



February 20, 2018

Chairman Anthony Hood  
District of Columbia Zoning Commission  
441 4<sup>th</sup> Street, NW  
Suite 200S  
Washington, D.C. 20001

RE: Z.C. Case No. 16-23  
Spring Valley Neighborhood Association's Response to Post-Hearing  
Submission from Spring Valley Wesley Heights Citizens  
Association/Neighbors for a Livable Community/Spring Valley West Homes  
Corporation

Dear Chairman Hood and Members of the Commission:

The Spring Valley Neighborhood Association ("SVNA"), a party in support in Z.C. Case No. 16-23, submits the following response to the February 12, 2018 post-hearing submission from the Spring Valley Wesley Heights Citizens Association ("SVWHCA") and Neighbors for a Livable Community ("NLC"), joint parties in opposition. The SVWHCA/NLC post-hearing submission was served upon the parties on February 12, 2018.

### **Introduction**

SVNA believes that it is important for the Commission to recognize that SVWHCA's membership does not include all residents of the Spring Valley neighborhood, and SVNA strongly objects to the misrepresentations SVWHCA has made to the Commission in its party status application<sup>1</sup>, in sworn testimony at the January 25, 2018 hearing<sup>2</sup>, and most recently in its

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<sup>1</sup> Ex. 115, p. 2: "*The SVWHCA includes in its membership all residents of Spring Valley.*"

post-hearing submission.<sup>3</sup> In sharp contrast to SVWHCA, SVNA has stated -- in its own testimony before the Commission -- that it does not speak for all Spring Valley residents<sup>4</sup>, recognizing that there are differing views within the neighborhood. Unfortunately, SVWHCA has continually refused to make this distinction.

Therefore, SVNA greatly appreciates the membership questions posed to SVWHCA representatives at the January 25 hearing, as well as the Commission's request for SVWHCA to submit a list of its members for the record.<sup>5</sup> Given Mr. Tom Smith's initial response at the hearing<sup>6</sup>, SVNA had hoped that SVWHCA's post-hearing submission would have contained a fulsome, substantive response to the Commission's request. Unfortunately, instead of simply providing the Commission with a membership list, SVWHCA filed a seven-page post-hearing submission containing misrepresentations, contradictory statements, and unsubstantiated allegations directed against certain ANC Commissioners.

As noted in its post-hearing submission, SVWHCA is indeed subject to the provisions "stipulated in the city's regulations for incorporation,"<sup>7</sup> including those contained in the District of Columbia Nonprofit Corporation Act (the "Act"). Under the Act, nonprofit corporations may not consider a person a member without that person's consent.<sup>8</sup> It is clear from the record in this case, as well as in ZC Case No. 11-07G<sup>9</sup>, that SVWHCA did not have the consent of all Spring Valley residents before claiming them as members of SVWHCA. What is unclear, however, is the extent to which Spring Valley residents, beyond those serving on the SVWHCA Board of Directors, were even aware that SVWHCA has been claiming them as members and advocating before the Commission on their supposed behalf.

In addition to highlighting SVWHCA's noncompliance with its statutory obligations as an incorporated nonprofit association registered in the District of Columbia, SVNA will address in detail the following statements made by SVWHCA in its post-hearing submission:

6. ***“Mr. Krebs and Mr. Smith (who was appearing on behalf of NLC but is also the Treasurer for the SVWHCA) responded that the SVWHCA Bylaws provide that all residents of Spring Valley and Wesley Heights are considered members of the Association. Mr. Kravitz asserted that several residents have signed something stating they are not members and do not wish to be members of the Association. The document referenced by Mr. Kravitz was not directed to the Association and the***

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<sup>2</sup> Tr. p. 71: "Okay, we have since 1952, we have considered that all residents of Spring Valley and Wesley Heights are members of the Spring Valley-Wesley Heights Citizens Association."

<sup>3</sup> Ex 210, pp. 2-3.

<sup>4</sup> Ex. 160, p. 1.

<sup>5</sup> Should SVNA receive a similar request from the Commission, SVNA is prepared to submit a list of SVNA members for the record.

<sup>6</sup> Tr. p. 63: "If we're asked by the Commission to submit something for the record, we'll be very happy to do it."

<sup>7</sup> Ex. 210, p. 7.

<sup>8</sup> § 29-404.02(b)

<sup>9</sup> Exhibit 50 of Zoning Commission Case No. 11-07G, November 20, 2017, pp. 1, 3-7: "To be clear, our Association is not affiliated with the Spring Valley-Wesley Heights Citizens Association ("SVWHCA"), and we dispute SVWHCA's contention that, 'The SVWHCA includes in its membership all residents of Spring Valley.'" (Note: Ex. 50 also includes a petition signed by over 60 Spring Valley residents stating that they are not members of SVWHCA.)

***Association has no independent knowledge of the document or any specific action requested.”***

The “document referenced by Mr. Kravitz” is SVNA’s written testimony and accompanying Spring Valley neighborhood resident petition submitted at the November 20, 2017 public hearing for Case No. 11-07G<sup>10</sup>, to which SVWHCA is a party in opposition. With respect to SVWHCA’s statement that it “has no independent knowledge of the document”, SVWHCA President Jeffrey Kraskin and SVWHCA Treasurer Tom Smith were present at the November 20, 2017 public hearing when SVNA’s testimony and accompanying resident petition were submitted to the Commission. Following the hearing, the document was entered as Exhibit 50 in the case record, thereby providing constructive notice of its existence to the parties in the case.

***7. “...Mr. Smith responded to questions about SVWHCA membership in order to be cooperative and provide additional historical background although the questions were not germane to the hearing or the testimony provided by the SVWHCA or NLC.”***

In applying for party status in this case, SVWHCA submitted a Form 140 application to the Commission, which stated that, “The SVWHCA includes in its membership all residents of Spring Valley.”<sup>11</sup> SVWHCA’s application goes on to state that, “Because of the proximity of the development to residents of Spring Valley, including Spring Valley West, the residents represented by the parties in this application will be more impacted by the general public.”<sup>12</sup> Since SVWHCA was providing testimony, as a party in opposition, about the impacts of the proposed development on its membership, it was entirely reasonable for ANC 3D Commissioner Kravitz to ask questions regarding SVWHCA’s membership. SVNA would also point out that many of SVWHCA’s alleged “members” reside in Commissioner Kravitz’s single member district and are his constituents.

Furthermore, under Sec. 408.6 of the Commission’s Rules of Practice and Procedure, “the presiding officer may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious, or otherwise outside of the scope of cross-examination.” It is not for SVWHCA or any other party to decide whether a cross-examination question is germane or not, and Chairman Hood chose to allow both Mr. McHugh’s and Mr. Kravitz’s questions related to SVWHCA’s membership.

***8. “Westover Place was included in the boundaries of the Association at their express request.”***

It is unclear as to whether the Westover Place Homes Corporation (“WPHC”) ever formally requested that it be included in the boundaries described in SVWHCA’s Articles of Incorporation filed with the Department of Consumer and Regulatory Affairs on May 16, 2017. However, just 11 days later, the WPHC Board of Directors sent the following formal request email to Mr. Smith and the SVWHCA leadership, stating, in part:

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<sup>10</sup> Id., pp. 3-7.

<sup>11</sup> Ex. 115, p. 2.

<sup>12</sup> Ex. 115, p. 5.

*“In addition, we were surprised to hear you say that Westover Place is a member of SVWHCA, implying that the mandate and jurisdiction of SVWHCA somehow includes the WPHC community. Let me make clear on behalf of the unanimous WPHC Board that whatever view some previously had on that matter, the WPHC Board unequivocally and formally rejects and will not agree to any such structure, jurisdiction, arrangement or otherwise going forward. We therefore ask you and your members to refrain from asserting that SVWHCA includes Westover Place.”*<sup>13</sup>

It is quite stunning that SVWHCA would still represent to the Commission, in sworn testimony and in its post-hearing submission, that all Westover Place households are SVWHCA members.

***13. “Following the close of the hearing, the Association began to explore how to provide a membership list. The SVWHCA maintains a mailing list of all addresses within its boundaries. That would identify all persons/households known to the Association to meet the membership eligibility assumptions in the Articles of Incorporation. This list is proprietary and confidential. While the identity of the residents of the defined area may be relatively easily assembled, the same is not true of the compilation of email addresses. We do not share or publish this list for others to use either for commercial or other purposes.”***

This statement directly contradicts Mr. Smith’s January 25 hearing testimony, where he confirmed that SVWHCA maintained a readily available list of alleged members, even noting that, “it is a lot of names because we do represent the community.”<sup>14</sup> With respect to SVWHCA’s list being “proprietary and confidential,” Mr. Smith testified at the January 25 hearing that, “I don’t think any of us look at our lists as being proprietary. So that’s not the issue.”<sup>15</sup>

The administrative and privacy concerns raised by SVWHCA regarding residents’ email addresses have no bearing whatsoever on the Commission’s request. To our knowledge, at no point during the hearing, did the Commission request that SVHWCA provide its members’ email addresses. In fact, when requesting SVHWCA’s membership list during his cross-examination at the January 25 hearing, ANC 3E Commissioner Jonathan McHugh cited the fact that Citizens for Responsible Development had previously provided the Commission with its membership list, which only includes names and residential addresses.<sup>16</sup>

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<sup>13</sup> Email from WPHC Board Chair C. Craik to SVWHCA/NLC leadership (May 27, 2017).

<sup>14</sup> Tr. p. 63.

<sup>15</sup> Tr. p. 63.

<sup>16</sup> See Exhibit 149, “Citizens for Responsible Development - Names and Addresses of Members.”

## Conclusion

SVNA is well aware of the significance of being a party in a contested matter and the responsibilities that come with it. Therefore, we find it all the more concerning and frustrating that SVWHCA continues to misrepresent the nature of its membership by claiming all Spring Valley residents as members. To make such an outrageous claim is an affront to the community, as well as a blatant violation of the DC Nonprofit Corporation Act. SVNA hopes that the Commission will take the appropriate action to hold SVWHCA accountable for misleading the Commission and the community.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Clarkson V', with a long, sweeping horizontal stroke extending to the right.

William Clarkson V  
Co- President  
Spring Valley Neighborhood Association

Certificate of Service

I hereby certify that on February 20, 2018, copies of the attached submission were delivered via e-mail to the following:

Valor Development  
c/o Christopher Collins  
Holland & Knight  
800 17<sup>th</sup> Street, NW  
Washington, DC 20006  
[Chris.collins@hklaw.com](mailto:Chris.collins@hklaw.com)

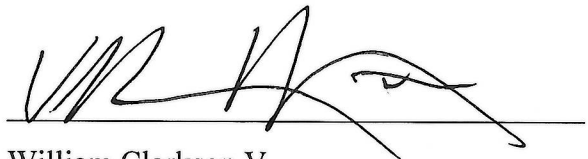
ANC 3D  
PO Box 40846  
Palisades Station  
Washington, DC 20016  
[3D@anc.dc.gov](mailto:3D@anc.dc.gov)

Spring Valley-Wesley Heights Citizens  
Association/Neighbors for a Livable  
Community/Spring Valley West Homes  
Corporation  
c/o Jeffrey Kraskin, Dennis Paul, Scott  
Parker  
[jlkraskin@rcn.com](mailto:jlkraskin@rcn.com)  
[dennis.paul@verizon.net](mailto:dennis.paul@verizon.net)  
[scottlparker@comcast.net](mailto:scottlparker@comcast.net)

Ward 3 Vision  
c/o John H. Wheeler  
[johnwheeler.dc@gmail.com](mailto:johnwheeler.dc@gmail.com)

ANC 3E  
c/o Lisner Home  
5425 Western Avenue, NW  
Washington, DC 20015  
[3E@anc.dc.gov](mailto:3E@anc.dc.gov)

Citizens for Responsible Development  
c/o Mr. Edward Donohue  
Donohue & Stearns, PLC  
117 Oronoco Street  
Alexandria, VA 22314  
[edonohue@donohuestearns.com](mailto:edonohue@donohuestearns.com)



William Clarkson V  
Co- President  
Spring Valley Neighborhood Association