



ANC3D-03 • ANC3D-05

Holmes Whalen
Commissioner
ANC3D-03
5131 Yuma Street, N.W.
Washington, D.C. 20016

Alma H. Gates
Commissioner
ANC3D-05
4911 Ashby Street, N.W.
Washington, D.C. 20007

January 10, 2018

Mr. Anthony Hood
Chairman
Zoning Commission for the District of Columbia
441 4th Street N.W., 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)”
Exhibit No. 154 – “ANC 3D's Response to Exhibits 150 & 151”

Dear Chairman Hood,

Attached please find our second request (and accompanying exhibit) for an Advisory Opinion from the OAG-LCD regarding Chairperson Steve Gardner's denial of our requests for a special meeting to reconsider ANC3D's Resolution in support of ZC Case No. 16-23.

As you know, in our first letter to you, dated January 9, 2018 (i.e. Exhibit 151), we described the circumstances under which ANC3D passed this Resolution at our ANC meeting on December 6, 2017. For the sake of brevity in this letter, we will not revisit the points we have already made.

We submit, for your review, our second letter to the OAG-LCD, and this cover letter, for two reasons. First, the issues we raised regarding Chairperson Gardner's denial of our requests for a special meeting have still not been answered, and still remain outstanding. Second, we would like to describe the circumstances under which a *second* ANC3D Resolution was considered earlier this evening, January 10, 2018 (i.e. Exhibit No. 154).

This evening, at the beginning of our regular meeting, the ANC's agenda was altered to discuss ANC3D's position on this Case, and hold a vote on a *second* Resolution. We were afforded no notice that this discussion (and vote) would take place and, thereby, had no

opportunity to prepare a rebuttal. We were afforded only moments to review the new ANC3D Resolution before the vote was held. Members of the public in attendance at the meeting lacked the same opportunity for input.

For an ANC to “revisit” (with no notice whatsoever) an extremely complex revised Application for Voluntary Design Review, at the eleventh hour, was reckless to say the least. An ANC should not conduct itself in this fashion. ANC3D should have given this case the attention it deserves at a special meeting.

We, again, emphasize the sentiment we expressed in our previous letter; we hope you will be mindful of the facts, and the manner in which ANC3D has conducted itself, when you determine whether to award ANC3D’s submissions “great weight” in this case. Thank you again for your consideration of our position.



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January 10, 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,

As you know, in our first letter to your office, dated January 9, 2018, we requested 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. Yesterday afternoon, Joshua Turner from your office replied by email to our request, attaching a letter addressed to ANC3D Chairperson Steve Gardner.¹ He did not provide any correspondence Chairperson Gardner has had with your office.

We write to you with a second request that the LCD provide us with guidance as to the question we posed in our initial letter. Despite our lack of knowledge of the extent or content of Chairperson Gardner's communications with your office, we will take this opportunity to address the notes in "Section One" and "Section Two" of Mr. Turner's letter.

- (1) "Under ANC 3D's Bylaws, may the Chairperson of ANC 3D exercise reasonable discretion in determining whether to call a special meeting when two Commissioners request one?"**

¹ See Exhibit A, Joshua A. Turner letter to Stephen K. Gardner (January 10, 2018).

In Section One of Mr. Turner's letter, he often re-states the content of the Immediate Offices' (IO) November 2016 letter to ANC3D. He provides one direct quote of the IO's November 2016 letter. He provides one direct quote of the language of our Bylaws.

In Section One of Mr. Turner's letter he also makes several conclusions of law. No legal reasoning or rationale is provided in support thereof. The conclusory statements include the following:

A request for a special meeting from two Commissioners (or ten residents) does not obligate the Chairperson to call a special meeting.

Here, our answer is different [than the IO's prior interpretation].

Regardless of which Bylaws interpretation is right, the Chairperson is not required to call a special meeting when two Commissioners request one.

If the LCD intends to reject our assertion that Chairperson Gardner acted contrary to our Bylaws, we ask for the rationale behind that conclusion. We hope you will agree that Mr. Turner merely re-stating what the IO has already said, quoting (and blaming) our Bylaws, and making unsupported conclusions of law in this case does not suffice.

Notwithstanding these items, it is the final paragraph of Section One with which we take issue. Specifically, that paragraph provides that one (of two) interpretation of our Bylaws "would authorize someone other than the Chairperson... to call a meeting, but... *the Chairperson would not be required to call the meeting him- or herself* [emphasis added]."

The first logical conclusion of this statement is that, if Chairperson Gardner refuses our request for a special meeting under the Bylaws, we will need to call *our own* special meeting. In contrast, Chairperson Gardner has posited, "if the Chair was acting unreasonably by refusing to call a special meeting... the recourse *would be to remove the chair* [emphasis added]." If the Chairperson refuses to call a special meeting, is it the responsibility of the two Commissioners to do so themselves? Which is the correct interpretation?

There is a second logical conclusion of the final paragraph in Section One: if ten residents submit a petition, and Chairperson Gardner refuses, our constituents would need to call *their own* special meeting. How can 10 residents—none of whom have taken an oath of office—call an ANC meeting? Would the recommendations of our constituents be given "great weight?" Would not this create the potential for confusion? Please help us understand how these exhibitions would work from a logistical standpoint (e.g. who holds the gavel if the Chairperson, the Vice-Chairperson, and the Secretary do not show up for the meeting?).

With your indulgence, we would like to make one final point. Section One addresses the notion of "reasonable discretion." Article IV, Section 7(A) of our Bylaws specifically identifies the Chairperson as the "convener" of Commission meetings.² Does this not indicate that it is the Chairperson's responsibility to "convene" meetings requested consistent with the Bylaws?

² Article IV, Section 7(A) provides the following: "The Chairperson shall serve as the convener of the Commission and shall chair the Commission meetings. In addition, the Chairperson shall have the power to call special meetings of the Commission."

Where in the Bylaws is the Chairperson either explicitly or implicitly granted "reasonable discretion" to convene ANC meetings?

The logical conclusion of Mr. Turner's analysis regarding "reasonable discretion" is that a Chairperson could limit ANC meetings to the minimum, and the only recourse available to the ANC is to, as Chairperson Gardner has asserted, "impeach" the Chair. We do not agree, and ask for your guidance.

(2) Does the ANC's 8-1 vote in its December 6, 2017 meeting signify its overriding will and express intention with respect to calling a special meeting?

Because Mr. Turner did not provide us with any correspondence your office has had with Chairperson Gardner, we do not have any context for an informed response to Section Two. We did not ask about the "overriding will and express intentions of the ANC."

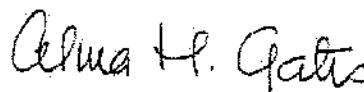
Mr. Turner did note, however, that this issue is a "factual question for the ANC." Mr. Turner also noted that nothing that transpired on December 6, 2017 precludes the "Commission's authority to reconsider that measure in a special meeting..." Obviously, we were denied the opportunity to do so, and we come to you seeking answers.

We are very grateful for your time and consideration of this matter. ZC Case No. 16-23, and the circumstances under which it received ANC consideration, is very important to our constituents. Your patience is much appreciated, and we look forward to hearing from you.

Sincerely,



Holmes Whalen
Commissioner
ANC3D-03



Alma H. Gates
Commissioner
ANC3D-05

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

January 10, 2018

Stephen K. Gardner
Chairperson
Advisory Neighborhood Commission 3D
4545 W Street NW
Washington, DC 20007

Re: Questions Concerning Proposed Special Meeting

Dear Chairperson Gardner:

Two Commissioners have requested a special meeting to reconsider a December 6, 2017 vote of the ANC. You asked us to resolve, on an expedited basis, two questions related to that request:

- (1) **Under ANC 3D's Bylaws, may the Chairperson of ANC 3D exercise reasonable discretion in determining whether to call a special meeting when two Commissioners request one?**

Yes. A request for a special meeting from two Commissioners (or ten residents) does not obligate the Chairperson to call a special meeting.

Two years ago, we were asked whether your ANC's Bylaws (unchanged since that time) permitted the Chairperson to call a special meeting¹ without a request from two Commissioners or ten residents.² We concluded in a November 10, 2016 letter that the answer to that question depended on which of two reasonable interpretations of the Bylaws was correct, which meant that the question was one for the ANC, not us, to decide.³ Here, our answer is different.

¹ We have interpreted the phrase "to call a special meeting" in the context of ANC 3D special meetings to mean: 1) to decide that a meeting shall take place; 2) to decide of when and where the meeting will be held; and 3) to notify fellow Commissioners and the public of the location, time, and agenda for the meeting through the ANC's normal procedures.

² See Letter from William Spence Spencer *et al* to the Hon. Karl Racine, May 2, 2016 (on file).

³ See Letter from Karl Racine, Attorney General, to Advisory Neighborhood Commission 3D Commissioners, Nov. 10, 2016, at 2-3, available at <https://oag.dc.gov/sites/default/files/dc/sites/oag/publication/attachments/to%20anc3d%20re%20bylaws%2011-10-16.pdf> (last visited Jan. 5, 2018).

Regardless of which Bylaws interpretation is right, the Chairperson is not required to call a special meeting when two Commissioners request one.

The Bylaws provision at issue is Article V, Section 3(B), which states in pertinent part:

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 or older, of the Commission area.

Our 2016 letter explained the two ways that this language could reasonably be read. One possible reading is that the Chairperson has exclusive discretion to decide whether a special meeting will be called, but he or she may not call one unless "other Commissioners or ANC residents request one."⁴ The other possible reading is that a special meeting may be called (1) by the Chairperson; (2) by written request of two Commissioners; or (3) upon petition of ten residents. Under that reading:

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.⁵

That second reading would authorize someone other than the Chairperson (here, two Commissioners) to call a meeting, but even under that reading, the Chairperson would not be required to call the meeting him- or herself.

(2) Does the ANC's 8-1 vote in its December 6, 2017 meeting signify its overriding will and express intention with respect to calling a special meeting?

That is a factual question for the ANC, not us, to determine, especially since the views and preferences of individual Commissioners can and do evolve over time. For example, even if the "will" of the ANC as expressed in its December 6, 2017 public meeting did not favor a special meeting, that fact does not affect the Commission's authority to reconsider that measure in a special meeting called in accordance with the Bylaws.

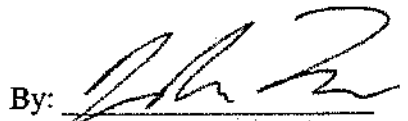
If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

⁴ *Id.* at 2.

⁵ *Id.*

By: 

JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division