Z C. Case No 06-06: Text Amendments—Charter Schools

Dear Ms Schellin:

Although this proceeding has now lasted six months, the text still reflects an underlying lack of serious policy deliberation that has been exacerbated by the Commission's decision to proceed on an emergency basis.

As I noted in prior letters, the Commission has never explained why emergency action was "necessary for the immediate preservation of the public peace, health, safety, welfare, or morals," much less how it justified keeping the emergency rule in effect longer than the 120-day limit imposed by D.C. Code § 2-505(c). That has unavoidably tainted the proposed rule as well

Moreover, it is still clear that the Commission has not had the benefit of feedback from the many stakeholders in the early-childhood-education community, both inside and outside the government, who will feel a dramatic impact from the rule if the Commission gives final approval. For instance, from a FOIA request, we now know that the State Education Officer (whose office includes the Office of Public Charter School Financing and Support) did not have an opportunity to contribute in any meaningful manner to the text amendment that was set down in February. See Email messages from Debora Gist, State Education Officer, to Ellen McCarthy, Feb 1 and Feb 10, 2006 (attached). Although I am not generally privy to communications within the D.C. government, I have no reason to believe that all the relevant agencies were ever brought on board with the proposal.

Although many witnesses testified at the Commission's one and only public hearing about the rushed nature of the proceeding, the need for greater consultation, and the great threat to small public charter schools posed by the text amendment—and the Commission affirmatively asked the Office of Planning to engage in greater consultation—the only concession that has since been made in the text is a spurious exception for very small schools of 16 or fewer students. At the Commission's July 10 meeting, the Office of Planning admitted that this exception had not been "floated" with anybody in the community. Indeed, although the number 16 has an analog in the childcare context, there is little reason to believe that it bears any relation to economic feasibility for charter schools, I am aware of no charter school in the District that would meet the 16-student threshold.

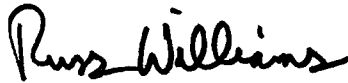
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At the July 10 hearing, Chairperson Mitten said it was “frustrating” that the Commission had received “no additional submissions” on how to “stri[k]e the right balance” between proponents and opponents of the size limitations in the text amendment. In fact, the June 9 comment of architect Milton Shinberg was exactly such an attempt, but there is no public sign that the Office of Planning or the Commission considered his reasoned arguments about ways to balance competing concerns.

I understand that the Commission typically relies on the presumption that a public comment process furnishes it with the information necessary to make good policy decisions. But the record demonstrates—notwithstanding the example of the Shinberg comment—that has not happened in this case. The Commission owes itself and the children of D C an obligation to do more to ensure that the relevant governmental and community stakeholders have contributed to this important policy debate, which as it currently stands, would doom small public charter schools in residential zones.

If the Commission feels it must do something immediately, it should act to finalize only the portions that amend the definition of public schools to include charter schools. As Chairperson Mitten said at the July 10 meeting, that definition merely “clarifie[s] an issue that the current Zoning Administrator had interpreted differently than prior Zoning Administrators” and there has been no “real concern about that.” The remainder of the proposed amendment should not be considered until the Commission and the Office of Planning have engaged in whatever efforts are necessary to ensure that this momentous decision is not made in such a vacuum.

Respectfully yours,

A handwritten signature in black ink that reads "Russ Williams". The signature is written in a cursive, flowing style.

Russ Williams
Managing Director
AppleTree Institute for Education Innovation

From: Gist, Deborah (EOM)
To: McCarthy, Ellen (OP);
CC: McCarthy, Gregory (EOM);
Subject: Zoning and Charter Schools
Date: Friday, February 10, 2006 4:09:30 PM
Attachments:

Ellen,

I don't know what procedurally is possible at this point because I understand that the emergency text amendments on the zoning for public schools were sent to the Commission in preparation for a scheduled review at their Monday meeting, but I really feel strongly that we need to slow this process down and take a closer look at them from a policy perspective. There is significant concern coming from the community from all directions, and I think that moving something forward on an emergency basis is not prudent. I'm also not clear why it is necessary or helpful to the process to have the emergency action rather than reviewing the issues and proposing amendments in a manner that allows for a rulemaking process to occur on a more carefully thought out set of recommendations.

While I understand that your office was responsive to feedback from FOCUS and made revisions based on feedback, there are many who have not been as closely involved. Jennifer sent the SEO the regulations after I reached out to you with that request, but I don't feel that we had time to provide feedback before the memo was sent to the Commission. Given that zoning is not my agency's area of expertise, we have spent time trying to sort out what it all means and what the policy implications are, but I think that if we had an opportunity to be briefed by Jennifer so that we could ask questions and really understand, our knowledge of the education and school facilities implications could have been shared within a productive context. I also shared the memo with the directors of the two chartering authorities on Tuesday. Neither of them had seen the document nor had they had the opportunity to review a draft as the memo indicates that DCPS did.

Can you let me know if there is any possibility that action from the Zoning Commission could be postponed? Either way, I'd like to schedule a briefing. If it is too late for Monday, then we can work to provide input during the 120 days. If it isn't, I would be much more comfortable if we can take a step back and bring a number of folks together (SEO, City Administrator's office, Gregory's office) with OP to work through this issue.

Thanks,

Deborah

**Deborah A. Gist
State Education Officer
DC State Education Office
441 4th Street NW, 350 North, Washington, DC, 20001
Phone 202-727-6436
Assistant, Mr. Robert Boik, 202-727-8805
deborah.gist@dc.gov**

From: Gist, Deborah (EOM)
To: McCarthy, Ellen (OP);
CC: McCarthy, Gregory (EOM); Clinton, Kevin
(EOM);
Subject: Charter Schools and Zoning
Date: Wednesday, February 01, 2006 9:22:46 PM
Attachments:

Ellen,

I understand that OP is circulating a draft of the zoning regulations for public schools. The Office of Public Charter School Financing and Support is a part of the SEO, and this issue is of the utmost importance to the work we do through that office every day. I want to be sure that we have an opportunity to review and comment on the regulations. Can you please send us a draft and also let me know the timeline and process for their approval? I've heard bits and pieces from other offices, but I wanted to be sure I understood directly from you all what the process and current status are.

Thanks,

Deborah

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