



GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 3D
PO Box 40846, Palisades Station
Washington, DC 20016

***PALISADES · KENT · SPRING VALLEY · WESLEY HEIGHTS · NEW
MEXICO/CATHEDRAL · THE AMERICAN UNIVERSITY · FOXHALL VILLAGE ·
BERKELEY***

January 9, 2018

Mr. Anthony Hood
Chairman
District of Columbia Zoning Commission
441 4th Street NW, Suite 210S
Washington, D.C. 20001

RE: Case No. 16-23
Exhibit No. 109 – “ANC 3D's Valor Resolution of Conditional Support (December 12, 2017).”

Dear Chairman Hood,

Attached please find a letter (and accompanying exhibits) that we have written to the Office of the Attorney General's Legal Counsel Division (OAG-LCD), requesting an Advisory Opinion on the circumstances under which ANC3D considered and passed its Resolution in support of ZC Case No. 16-23.

As you know, on December 6, 2017, ANC3D passed a Resolution to support the Ladybird proposal. Only ten days prior, Valor Development, LLC communicated to ANC3D Commissioners, by email, a 72-page Comprehensive Transportation Review (CTR), 283 pages of CTR Technical Attachments, and 98 pages of Site Exhibits. Prior thereto, none of these documents had been posted online (or otherwise distributed) for public inspection. Notwithstanding having just been presented with 453 pages of new information, ANC3D passed its Resolution supporting Valor's revised Application over two weeks before it was eventually filed on December 22, 2017.

Immediately after Valor's revised Application was filed, we requested, pursuant to our Bylaws, that ANC3D Chairperson Steve Gardner call a special meeting to revisit the matter. Both times Chairperson Gardner denied our request. We believe he did so in contravention of ANC3D's Bylaws. As such, we have requested an Advisory Opinion from the OAG-LCD to answer this question.

We file this request for an Advisory Opinion into the case log for two reasons. First, we would like you to be aware that the issue regarding Chairperson Gardner's denial of our special meeting requests is outstanding. Second, when evaluating whether to give "great weight" to ANC3D's Resolution, we would like the ZC to be advised of the circumstances under which it was prematurely considered, and the fact that Chairperson Steve Gardner refused to allow the ANC to revisit this extremely important case at a special meeting.

Furthermore, we oppose Valor's revised Application in this Case. We cite Exhibit 150 (i.e. "Commissioner Gates' Testimony in Opposition") as the substantive explanation behind our opposition.

Thank you very much for your consideration. Please do not hesitate to reach out to us with any questions.

Sincerely,



Holmes Whalen
Commissioner
ANC3D-03



Alma H. Gates
Commissioner
ANC3D-05



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January 9, 2018

Karl A. Racine
Attorney General
Office of the Attorney General for the District of Columbia
441 4th Street, N.W.
Washington, D.C. 20001

Dear Mr. Racine,

We respectfully request that the Legal Counsel Division (LCD) provide guidance as to whether Article V, Section 3(B) of Advisory Neighborhood Commission 3D's (ANC3D) Bylaws require a special meeting to be called at the written request of two Commissioners. Below we have detailed the circumstances under which this question has arisen, and the substance of our engagement with ANC3D Chairperson Steve Gardner, and Simon Gottlieb at the Office of Advisory Neighborhood Commissions (OANC).

I. BACKGROUND

On December 6, 2017, ANC3D considered and passed a Resolution to support a development proposal for an apartment building, and grocery store, to be constructed at 4330 48th Street N.W.¹ The Resolution of support was penned by Commissioner Troy Kravitz. A Resolution of "neutrality" was offered by Commissioner Holmes Whalen, noting that the developer had not yet filed a revised Application for Voluntary Design Review with the Zoning Commission, and the matter was not yet ripe for review. This logic was to allow ANC3D to consider the revised Application when (and if) the developer filed its new plans for the building as promised.

During ANC3D's consideration of the Kravitz Resolution, an Amendment was offered by Commissioner Chuck Elkins, and approved by the Commission. The Elkins Amendment allowed for reconsideration or withdrawal of the letter *if* the developer materially changed that which it had presented to ANC3D that evening. Given our skepticism as to whether the revised

¹ See ZC Case No. 16-23.

Application would be substantially similar to that which had been presented that night by the developer, the Resolution – allowing for reconsideration – received our support.

On December 22, 2017, just before Christmas, the developer filed its revised Application for Voluntary Design Review. As we had expected, ANC3D found itself in an awkward position; it had already passed a Resolution in support, but had not had an opportunity to consider, what we believe, are material changes in the revised Application.

The next regular meeting of ANC3D is on January 10, 2018. The ZC hearing will be held the very next day, on January 11, 2018. Given these time constraints, the size and scope of the development, and its expected effects on the surrounding community in ANC3D, we believed that a Special meeting, pursuant to ANC3D's Bylaws, was necessary and appropriate.²

On December 26, 2017, we requested that Chairperson Gardner, pursuant to ANC3D's Bylaws, hold a special meeting to consider the revised Application.³ Chairperson Gardner denied our request the next day.⁴ We again requested a special meeting on December 28, 2017.⁵ Our request was again denied by Chairperson Gardner.⁶

The Office of Attorney General's (OAG) Immediate Office has visited this provision in ANC3D's Bylaws before under different circumstances. In a letter dated November 10, 2016, the OAG Immediate Office noted that there are two plausible ways to interpret Article V, Section 3(B) of ANC3D's Bylaws.⁷ In pertinent part, the letter states:

...This sentence could be read to mean that the Chair may only call a special meeting if other Commissioners or ANC residents request one. It could also, however, be read in conjunction with Article IV, Section 7 to mean that the Chairperson has the power to call a special meeting, and even if a Chairperson does not call a special meeting, two Commissioners (by request) or ten residents may nonetheless call one.

In addition, this letter stated that the second interpretation of Article V, Section 3(B) would "check the Chairperson because no Chairperson could obstruct a special meeting if other Commissioners, or ANC residents, believe such a meeting to be necessary and appropriate."

In denying our second request for a special meeting, Chairperson Gardner stated the following:

² Article V, Section 3(B) provides the following: *Special meetings of the Commission may be called by the Chairperson, by written request of (2) Commissioners or upon petition of (10) residents, 18 years of age or older, of the Commission area. No matter shall be considered at any special meeting except those stated in the request and notification. Regular meeting procedures will be followed.*

³ See Exhibit A, Commissioner Gates and Commissioner Whalen's first request for special meeting.

⁴ See Exhibit B, Chairperson Gardner's first denial of special meeting request.

⁵ See Exhibit C, Commissioner Gates and Commissioner Whalen's second request for special meeting.

⁶ See Exhibit D, Chairperson Gardner's second denial of special meeting request.

⁷ See Exhibit E, Immediate Office Review of ANC3D's Bylaws Concerning Special Meetings (November 10, 2016).

I interpret the Bylaws as allowing for the discretion of the chair to call a special meeting. Without the ability of the duly elected chair to determine whether a special meeting is in the best interests of the Commission, then any 2 commissioners could determine at any time that a special meeting should be called for any reason whatsoever, whether their motives were legitimate or not. If the Chair was acting unreasonably by refusing to call a special meeting under circumstances that clearly warranted a special meeting, then, under the Bylaws, the recourse would be to remove the chair.⁸

We reject this interpretation. To conclude that our only recourse is to file “articles of impeachment” is illogical and baseless. We also believe it is contrary to the Immediate Office’s November 2016 interpretation, providing that our Bylaws “check” the Chairperson from obstructing a special meeting “if other Commissioners... believe such a meeting to be necessary and appropriate.”⁹

The OANC has expressed its support for such an interpretation. In an email dated December 29, 2017, the OANC Executive Director, Gottlieb Simon, communicated his thoughts based upon his experience with this provision of ANC3D’s Bylaws.¹⁰ In pertinent part, Mr. Simon stated that, based on our logic, we “may reasonably understand that section to empower you... to call a special meeting which you have indicated to me you believe as necessary and appropriate.”¹¹

II. QUESTION FOR WHICH WE SEEK CLARIFICATION

Our question is straightforward. Chairperson Gardner received two requests to call a special meeting from two Commissioners, pursuant to the Bylaws of ANC3D. Both times he refused to do so. Did Chairperson Gardner act contrary to ANC3D’s Bylaws, and inappropriately award himself the unilateral discretion to call, or not to call, a special meeting?

We would like to thank you in advance for your consideration of this matter. We look forward to your response, and please do not hesitate to contact us with any questions.

Sincerely,



Holmes Whalen
Commissioner
ANC3D-03



Alma H. Gates
Commissioner
ANC3D-05

⁸ See *supra* note 6.

⁹ See *supra* note 7.

¹⁰ See Exhibit F, E-mail from OANC Executive Director Gottlieb Simon.

¹¹ *Id.*

Request for Special Meeting of ANC3D

Whalen, Holmes (SMD 3D03)

Tue 12/26/2017 3:21 PM

To:

Gardner, Stephen (SMD 3D06);

Gates, Alma (SMD 3D05)

Cc:

Sriqui, Michael (SMD 3D04);

Elkins, Chuck (SMD 3D01);

DeWitte, Conrad (SMD 3D09);

Gold, Mike (SMD 3D08);

Lucero, Silvia (ANC 3D10);

Kravitz, Troy (SMD 3D02)

Chairman Gardner:

Pursuant to Article V, Section 3(B) of ANC3D's bylaws, Commissioner Gates and I request that you call a special meeting of ANC3D to reconsider Valor Development's Voluntary Application for Design Review (i.e. Case No. 16-23). Thank you.

Holmes Whalen

Commissioner

ANC3D-03

Ph: (202) 210-8609



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· FOXHALL VILLAGE · BERKELEY*

December 27, 2017

BY EMAIL

Commissioner Holmes Whalen
Commissioner Alma Gates

Re: Request to Call a Special Meeting

Dear Holmes and Alma,

This responds to the request that you and Commissioner Gates made on December 26, 2017 that I convene a Special Meeting pursuant to Article V, Section 3 (b) of ANC3D's Bylaws "in order to reconsider Valor Development's Voluntary Application for Design Review (i.e. Case No. 16-23)."

After careful consideration, and for the following reasons, I decline to call such Special Meeting.

First, this matter was duly considered and voted upon by ANC3D at its regularly scheduled meeting on December 6, 2017. The Commission voted by a margin of 8-1 on December 6th to support of Valor's Application (ZC Case no. 16-23) Thus, the Commission considered this case just weeks ago. Your request contains no underlying rationale or reason for calling a Special Meeting. In short, it is simply a request a request by two Commissioners to reconsider a vote duly taken by the Commission at its last meeting.

Second, the Commission's December 6 resolution in favor of the Valor Application contains a specific clause that permits the Commission to reconsider or withdraw its Resolution provided two conditions are meant. One, there must be a "material and significant" impact on the community measured against the December 6th Valor presentation. And two, there must be a written request of 3 Commissioners. If such conditions were meant, the matter would be placed on the agenda at the January 10th regular meeting. Therefore, it is my view, as Chair and the

convener of meetings, that it is the Commission's clear intent to reconsider the Valor matter only if these two specific conditions were met. Accordingly, the Commission's vote on this matter and the specific process it adopted for reconsideration, in my view, supersedes the more general special meeting clause in the Bylaws. Given that your request is not based upon the satisfaction of these conditions (nor is it my understanding that such conditions could, in fact, be met), your request runs contrary to the specific intent, procedure, and process for reconsideration of the Valor vote as set forth in the December 6 Resolution.

Third, under any circumstances, neither you, Alma, nor any Commissioner is prejudiced by declining your request. All Commissioners have an unfettered right to request reconsideration of any matter at any Commission meeting. Thus, if you and Alma or any other Commissioner wishes to move for reconsideration of the Commission's vote on Valor, you have every right to do so. The next regularly scheduled meeting of the Commission is on January 10, 2018. This meeting is prior to the scheduled meeting of the Zoning Commission hearing on the Valor Application. Thus, if the Commission were to change its position, the Commission's change in position could be officially convened to the Zoning Commission prior to its hearing on January 11. Further, if the Commission's 8-1 vote were reversed, then a prevailing Commissioner would be assigned, if requested, to testify at the Zoning Commission hearing in order to convey ANC3D's position.

Fourth, no Commissioner is prejudiced because the Commission discussed and considered whether to hold a special meeting prior to its regular meeting on January 10 if the two conditions set forth in the Resolution were met for reconsideration and withdrawal. As the recording of our December 6 meeting reflects, the Commission decided that its regular meeting of January 10 was sufficient to reconsider the matter as the January 10 meeting was prior to the Zoning Hearing the next day. Thus, the issue of holding a special meeting was discussed and dismissed as unnecessary as reflected in the Commission's deliberations on December 6.

Fifth, the underlying purpose of a special meeting is essentially to consider a matter that cannot wait until a regular meeting or possibly when the public interest is so great as to require its own forum. In fact, an examination of the ANC laws reveal that there is no mention in the law whatsoever of a so-called special meeting.¹ ANC3D's special meeting provisions were inapplicably borrowed and copied from the DC Council rules. That is why Section 5.03(b) is headed "Additional and Special Meetings" as is the DC Council Rules, yet ANC3D makes no provision for an "additional meeting". In the Council rules, the "additional" referred to additional legislative meetings and the "special" referred to certain circumstances where the Chair of the DC Council can call a special meeting. None of these provisions are contained in the ANC laws. Instead, the ANC laws refer to only two types of meetings "emergency" meetings and "regular" meetings. Emergency meetings occur only when a critical matter must be addressed immediately and cannot wait until a regular meeting. That is not the case here. In this situation, there is no emergency. Your request can be addressed on a timely basis at our January 10 meeting.

¹ Except for the limited circumstance of removing a Chair

Thus, based upon the above factors, including the administrative burden on the Commission of holding a special meeting, it is my ruling as Chair, that the express language, clear intent, and process set forth in the December 6 Resolution passed by the Commission and providing for reconsideration or withdrawal of our vote in support of Valor supersedes any emergency need or urgency for a special meeting and further that no Commissioner will be prejudiced because all commissioners retain the right to request reconsideration on January 10. Accordingly, the request (which under the bylaws is discretionary rather than mandatory with the Chair) is declined.

Thank you.

Respectfully,

A handwritten signature in cursive script that reads "Stephen Gardner".

Stephen K. Gardner
Chair

EXHIBIT C

Whalen, Holmes (SMD 3D03)

Thu 12/28/2017 4:28 PM

To:

Gardner, Stephen (SMD 3D06)

Cc:

Elkins, Chuck (SMD 3D01);

Kravitz, Troy (SMD 3D02);

Sriqui, Michael (SMD 3D04);

Gold, Mike (SMD 3D08);

DeWitte, Conrad (SMD 3D09);

Lucero, Silvia (ANC 3D10);

ANC 3D Office (ANC 3D);

Simon, Gottlieb (OANC);

Ludaway, Natalie (OAG);

Turner, Joshua (OAG);

Gates, Alma (SMD 3D05)

Steve,

According to Article V, Section 3(B) of the bylaws of ANC3D, there are three ways in which a Special Meeting of the Commission may be called. The first is by the Chair, the second is at the written request of two Commissioners, and the third upon petition of (10) residents, 18 years of age or older, of the Commission area.

As you know, on December 26, 2017, Commissioner Gates and I submitted a written request (by e-mail) that you convene a special meeting to discuss the new proposal submitted by Valor Development, LLC (i.e. ZC Case No. 16-23). As of December 21, 2017, the case contains significant changes that place in question the information that was shared with the Commission on December 6, 2017. Yesterday you declined our request to hold a Special Meeting. In doing so you cited a number of reasons that are not germane to the plain language of our bylaws.

Commissioner Gates and I, again, request that you convene a Special Meeting consistent with your duties as Chairman to uphold the bylaws which govern the direction and process of the ANC. If we do not hear from you by close of business (i.e. 5p) tomorrow, December 29, 2017, we must request that the Office of the Attorney General issue an expedited advisory opinion given the time-sensitive nature of the matter at hand. Thank you very much.

Holmes Whalen
Commissioner
ANC3D-03
Ph: (202) 210-860

Gardner, Stephen (SMD 3D06)

Thu 12/28/2017 7:49 PM

To:

Whalen, Holmes (SMD 3D03)

Cc:

Elkins, Chuck (SMD 3D01);

Kravitz, Troy (SMD 3D02);

Sriqui, Michael (SMD 3D04);

Gold, Mike (SMD 3D08);

DeWitte, Conrad (SMD 3D09);

Lucero, Silvia (ANC 3D10);

ANC 3D Office (ANC 3D);

Simon, Gottlieb (OANC);

Ludaway, Natalie (OAG);

Turner, Joshua (OAG);

Gates, Alma (SMD 3D05)

Dear Holmes,

The Bylaws state and you have restated that a Special Meeting **may** be called by the Chair. The Bylaws do not state that upon the request of 2 Commissioners, a Special Meeting **shall** be called by the Chair. The Legal Dictionary states as follows with respect to the difference between shall and may: "a choice to act or not, or a promise of a possibility, as distinguished from "**shall**," which makes it imperative." Thus, I interpret the Bylaws as allowing for the discretion of the chair to call a special meeting. Without the ability of the duly elected chair to determine whether a special meeting is in the best interests of the Commission, then any 2 commissioners could determine at any time that a special meeting should be called for any reason whatsoever, whether their motives were legitimate or not. If the Chair was acting unreasonably by refusing to call a special meeting under circumstances that clearly warranted a special meeting, then, under the Bylaws, the recourse would be to remove the chair.

In this case, my actions are both sensible and rationale. My letter to Alma and you of December 27 laid out sound and considered reasoning for denying your request. Each point is germane to the fair and reasonable exercise of the discretion given to me under the Bylaws. The Commission voted 8-1 on December 6 to approve the Valor Application, but critically to your request, set forth in detail the procedure and process for reconsidering or setting aside the Valor vote. This was a clear expression of the Commission's intent. I do not believe that the Chair has the unilateral right to go against the express wishes of the Commission, voted upon just weeks ago. Think about this for a moment. Let's say that the vote was 7-2. Under the theory advanced by Alma and you, the two losing Commissioners could compel the chair to hold a special meeting whenever they wanted in an attempt to reverse the vote. This would create havoc and, in my view, is precisely why the

Bylaws give discretion to the Chair. This is exactly what what is occurring by virtue of your request. Furthermore, you and Alma have never stated, nor can you state, why there is an imperative for holding a special meeting (which I explained is intended primarily under the ANC laws for emergency purposes.) Most critically, as I thoroughly outlined in my letter, neither you, Alma, or any other Commissioner is prejudiced by not having a Special Meeting prior to the regular meeting on January 10 because our regular meeting is prior to the Zoning Commission hearing on January 11. Because you are free to bring up a motion for reconsideration during our January 10 meeting (which was part of the Commission's decision on December 6.) there simply is no harm or imperative.

You and Alma have every right to seek an advisory opinion from the Office of the Attorney General. You have framed the issue very clearly. The question is whether the chair has any discretion to apply a reasonableness test to whether a special meeting should be called and whether such Special Meeting is in the best interest of the Commission.

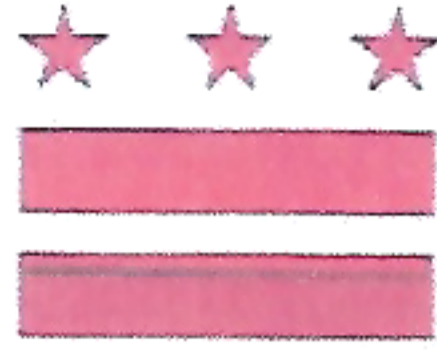
Prior to giving you my final answer by 5 PM tomorrow, December 29, as you demand below, I welcome the input and views of the other Commissioners.

Respectfully,

Steve

Stephen Gardner
Chair, Advisory Neighborhood Commission 3D
SMD - 3D06
Cell: (202) 669-7962

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

November 10, 2016

Commissioners
Advisory Neighborhood Commission 3D
P.O. Box 40846 Palisades Station
Washington, DC 20016

Re: Immediate Office Review of ANC3D's Bylaws Concerning Special Meetings

Commissioners:

Chairperson Smith requested that the Immediate Office reexamine¹ the Legal Counsel Division's (LCD) written advice that Advisory Neighborhood Commission 3D's (ANC) Bylaws unambiguously require a request from two Commissioners or a petition from ten residents before the Chairperson may call a special meeting. This matter began on May 2, 2016, when Commissioners Spencer, Gardner, and Ross presented this question to LCD. On June 13, 2016, LCD advised that the Chairperson could not call a special meeting without an antecedent request. Chairperson Smith formally asked LCD to reconsider that advice on June 15, 2016, and after thorough review, LCD reaffirmed its advice on July 11, 2016. Chairperson Smith then requested the Immediate Office to reexamine that conclusion.

Immediate Office Review

In accordance with Chairperson Smith's request, the Immediate Office reviewed LCD's advice. In sum, the Immediate Office concludes that ANC3D's Bylaws can reasonably be read to allow the Chairperson to call a special meeting without any prior request.

Two provisions of ANC3D's Bylaws describe how special meetings may be called. Article IV, Section 7 vests the Chairperson with the "power to call special meetings of the Commission." And Article V, Section 3(B) states that:

Special meetings of the Commission may be called by the Chairperson, by written request of two (2) Commissioners or upon petition of ten (10) residents, 18 years

¹ Commissioner Spencer also asked me to offer guidance on how our office will approach requests for reconsideration going forward. The Attorney General reserves discretion to reexamine any legal advice that this office has supplied to an ANC or its Commissioners.

or older, of the Commission area. No matter shall be considered at any special meeting except those stated in the request and notification.

The first sentence of Section 3(B) is ambiguous because there is no comma between “request of two (2) Commissioners” and “or upon petition of ten (10) residents.” Consequently, this sentence could be read to mean that the Chair may only call a special meeting if other Commissioners or ANC residents request one. It could also, however, be read in conjunction with Article IV, Section 7 to mean that the Chairperson has the power to call a special meeting, and even if a Chairperson does not call a special meeting, two Commissioners (by request) or ten residents (by petition) may nonetheless call one.

This plausible reading would preserve the Chairperson’s authority to call a special meeting because it would not make that authority hinge on whether other Commissioners or ANC residents asked the Chairperson to call a meeting. It would also ensure that Section 3(B) serves as an effective check against abuses of special meetings. It would check the Chairperson because no Chairperson could obstruct a special meeting if other Commissioners, or ANC residents, believe such a meeting to be necessary and appropriate.² Indeed, whenever two or more Commissioners (or ten or more residents) object to the date of a special meeting called by the Chairperson, they could call one themselves. This plausible reading would also prevent abuses more generally by limiting the scope of any special meeting. Because no matter may be considered in any special meeting “except those stated in the request and consideration,” no special meeting could include matters not mentioned in the public notice for that meeting,³ and no special meeting requested by Commissioner or residents could exceed the scope of what was requested.

This reading also has the benefit of being consistent with the past practice of this and other ANCs. Based on the information that Chairperson Smith and Commissioner Gates have provided, Chairpersons of ANC3D have relied on their authority to call special meetings at least five times before. Moreover, my understanding is that ANCs commonly authorize their Chairpersons to call special meetings without requiring a prior request. It would be unusual, therefore, for an ANC to deny its Chairperson that authority.

Conclusion

Because ANC3D’s Bylaws can reasonably be read to permit the Chairperson to call a special meeting without any prior request, it is for ANC3D, not this office, to determine whether that

²While this reading would permit a Chairperson to schedule a special meeting when dissenting Commissioners were unavailable, *any* reading of the Bylaws would permit that as long as at least two Commissioners supported that course of action. Conversely, a majority of Commissioners can always prevent an unwanted special meeting by ensuring that the meeting lacks a quorum. *See* Bylaws Art. V, Sec. 2.

³ *See* Bylaws Art. V, Sec. 6 (“Public Notice of Meetings”).

Commissioners
Advisory Neighborhood Commission 3D
November 10, 2016
Page 3

interpretation is correct.⁴ The Bylaws do not unambiguously require the Commission to alter the status quo by reexamining its decision in the special meeting to recommend historic designation for the Palisades Playground and Field House. Since the Bylaws are ambiguous, however, we would recommend that the Commission consider amending them to avoid unnecessary uncertainty.

Sincerely,

Karl A. Racine / by NOL

Karl A. Racine
Attorney General for the District of Columbia

⁴ See Letter to Tom Smith, Chairperson, ANC 5D, July 1, 2014 (“if a bylaw provision is ambiguous, it is proper to resolve the ambiguity through a majority vote of the ANC (or amend the bylaw)”); HENRY M. ROBERT III *ET AL.*, ROBERT’S RULES OF ORDER NEWLY REVISED (“Robert’s Rules”) 588 ln. 25 (11th ed. 2011) (“[e]ach society decides for itself the meaning of its own bylaws”).

OAG letter regarding 3D special meetings

Simon, Gottlieb (OANC)

Fri 12/29/2017 5:54 PM

To:

Whalen, Holmes (SMD 3D03)

Dear Commissioner Holmes,

I am writing to confirm my discussion with you regarding the calling of ANC 3D special meetings.

Article V Section B of the ANC 3D Bylaws reads as follows:

B. Additional and Special Meetings Special meetings of the Commission may be called by the Chairperson, by written request of (2) Commissioners or upon petition of (10) residents, 18 years of age or older, of the Commission area.

As the Office of Attorney General has noted, this section may be read in two ways. One way would be to read it as meaning that the Chairperson may call a special meeting only if two Commissioners make such a request in writing or if 10 residents petition the Chairperson to call a special meeting. The other meaning, as noted by the OAG, is that "the Chairperson has the power to call a special meeting, and even if a Chairperson does not call a special meeting, two Commissioners (by request) or ten residents (by petition) may nonetheless call one."

The OAG also noted that the second interpretation, allowing two Commissioners on their own to call a special meeting, would serve as a check against abuse. Among other things "(i)t would check the Chairperson because no Chairperson could obstruct a special meeting if other Commissioners, or ANC residents, believe such a meeting to be necessary and appropriate."

While noting that this and other considerations argued in favor of the second interpretation, the OAG concluded that because of the ambiguity in how the section may be read, "it is for ANC3D, not this office to determine [which] interpretation is correct."

It is my understanding that ANC 3D has yet to remove the ambiguity (for instance by adding a comma after "Commissioners" in section B, Article V). Therefore, you may reasonably understand that section to empower you and Commissioner Gates to call a special meeting which you have indicated to me you believe as necessary and appropriate.

While, I have told you that I, too, believe that the bylaws empower two Commissioners to call a special meeting, I also want to make clear that I am not recommending that you do so in this case unless you have the concurrence of a majority of the Commission to take this action. A meeting that lacks a quorum will not be able to take any action, will not achieve the goal of generating a full discussion of the issues, and is thus likely to open the ANC as a whole to ridicule and, consequently, to impede the ability of the Commission to work collegially and cooperatively.

Sincerely,
Gottlieb

=====
Gottlieb Simon
Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave NW, Suite 11
Washington, DC 20004 p: (202) 727-9945
=====