GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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Wednesday

March 1, 2000

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The Public Meeting convened in Room 220, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID,	Chairperson
ROBERT N. SOCKWELL,	Vice Chairperson
MS. ANNE RENSHAW,	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD,	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Mr. Rodney Moulden, National Capital Planning Commission

D.C. OFFICE OF CORPORATION COUNSEL

Marie Sansone, Esq.

C-O-N-T-E-N-T-S

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P-R-O-C-E-E-D-I-N-G-S

(9:40 a.m.)

CHAIRPERSON REID: The meeting will please, the meeting will please come to order. March 1st, it will be the BZA meeting, the March 1st, year 2000. Thank you.

Ms. Pruitt?

MS. PRUITT: Good morning Madam Chair. Before you are the minutes from the public meeting, and also bench minutes for February 2nd, 9th, 16th, and 23rd. There is one change on the, I had to call a proxy for Ms. Mitten, and concerning the February 2nd public meeting minutes, Mr. Hood is listed as Zoning Commission Member present, it should be Mrs., Ms. Mitten. So we will make that correction.

CHAIRPERSON REID: Okay. All right, can I have a motion, or I'll move that --

MEMBER RENSHAW: I so move.

CHAIRPERSON REID: And you're moving that--

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MEMBER RENSHAW: It's either the change be made or that we're moving the --

CHAIRPERSON REID: You're moving that the minutes be approved --

MEMBER RENSHAW: -- the minutes be

approved --

CHAIRPERSON REID: -- and amended as --

MEMBER RENSHAW: Exactly, uh-huh.

CHAIRPERSON REID: -- as indicated by Ms. Pruitt.

MEMBER RENSHAW: Yes.

MS. PRUITT: Are we talking about all of them, or you want to do them individually?

CHAIRPERSON REID: No, no, no. That's not what I'm going to say. Some, the new Board Members, sometimes what we do is rather than going over each set of minutes individually, we do it by what we call consent calendar.

And rather than taking, you know, one or two or three votes, we just do it all together, and if there is no objection, or there's not anything that's glaringly omitted or any, any problems with it, it's more proficient sometimes just to do it by consent calendar.

And if there is no objection, Mrs. Renshaw would you like to do it in that matter?

MEMBER RENSHAW: Yes, I so move.

CHAIRPERSON REID: Okay.

MS. PRUITT: Seconded by, I'm sorry?

COMMISSIONER HOOD: Madam Chair can we

just make sure that we include what the necessary corrections, because that was an issue about my name being on the February 2nd --

CHAIRPERSON REID: Right.

COMMISSIONER HOOD: If Ms. Renshaw would have said that has a friendly amendment.

MEMBER RENSHAW: Yes, I will.

CHAIRPERSON REID: Yes, she --

COMMISSIONER HOOD: Okay, I'll second the motion.

CHAIRPERSON REID: Okay. That was, that February 2nd was rather straight forward wasn't it. Since everything was dismissed. Okay. And, the morning, part of it anyway.

Okay --

MS. PRUITT: Call the vote, the actual vote.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

MS. PRUITT: Staff will record the vote as five to zero to approve. Motion made by Ms. Renshaw and seconded by Mr. Hood with the corrections as noted. And, there actually aren't any cases to be decided, but there are some, one to be discussed, and

that's the application of 16542, the District of Columbia Public Schools/Georgetown Flea Market, pursuant to 11 DCMR 3103.2, for a variance under Subsection 330.5 to continue to operate the ?Sales of Antiques and Collectibles? on school parking lot - Sundays only in an R-3 District at 1819 35th Street, N.W. (Square 1297, Lot 850).

At its February hearing, the Board decided that it needed additional information before they could move forward. One was that, one item was a brief or history from Mr. Shearer (phonetic) concerning why he believes it's, was, is in a correct jurisdiction for this to be before the Board.

A copy of the legislation. The secretary, we were, this, I was to get in touch with the Zoning Commission to talk about the legal issues, and in fact I believe that was really handled more in the Joint meeting that occurred right after that with Corp. Counsel.

And then also included was advise from Corp. Counsel which was done at that meeting. And we tried to get testimony from public school systems. We put in several calls but have not gotten any returned. So we can continue to do so.

CHAIRPERSON REID: Ms. Pruitt, you said

that, the first item that you, that you mentioned was that we had requested a report from Mr. Shearer.

MS. PRUITT: Yes.

CHAIRPERSON REID: And that's not, I didn't see that on this, on my --

MS. PRUITT: It actually is written as History/Description of Flea Market operation.

MR. HART: Madam Chair, if you, you would see a revised, there's a revised agenda to your right.

CHAIRPERSON REID: No, I don't --

MR. HART: To your right.

CHAIRPERSON REID: Oh, we have a new agenda?

MR. HART: Yes, it's revised.

CHAIRPERSON REID: Oh. Well, it would have been nice if someone had let me know that we had a new agenda. Thank you. All right.

(Pause.)

Okay, go ahead. Were you done?

MS. PRUITT: Yes, I'm, these are the, all these items are in your package for discussion, or whatever you'd like to do with them. Oh, I'm sorry, one other note. We did say determine why the ANC, this area didn't respond, and we did some research.

There is an appeal for this site and an application for this site. The appeal was originally scheduled for January 19th and then that was continued to June 5th. In that, in the appeal application there is an ANC report.

And when you read the report they're kind of confusing the appeal and the application all in one. So we included the ANC report that was associated with the appeal in this, so that you would understand that they are in support of it, but just didn't quite --

CHAIRPERSON REID: Okay, now, we did have discussion with Corp. Counsel in regards to this --

MS. PRUITT: Correct.

CHAIRPERSON REID: -- and, I would just need, I think we just need to kind of, just some further clarification if Board Members have questions, we can kind of move forward with this.

And the question I had was, they had asked for a postponement, pending the legislation. The, what I need to understand is the, the status of the legislation at this time is what?

MS. PRUITT: It's temporary. They're pursuing temporary legislation.

CHAIRPERSON REID: Emergency legislation.

MR. PRUITT: Well there's emergency, now there's temporary.

CHAIRPERSON REID: I'm sorry?

MS. PRUITT: I believe there was emergency and now there is temporary legislation pending.

CHAIRPERSON REID: Okay, what's the difference?

MS. P: To be honest, I'm not sure.

CHAIRPERSON REID: Okay, that's good. Does anyone know?

MS. SANSONE: Madam Chair?

MR. HART: It's temporary, oh, go ahead, let Corp. Counsel --

MS. SANSONE: The emergency legislation would have become effective upon approval and review by the Control Board. The temporary, for 90 days. The temporary legislation would be effective for a period of 225 days.

It's not subject to committee hearings at the D.C. Council but it does require review and approval by the Financial Responsibility and Management Assistance Authority and also by Congress.

But it would be only for 225 days, then it would be necessary to pursue permanent legislation if they wish to continue.

I did not see the temporary legislation in the, I did a quick check of the Council's website yesterday, but perhaps that's something that could be clarified with the Applicants if they have a copy of that Bill.

CHAIRPERSON REID: Uh-huh. The emergency legislation was approved by the Control Board?

MS. SANSONE: Yes, Madam Chair, we had that in our file at the last hearing. That was approved, and it's --

CHAIRPERSON REID: And then, and that made it temporary? That put it in a temporary status?

MS. SANSONE: No, Madam Chair, that would be the emergency law, and it's only effective for 90 days.

CHAIRPERSON REID: No, okay, no, that's not, but I'm still a little confused. What I'm asking is, the emergency legislation, it has been approved by the Control Board. Now once that was done, then how, then how did it get to be in temporary status?

MS. SANSONE: Madam Chair, that is the question. I don't, I was unable to find a temporary Bill. Perhaps the Applicant knows of one, or perhaps Ms. Pruitt knows of one.

CHAIRPERSON REID: So we have some input?

MS. SANSONE: But I don't have one.

MS. PRUITT: That's your call Madam Chair.

CHAIRPERSON REID: Okay, Board Members, unless you all are clearer about this than I am, then I would like to request from the applicant some more information. Unless there's objection from anyone.

MR. HART: No.

CHAIRPERSON REID: Sheri --

MS. PRUITT: We've been seeking a request that they provide it to us. We shouldn't do it at the meeting.

CHAIRPERSON REID: Well, I just wanted to ask, is this Mr. Shearer have any, a copy of this temporary legislation or can give us an, give us some status.

MS. PRUITT: We can provide that for you. But not at this particular meeting.

CHAIRPERSON REID: Does he have it? Can you have, please, just turn around and ask him?

MS. PRUITT: No.

MEMBER RENSHAW: Madam Chair --

CHAIRPERSON REID: Ask him, excuse me one second Ms. Renshaw. Can you ask him, is there such a document in existence?

MS. PRUITT: Mrs., this really shouldn't be, I mean this isn't the correct procedure. We, we can ask them, we can get back to you at the next, we can get back to you at the public hearing with this information if that's what --

If you have a list of questions, I will try to resolve and get answers to them prior to the public hearing.

CHAIRPERSON REID: Well, I mean I don't understand why not. I don't understand why you couldn't just tell us whether or not there's a, such a document in existence because we can't do our work.

I mean we have to have information before us before we can make intelligent decisions and that's predicated upon having adequate information which we don't. Yes, Ms. Renshaw?

MEMBER RENSHAW: Madam Chair, we can contact the office of documents upstairs and have that information almost immediately. A staff person could do that right away.

CHAIRPERSON REID: Well, thank you Ms. Renshaw, that's a given. But the point I'm making is that when we have these meetings, the point, the purpose of the meeting is to be able to conduct our business and, conducting our business is predicated

upon having that information that we need to be able to do so.

And unless someone else has some comments, I don't think we can do anything today.

COMMISSIONER HOOD: Madam Chair, I want to make sure that we're clear.

CHAIRPERSON REID: Uh-huh.

COMMISSIONER HOOD: I'm not exactly sure what we're trying to entertain. I think what's, I'm not sure what, what. I think what's in front of us is more or less whether or not we should act on this or should we delay because of the pending legislation.

Now, I believe at the Joint Meeting we found out what was legitimate and what wasn't. So I don't see any reason for us to delay this. I think we're ready to move forward with what we have in front of us.

Unless there's some unreadiness. I'm not sure what, what the question is that's on the table. What we're looking for that we don't already have.

CHAIRPERSON REID: Any other comments?

VICE CHAIR SOCKWELL: Well I mean it appears that we are discussing whether or not there is a second piece of legislation that bears upon the

applicability of the legislation period to what we are here to deliberate.

And my only issue is that notwithstanding the legislation I assume that we're charged to determine whether or not, based upon the law that we are enforcing, this is acceptable or not acceptable.

CHAIRPERSON REID: Well, my read on this whole situation is that there is an appeal of the Zoning Administrator's decision in this regard, and in the interim, when they had the hearing, there was presented to us some evidence that there hadn't been legislation that was emergency legislation that was remaining to this particular issue, that in fact would remove that particular parcel, specific parcel, from zoning.

So, that being the case it would become a matter of right which would not have to come before us. Then, that legislation was passed by the Control Board, and then, what I'm trying to ascertain is this temporary status.

Now, I don't know, I don't understand what temporary means. If temporary means that it's something that is -- conclusion that will be passed, then that's one thing, but temporary means that it may or may not be passed then we would then postpone

a decision.

I would suppose it would be a postponed decision until we determine whether or not the legislation became permanent. And that's, it's a very unusual position to put us in --

MS. PRUITT: Madame?

CHAIRPERSON REID: We've never been here before, so it's a little murky.

MS. PRUITT: Madam Chair that's why the applicant was requesting a postponement until June 5th because they were hoping that all of those issues would be resolved, either sink or swim and you could make a decision there.

CHAIRPERSON REID: But given, given our, when we had our Joint Meeting, as Mr. Hood just mentioned, the information that was given to us at that time became another matter altogether.

MS. PRUITT: Well I believe, and my understand was that the issue was whether or not the Counsel could do legislation that would take it out of the hands of Zoning. And it was, my understanding was that yes, it can do so, it does so very rarely. They've done it with the Hurt (phonetic) home and the 911 at --

CHAIRPERSON REID: Uh-huh.

MS. PRUITT: And with the trash transfer, the 500 foot.

CHAIRPERSON REID: Uh-huh.

MS. PRUITT: So it has been done, it is legal.

CHAIRPERSON REID: Uh-huh.

MS. PRUITT: It is not a usurping of your powers.

CHAIRPERSON REID: Uh-huh.

MS. PRUITT: And so that was my understanding of what your major question was, prior to then determining --

CHAIRPERSON REID: Okay.

MS. PRUITT: -- what, basically what this is in our jurisdiction.

CHAIRPERSON REID: Okay.

COMMISSIONER HOOD: Madam Chair with that clarification there is some uncertainties on both lines because with the other case, the -- issue, then you come back to the Zoning Regulations. So, but in this issue, I think that the Council can do it and I believe that the --

CHAIRPERSON REID: Uh-huh.

COMMISSIONER HOOD: -- temporary status is 200 and some days.

MS. PRUITT: The temporary goes to the time, the days.

COMMISSIONER HOOD: Which takes us, unfortunately, and I disagree with what's there. It takes us past the date in which the Applicant is asking for. But then that is a question that the Zoning Commission needs to revisit.

Can the Council legislate zoning? Sometime they can from what I'm understanding, sometime they can't. And to me, that is, is something, there's some inconsistencies here, which we need further clarification, but for this particular case, the temporary legislation and the -- postpone it, temporary legislation is already in effect.

That will supercede the, that's going into 200 and what was it --

MS. PRUITT: 60.

COMMISSIONER HOOD: 260 days? And he's asking for, they're asking for a postponement until June the 7th I believe. So I just don't see no reason for us to delay this any further, we just need to move forward.

VICE CHAIR SOCKWELL: Let me, let me --

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: Madam Chair?

CHAIRPERSON REID: Yes.

VICE CHAIR SOCKWELL: Let me say this. Part of, part of what's wrong with this whole process is that the legislation was obviously determined on the basis of financial convenience to the District of Columbia as viewed by the Council which passed the legislation.

Because the principal issue was the $21,000 of rental fee paid and the $30,000 of tax benefits derived from the use. And on that basis and on that basis alone the Council determined that it is a good reason to zone, to take over the process of zoning from themselves for this particular piece of property.

While the Zoning Ordinance itself in Section 106.5 does state a specific limitation, or implies a specific limitation to the use of such property when owned by the District of Columbia Government for a public building or public use.

And the particular use is an overlay on to the public use of a private use through the sublease. Under those circumstances it is not clear, or it certainly isn't defined as being an appropriate un-zoned use based on what the ordinance says

specifically.

So my problem is that we're looking at something that the Council decided to take out of our hands strictly for financial gain, to the District of Columbia, rather than for some more, um, what I believe is a more valid reason.

CHAIRPERSON REID: Mr. Sockwell you cannot say, we don't know the rationale for --

VICE CHAIR SOCKWELL: It's written into the legislation, that's why.

CHAIRPERSON REID: -- why they chose to take the position that they took.

VICE CHAIR SOCKWELL: Well.

CHAIRPERSON REID: Nonetheless, I think that what we have is a situation wherein this temporary status of legislation does not allow us to be able to do, to act on this, as it is before us. As far as the application that is before us, because we don't know what the outcome is going to be after this time has passed, this 240 days. 260 days.

So the only thing that we can do under these circumstances I suppose is to grant the continuance until that time. And in the meantime these other things that we're asking about, we can, it be clarified for us.

Nonetheless, what Mr. Sockwell pointed out was a very good point. As far as the regulations are concerned in regard to property owned by the District Government for a public use, being un-zoned.

But, and that, and the problem I had with that was the fact that it was not for public use, but then he mentioned something about an overlay that allowed the public use to be used for private use --

VICE CHAIR SOCKWELL: No, you misunderstood me. What I'm saying is that the private use has been overlaid over the public use. In other words --

CHAIRPERSON REID: By whom?

VICE CHAIR SOCKWELL: By the School Board, the School System having subleased the property which is normally used for a public use, to a temporary one day a week private use.

CHAIRPERSON REID: But it is private. I mean, that's what I'm asking, overlay --

VICE CHAIR SOCKWELL: What I'm saying is the private use may take it back into the zoning category, because the specifics of the Ordinance are that for a public use it's un-zoned, not for a private use.

CHAIRPERSON REID: That was the question. That was the question that I had a problem with and I raised. It was brought out in the hearing that this was not public use, this in fact was a private use. I don't understand about an overlay, because I don't --

VICE CHAIR SOCKWELL: The word, I used the term overlay because I just meant that --

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: -- the primary underlying use is --

CHAIRPERSON REID: So it was not a legal --

VICE CHAIR SOCKWELL: No, not a legal overlay. I just used it as a term, rather than as a --

CHAIRPERSON REID: So, that was my objection to the matter and it was pointed out to us by Counsel, by Corporation Counsel, that under certain circumstances the City Council does have the right to deem certain sites, site specific properties to have them to be un-zoned to determine that they're un-zoned.

And I don't agree with that. I have a problem with that because if that's the case why even

have the zoning regulation in the first place? But, and that's not my call.

So. Given that, the only thing that we can do is postpone until such time that this temporary, quote, unquote temporary legislation has, get the outcome of that, and then we will have a better guide as to what, what we should do.

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REID: Well, I'm uncomfortable with this whole situation quite frankly. Yes.

MEMBER RENSHAW: Madam Chair I'm not quite sure when the, are we checking off the 90 days from the approval date of this legislation, January 10th, 2000, and then does the temporary legislation of 225 days follow that period of time.

And the Applicant, let's see, has asked for a postponement until June 5th, meanwhile the Flea Market is going to be up and running, I expect with the first good day in Spring, I am assuming that it starts almost immediately when the weather clears.

And I would like to move on this as soon as possible. Mr. Hood has expressed that opinion, I feel the same way. So that this doesn't hang out in limbo until June then through the summer and into the fall probably.

So I would like to push on it. I think we owe it to all parties to get this resolved.

CHAIRPERSON REID: Okay, let's take your comments, your questions, in the order in which you gave them. The first issue was the running of the time. Ms., that would be best answered by Corp. Counsel, cause I'm not exactly sure legally how it's counted when it starts and when it ends.

MS. SANSONE: Madam Chair, I believe the 90 day period begins to run upon approval by the financial Responsibility and Management Assistance Authority, which would have occurred seven or 14 days after January 10th.

And I'm not, again, I'm not sure if it's the seven or 14 day review period, but shortly after January 10th, this would have become effective, for 90 days.

CHAIRPERSON REID: And that was, what date would that run to?

MS. PRUITT: April 24th at the very latest.

CHAIRPERSON REID: Okay, and then, the 240 days starts --

MS. PRUITT: 240, I thought it was 260?

CHAIRPERSON REID: 260. I keep saying

240, 260 days starts when?

MS. SANSONE: Madam Chair, the 200, it's 225 days. It would start, if there had been a, a bill introduced in the Council and approved for a temporary act, and that is what I don't, I did not find a bill for a temporary act, I don't believe there is any temporary legislation as yet.

And that was a question that really needed to be clarified. I did not find one, and so if there isn't one, we can forget about the 225 days. So I don't believe we have any temporary legislation before us.

But I mean I could be wrong about that, but I did not find any.

CHAIRPERSON REID: Okay, where do we get that from? Who introduced that temporary legislation aspect of this?

MEMBER RENSHAW: Um.

CHAIRPERSON REID: Where did you get that Ms. Pruitt? Where does that stem from, the temporary aspect, temporary legislation --

MS. PRUITT: The request for it, or where the information that we ?

CHAIRPERSON REID: The information regarding that?

MS. PRUITT: I honestly don't know, cause we are, remember you also had, we've already dealt with this issue on June 9, January 19th, in reference to the appeal, which has been continued to June 5th.

And that's when we first got the information as to temporary, I mean about the legislation being available, being there and the Board had already continued that.

So this is the application. Basically what they've done is they're going to appeal the Zoning, somebody is appealing the Zoning Administrators determination.

If that appeal is, if the Zoning Administration's determination is overturned then they have already put in an application so that they could become legal.

I mean that happens frequently when you have an appeal, and so then that's a special exception just to cover their bases. And that is exactly what has happened here.

So you've already continued the appeal to January, I mean, excuse me, to June 7th. And this was just the application that was being requested for the same consideration.

And at that time we believed, we knew it

was emergency legislation which would have taken us to April 24th. We initially thought maybe May, but we thought because of any type of slippage, if we make it the first meeting in June then that would be the, really first reasonable available date after emergency legislation would have run out.

COMMISSIONER HOOD: This is going to be a temporary use once it's approved, right?

MS. PRUITT: No, actually it would be a year, I mean it would be a permanent use, --

COMMISSIONER HOOD: A permanent, year round --

MS. PRUITT: -- seasonally, I believe.

COMMISSIONER HOOD: -- flea market. Okay. Sort of almost acting like a retail use then in the sense --

MS. PRUITT: Correct. But I think it's a seasonal thing.

COMMISSIONER HOOD: Yeah. Okay. I'm just concerned at the amount of energy that we're spending on this for such a use, and I think we need to. I wasn't involved in this, I'm new, but I'm just concerned about the amount of energy we're spending on this.

And can we reach some kind of decision to

move forward? I mean we have the Council involved and the legislation has been in process --

MS. PRUITT: The Applicant is requesting that the Board hold off on anything until June 7th so that basically the dust can settle with all the things that are kind of floating out there.

COMMISSIONER HOOD: Okay, yeah. But I will, I would like to put on the record that we do have some concerns, and why this time we don't want to ruffle any feathers, especially during the budgetary time, but we do have some concerns about whether or not the zoning can be legislated by the Council.

And that's been a concern of mine since I've been here. So with that and with everything in front of us, Madam Chair, I would just, if it's an Order, and all discussion, I would just make a motion that we postpone to --

MS. PRUITT: June. I will, excuse me, I would like to at least. I forgot, and this was brought to my attention. On this particular case --

COMMISSIONER HOOD: Well let me just take the motion back off the table because I was making a motion and I think, let me just take that back off the table until we finish discussion.

MS. PRUITT: In this particular application there was one person in opposition. And so I just will let you know that. I mean, but you've already continued the other case to June 5th, June 7th, excuse me, I don't know why I said 5th.

COMMISSIONER HOOD: But what is the ANC's? --

MS. PRUITT: ANC supports it.

CHAIRPERSON REID: They supported it.

COMMISSIONER HOOD: All right.

CHAIRPERSON REID: In regard to the appeal and to the application, if we just go ahead and pose, continue that the application until June, June what was it? June the 5th, go ahead and.

MS. PRUITT: June the 7th.

CHAIRPERSON REID: June the 7th. Go ahead and do that, and if in fact in the interim this legislation is, becomes law, then it becomes a moot point. Let's do that. I would so move.

MEMBER RENSHAW: However, I just want clarification here. If the emergency legislation lapses on April the 24th, and if there is no temporary legislation, and if we are not hearing the case until June the 7th, therefore, there is a void that has to be filled.

Hence I go back to my other comment that we need to move forward with this.

CHAIRPERSON REID: What do you mean Ms. Renshaw?

MEMBER RENSHAW: In other words, I would, I would take it up within the April hearing schedule, and rule on it. And if we find that we have temporary legislation that's going to take it beyond April the 24th then we can decide as a Board whether or not we want to wait until the end of the temporary legislation.

But right now we don't know that there's any temporary legislation in effect. All we know is that we've got 90 days, 90 days and, on the 24th. So why don't we move ahead for all parties, I think they'd like to have a decision made by us.

And I think that we should speak out and decide how to rule on this, period.

CHAIRPERSON REID: Well the party is, I mean, that, the major party is asking for the postponement until June the 7th. That's coming from the Applicant. And the ANC doesn't have, has not in any way indicated to us that they had any sense of urgency to afford to be heard earlier than that.

MEMBER RENSHAW: How is the Flea Market

operating in that period of time, if and when the emergency legislation lapses, and until the time that we hear the case in June, under what is the Flea Market operating, on what basis? Well just, well, Court Counsel could --

CHAIRPERSON REID: Direct that for the Counsel, I don't know.

MEMBER RENSHAW: Uh-huh.

MS. SANSONE: Madam Chair, I'm afraid I don't know the answer to that either. The application, if it is ruled upon favorably would be what would allow the Flea Market to proceed legally. So I believe Ms. Renshaw is making a valid point here that depending on what their operating season is, if it begins earlier, they would need the special exception to proceed, or else they would need a favorable ruling on the appeal to enable them to get the permit that they were seeking.

CHAIRPERSON REID: You mean as of, as, they would, we'll know that as of April, so Ms. Renshaw are you saying that you'd like to move the decision date up closer to the expiration of the 90 day period of April 24th?

MEMBER RENSHAW: Definitely.

CHAIRPERSON REID: Okay. I have no

problem with that. I mean, again, the application, the Applicant had requested. The request was for June 7th. Now I don't know what the rationale was for them to do that, given the fact that it could be decided upon earlier, if the 90 day period expires April 24th.

MS. PRUITT: So, just so I'm understanding, you're requesting that this be put on the agenda for the May meeting, and you will determine whether or not you will hear it or do you want to actually have the case available to be heard?

MEMBER RENSHAW: I think the case should be heard in April, because the legislation lapse is at the end of April.

MS. PRUITT: Right, I'm looking at the April schedule. That's the last week in April, and I'm trying to look to actually see what we have scheduled.

(Pause.)

Oh, we have GW, University Master Plan.

CHAIRPERSON REID: Okay, that's April, what about May?

MS. PRUITT: Then that would be the first meeting in May, that's what I was suggesting.

CHAIRPERSON REID: Do we have, is the

calendar um, --

MS. PRUITT: Full?

CHAIRPERSON REID: Yeah, I mean --

MS. PRUITT: It's full, but I mean you could add this. I wouldn't, I would not suggest adding this to GW.

CHAIRPERSON REID: No. Okay. So the first available date after the legislation and after the 90 day period is May what?

MS. PRUITT: May 3rd.

CHAIRPERSON REID: May 3rd.

MS. PRUITT: We will add it to an existing agenda.

MR. HART: Okay --

MS. PRUITT: In the afternoon. We could add it to the afternoon agenda on May 3rd.

CHAIRPERSON REID: Okay, now, wait a minute, wait a minute. The appeal is already scheduled for when?

MS. PRUITT: January, June 7th.

CHAIRPERSON REID: All right, then why wouldn't we do it on the same day? I mean, Ms. Renshaw, I don't, wait, wait, wait. Let's go --

There is, unless there is some, some overriding urgency, this, the Applicant has requested

that both of these, they're on the, we've already voted that the appeal is going to be heard on June 7th.

So what we would do is if we have the application also on the same date, then we would have it, we would have the opportunity to determine which one we were going to be, actually, we would know by that time which one.

Would it be the appeal or would it go for the actual application?

MEMBER RENSHAW: But then it goes back to under what is the Flea Market operating from the end of April until June the 7th?

CHAIRPERSON REID: Well I think, Ms., tell me your last name, Ms. Corp. --

MS. SANSONE: Sansone.

CHAIRPERSON REID: Sansone. Just one second. Ms. Sansone, let me ask you a question regarding the status of an application or a status of a business pending a hearing by the Board of Zoning Adjustment. Is, does it not, is it not allowed to operate in the interim?

MS. SANSONE: Madam Chair if you'll allow me a minute to look at the regulations. I'm not sure off hand. Apparently the Applicant was seeking a

certificate of occupancy and that was what was denied, which led to the appeal.

CHAIRPERSON REID: Uh-huh, uh-huh. Cause I think, if I'm not mistaken, Ms. Pruitt, maybe, you've been here for some time. In situations like that where you have a business that is in a holding pattern, pending the outcome of, a decision by the BZA, my understanding is, if I'm not mistaken, my understanding is that they are, they are allowed to continue conducting their business until such time that they actually have the hearing.

MS. PRUITT: I believe, and this is my off the cuff, I would really have to research this, but it does usually stay the process.

CHAIRPERSON REID: Uh-huh. That's what I thought.

MEMBER RENSHAW: But we're not sure.

MS. PRUITT: Correct. I can verify that.

VICE CHAIR SOCKWELL: In the case, however, in the case of a seasonal use, does their certificate of occupancy expire at the end of a given date?

CHAIRPERSON REID: I don't think they have one, do they?

VICE CHAIR SOCKWELL: They don't have one

at all.

CHAIRPERSON REID: Uh-uh.

MS. PRUITT: That's what they applied for.

VICE CHAIR SOCKWELL: Okay, so they didn't have one at all.

CHAIRPERSON REID: That's what triggered this whole, well, see I think they have been operating --

VICE CHAIR SOCKWELL: Strictly on a --

CHAIRPERSON REID: -- for some time without one.

VICE CHAIR SOCKWELL: Strictly on a lease basis.

CHAIRPERSON REID: Uh-huh.

COMMISSIONER HOOD: And Madam Chair, that's my comment, not just the Flea Market. There are places all over this City that operate without anything, and they continue to do that. And again, I have to concur with I think Ms. Pruitt Williams' statement that once there's an appeal and all these things are on the table, then they're able to operate pending a final decision.

So it's, I think it's in our best interest to go ahead and settle this and move forward. However we do it. I was not exactly in the

same mind frame as Ms. Renshaw, but however we can take care of this, I think we need to move.

I was in favor of the postponement, but I go back to step one where I have some concerns about this, the City Council legislating the zoning. And I don't know when the time is to bring that up, but I know the time is not now.

CHAIRPERSON REID: Okay, all right. Why don't we do this. I think we're in agreement. I think that it should be postponed. Now it's a matter of when as to what time, and also, who, the determination about the status of the business, the Flea Market, in the interim.

Ms. Sansone, wouldn't that just take a telephone call, find that out for us, please?

MS. SANSONE: Yes, Madam Chair, we'll do that.

CHAIRPERSON REID: Yeah, I mean if it's only a telephone call we don't have to wait about that. And anyway, I think that the appeal and the special exception, that the appearance and such exception be heard on the same day.

And we've already got the appeal scheduled for June the 7th. It's a variance? That's what I'm asking. Is it a variance or a special

exception? It's a variance, okay. You, -- okay.

I would, I think it would advisable to have it on the same day. And we already have the appeal on the 7th, so I would, it would be my feeling that we should also do the other one on the 7th as well, of June.

MEMBER RENSHAW: My feeling is that we should accelerate this case and move it up.

CHAIRPERSON REID: Why?

MEMBER RENSHAW: Because I feel that we are getting into limbo again with --

CHAIRPERSON REID: Why?

MEMBER RENSHAW: Why? Because the emergency legislation lapses on the 26th.

CHAIRPERSON REID: But what's the danger, what's the --

MEMBER RENSHAW: We don't know. We don't know how they are operating, and I just feel on, I just --

CHAIRPERSON REID: We will find out.

MEMBER RENSHAW: Right. We're going to find out, is right. But I feel that this has dragged on long enough and I would like to accelerate it and bring it to closure.

CHAIRPERSON REID: We haven't drug on Ms.

Renshaw, I beg to differ.

MEMBER RENSHAW: All right.

CHAIRPERSON REID: It has not drug on, this is the second, this is the proper time for it to have come before us, after we've had our meeting, and this is the time to make a decision and the decision is, is predicated upon what's before us which is a request for June the 7th where the appeal is already set for June the 7th.

To have it on two different days, puts a burden not only on this office but also on the Applicant because they have to deal with, possibly have to prepare for two different days to be able to appear here.

And, if there was some overriding reason why there is some urgency, that would be different. But I don't, only, only concern of urgency that I see is basically coming from you. And I don't understand why.

MEMBER RENSHAW: All right, well I will just not belabor this but I will let my objection stand and urge that this be done at the earliest possible date.

CHAIRPERSON REID: If the Flea Market is allowed to operate in the interim, then I can't see

where there's a problem.

MEMBER RENSHAW: I think that the Flea Market would like to have some resolution of this problem and be able to proceed under whatever we have agreed is to be the proper arrangement.

But to drag it on into the Flea Market's season, is just to elongate the process. I would just like to shorten it and come to closure.

VICE CHAIR SOCKWELL: If I might make this statement Madam Chair. The one issue about a flea market is that the persons who use it have to leases the spaces from Mr. Sussman and therefore would be more up in the air as to the duration of their leases, the situation of the time that they'd be there, et cetera, et cetera.

So there is some justification for closing some of the issues off to narrow the focus of the, of the case. And that is the only thing that I would suggest be considered.

CHAIRPERSON REID: Mr. Sussman is the Applicant?

VICE CHAIR SOCKWELL: Yeah, he's the Applicant.

CHAIRPERSON REID: He's the one who requested June the 7th, not us. We didn't, we did

not impose that.

VICE CHAIR SOCKWELL: Right.

CHAIRPERSON REID: I mean, I don't understand. I don't understand --

VICE CHAIR SOCKWELL: Mr. Sussman may be the Applicant, but there are a large number of spaces that are leased there, and Mr. Sussman, while he may hold the lease to the property and control over that and it's a very sought after location, those spaces are all booked up.

There are other people to be considered.

CHAIRPERSON REID: But why didn't he, I don't understand, why didn't he ask for an earlier date?

VICE CHAIR SOCKWELL: Maybe it wasn't important to him.

CHAIRPERSON REID: All right, well, again, the Applicant is the one who I think has the responsibility of proffering to us what they would like. And they asked for June the 7th. And I think that they know their business and their attorneys are much, much more apprised of the situation than we are.

I can't, I don't, I have a very difficult time with speculation and conjecture, and to reading

into things what we don't have before us.

MEMBER RENSHAW: But I think that the Board can move forward with an earlier date and just inform the attorney for the Applicant that the Board wishes to adjudicate this matter at the first meeting in May.

CHAIRPERSON REID: Adjudicate, you mean, the, have the hearing?

MEMBER RENSHAW: Yes.

CHAIRPERSON REID: Wait a minute. Don't you have to have the appeal before you have the hearing? Well, if --

MS. PRUITT: You don't have to, it certainly makes sense, but. And that's why in fact they were um, submitted that way. The appeal --

CHAIRPERSON REID: On the same day.

MS. PRUITT: No, well, either on the same day, but the appeal was submitted prior to --

CHAIRPERSON REID: No, I'm saying, to be heard on the same day. You have the appeal, and if the appeal doesn't, if they lose the appeal then you go to the hearing.

MS. PRUITT: Correct. Which is also why we usually schedule them either the same day or the appeal prior to an application.

CHAIRPERSON REID: Okay. All right. I think that that would be the proper way to proceed. I think that, like, this is a very complicated situation. And we're kind of feeling our way, but I don't want to get bogged down with all these legalities and these, all of the various complexities that are, this cause is brought with, such that we are not conducting ourselves in a proper manner.

And at all times we must look at what is before us. We can not conjecture or speculate or to put anything into it that's more than what we have in black and white or what is in extent what has come out in the hearing.

It doesn't make sense to have a hearing before you have the appeal. The Applicant has so, has so requested and that's what's before us. That's what, I think that we should be voting on, in the interim we'll find out about the operation of the business for the duration.

And I'm almost certain that, has a phone call been made yet? Yeah. To clarify that matter, but the Corporation Counsel did say to us in our meeting that in certain instances there have been, that there have been circumstances under which the City Council has made rulings in regard to zoning.

Although it is not the City Council's charge to legislate zoning. We know that, this is why you have a Zoning Commission. But this seemed to be one of those irregular situations that may lend itself to such a, such an abnormal ruling by the City Council.

We don't know what that's going to be, but we can be prepared for the hearing and the, for both the appeal and the variance in the event for some reason it doesn't fly.

And that's, and I think that's where we are. I think. So, my motion would be, to postpone this until June the 7th, to be heard on the same day, of the appeal, with the appeal being heard first on that day. Is there any second?

COMMISSIONER HOOD: I have some unreadiness.

CHAIRPERSON REID: Okay.

COMMISSIONER HOOD: Cause I'm sitting here thinking as we, since we've been on the subject now for 45 minutes, other things have come into my mind.

I'm just curious, and I go back to, well anyway, I'm just curious that if, if this legislation, wherever it is out there -- is passed, permanently, then were does that leave our ruling?

And I guess Corp. Counsel is out of the room, but I'm just curious. It seems like it's a fight here between, it seems like it's going to be a fight between us and the Council, and well, not necessarily the Council.

It just seems like decisions are coming our sporadically and it's like everything's in a disarray, and actually that's not fair, I don't think, to folks who live over there in that neighborhood, as well as to us.

So, I really am, now, I'm kind of want to agree with Ms. Renshaw, but if we do have the hearing earlier, what difference does it make if, which one supercedes which? I guess that's where I am.

VICE CHAIR SOCKWELL: If I might put my two cents worth on that. If we step aside and wait for the Council to act we don't give any indication, well we do give an indication of our position on the matter, that we step aside for the Council to make its decision.

And then we determine from the Council's decision what should be done, as opposed to doing what we would normally do, absent legislation, that we think first of all is unfair to the ordinance and second, puts the decision making out of the hands of

the Body that should be handling such cases.

If we don't take a stand prior to say a temporary legislation being passed, then there's no indication to the Council at all that the Board of Zoning Adjustment feels that it has jurisdiction.

CHAIRPERSON REID: Well, if in fact we took that posture, then we could go ahead and rule for or against what's before us, and then if in fact the City Council's legislation passed, then they certainly would have the power to reverse it. So what's the point.

COMMISSIONER HOOD: And that's, that's my problem, unfortunately. That is definitely my problem.

CHAIRPERSON REID: So before we, well what I'm saying is if we're going to err, let's err on the side of caution, because if we don't know what they're going to do. We know that there has been some temporary, I mean some emergency legislation that's been passed by the Control Board.

So let us now remember now, we're not just dealing with the City Council, we're dealing with the Control Board as well. And my understanding is that this temporary legislation. Now, correct me if I'm wrong, Corp. Counsel --

MS. PRUITT: She's out of the room right now, but --

CHAIRPERSON REID: Oh, okay, well, when she comes back then we'll find out. But, that this, this legislation, this temporary legislation, if approved by the Control Board is not subject to congressional review.

I just read that somewhere.

COMMISSIONER HOOD: But I think that the, I don't know how much time frame the Control Board does with the -- charter, but I know that the Commission is up and I believe BZA too, up under the -- charter.

See, we're bringing in a whole lot of other things now, and that's, my --

MS. PRUITT: The Zoning Commission is --

CHAIRPERSON REID: Well what I'm saying is, the point I'm making is why don't we see what they're going, give them, we'll postpone this, see if they do that, you know, and if they do, if they, if they invoke the legislation, then that would take a, that would immediately usurp the powers of the Zoning Commission.

All right, now, then comes the issue as to whether or not they can or cannot do that, and the

Corporation Counsel, and I don't know, he may or may not be correct, that they can.

And that in some regards he has said that they, there have been case law where this happened before and in certain instances it can be done.

COMMISSIONER HOOD: I have to also agree with Ms. Renshaw, though, we do need to send a strong message that we're not going to wait on any Council or anybody, that is in our jurisdictions, our purview. Just act on --

CHAIRPERSON REID: That's not what she's saying --

COMMISSIONER HOOD: Hold on, let me finish. Let me finish. That is in our purview. But since we have already made a decision on the appeal of June the 7th, I would be inclined to go ahead and have a hearing for June the 7th.

But there are some other issues we can talk about for another hour.

CHAIRPERSON REID: Yeah, there are other issues but --

COMMISSIONER HOOD: But I think we need to move forward and stay consistent.

CHAIRPERSON REID: But what she said, but what she said if I understood it correctly was not,

not so much waiting on City Council, she was like, she was still saying after the City Council's ruling, but closer to that date than later.

MEMBER RENSHAW: No.

COMMISSIONER HOOD: Ms. Renshaw, could you clarify that?

MEMBER RENSHAW: Yes. What I said was that since the emergency legislation is lapsing at the end of June and we do not know the status --

CHAIRPERSON REID: Of April.

MEMBER RENSHAW: Of April, sorry, and we do not know the status of this temporary legislation, that it is best to move it up and put it on the schedule for May the 3rd, which we've determined we have time for --

CHAIRPERSON REID: That's after the legislation.

MEMBER RENSHAW: But it is the first available date after the legislation lapses.

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: And I would move to inform all parties hearing and appeal that the case would be heard on the same day and that the Board has decided to move this issue to May the 3rd.

CHAIRPERSON REID: Okay, um.

MEMBER RENSHAW: That's what I'm moving.

CHAIRPERSON REID: --

MS. SANSONE: Yes, Madam Chair, I was able to speak with the Edgar Nunley and the Zoning Administrator's Office. He, and I was not able to reach anyone else in the Corporation Counsel's office, but Mr. Nunley stated that if the Applicant does not have a certificate of occupancy, he will not be able to operate the Flea Market this summer.

So the Applicant either needs to proceed to get favorable action on the appeal, and, and obtain a certificate or he needs to obtain a variance prior to operating this summer.

Otherwise it would be an illegal use.

CHAIRPERSON REID: Okay, you said this summer. I'm not --

MS. SANSONE: I'm not sure what the Applicant's operating season is, when they start, but they, the Applicant needs the certificate of occupancy to operate the Flea Market.

CHAIRPERSON REID: So are you saying that he would not, oh, I see, well in the first place. Excuse me, in the first place, in this instance, he's not operating now. So you're saying that for him to be able to start this operation he would have to

have, is that what you're saying?

MS. SANSONE: Madam Chair?

MEMBER RENSHAW: --

MS. SANSONE: I don't know what his schedule is, but in order to operate the Flea Market he needs either the certificate of occupany, which he does not currently have, or the variance, at, which would lead to a certificate of occupancy, or he would need to have the legislation be in effect.

Right now he has the emergency legislation, which will carry him through to April. If there is no temporary legislation, that would take him beyond that point, then he would be operating illegally.

So he needs relief, in order to continue operation, he needs relief in one of those three manners. But, the fact that there are proceedings before the Board or an application before the Board would not enable him to operate legally.

CHAIRPERSON REID: All right, go ahead.

MEMBER RENSHAW: And Madam Chair, he's operating now, the weather permits.

CHAIRPERSON REID: Oh, he is?

MEMBER RENSHAW: Yes.

CHAIRPERSON REID: So --

MS. PRUITT: But they're under emergency legislation at this point, so they're operating legally.

CHAIRPERSON REID: Yeah. So you're saying --

MEMBER RENSHAW: Operating legally, but it comes to an end at the end of April.

CHAIRPERSON REID: I understand. Yeah, I understand. And, so you're saying that an existing business cannot continue to operate pending the outcome of the decision of the Board of Zoning Adjustment. Is that what I'm hearing you say?

MS. SANSONE: Madam Chair that was the, that's correct. That was the recommendation from the Zoning Administrator and it, as far as I'm able to determine.

CHAIRPERSON REID: I don't think that's correct. And I'm going to further check that because I don't think that the City, if a business in, fully operating business determines that, it's determined that they need a certificate of occupancy, that there business has to close down until they can get to the BZA.

I don't think that's true in our rules. We can check that, you know, for the record to

clarify that. But, now, but, given what you just said, I think that what, I hearing Ms. Renshaw say is to move it out to May both, the appeal and the hearing as long as it's on the same day.

The appeal and the hearing. I don't have a problem with that. Now, but can we, Ms. Pruitt, after having, having voted to continue the appeal to June 7th, can we now change that to another date?

MS. PRUITT: We would re, we would have to re-advertise because while the parties may know --

CHAIRPERSON REID: We have time, I mean we have time to do that. I mean would there be any objection --

MS. PRUITT: Then we can do so.

CHAIRPERSON REID: -- by the Applicant?

MS. PRUITT: Well I'll have to find out from them.

CHAIRPERSON REID: Well can't you just turn around and ask them?

MS. PRUITT: Well this is a meeting of --

CHAIRPERSON REID: I know that.

MS. PRUITT: Normally we don't do that --

CHAIRPERSON REID: I know that.

MS. PRUITT: -- but if that's your choice.

CHAIRPERSON REID: That's my choice today because of the abnormality, this is an anomaly.

MS. PRUITT: Whatever you want, whatever you'd like.

CHAIRPERSON REID: Okay, good.

VICE CHAIR SOCKWELL: Madam Chair?

COMMISSIONER HOOD: -- should include opposition if we're going to do that I really think we need to be fair.

CHAIRPERSON REID: The opposition is here. The opposition is present today.

VICE CHAIR SOCKWELL: Madam Chair?

CHAIRPERSON REID: I mean, and, when I, excuse me, when I said, to check to see if that was okay with the Applicant, that was not, I mean I'm not --

COMMISSIONER HOOD: You don't have to explain, Madam Chair, I just want to make sure we're covering both sides.

CHAIRPERSON REID: Sure, sure, and I appreciate that. I appreciate that. That's the main, you know. I appreciate that, uh-huh. Can we, can we vote now? Do you have more comments?

VICE CHAIR SOCKWELL: The only thing I was going to say was that per a phone call I just made,

apparently the Flea Market operates year round, with the exception of January and February.

CHAIRPERSON REID: Okay. Okay. All right. So then, you, Ms. Renshaw, make your motion.

MEMBER RENSHAW: I move that the Board set the hearing and appeal for May the 3rd, and that the Board informs all parties that the cases will be heard on the same day.

COMMISSIONER HOOD: I'll second that motion.

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

Opposed?

(Pause.)

MS. PRUITT: Excuse me, staff would record the vote as five to zero to continue this case to May the 3rd, along with the appeal. The motion made by Mrs. Renshaw, seconded by Mr. Hood.

CHAIRPERSON REID: Okay.

(Pause.)

MS. PRUITT: The last item on your agenda is, excuse me, application 16144 Parkside Phase II. This case was originally heard on June 5, 1996 and approved at the public hearing meeting on June 10th, 1996. Our fees were never paid, and the order was

never issued.

There was an understanding because this was a, they weren't able to pay the fee right away that they would then pay it after the decision.

Here we are four years later, and we've had several letters to them, June 13th, ?96, May 21st, 1998, August ?98, November 1998. And each time they've requested additional time to try to raise the funds.

We're into the fourth year of them trying to raise these funds and the order's never been issued. We would, staff is recommending that maybe you give them a time certain for them to, instead of just deferring it on end and end.

A time certain to either come up with the fees or dismiss the, so we can close out the case, because right now it's just hanging open. And we have, we can't get any straight or hard evidence as to when they may be coming, when they would even be able to pay the fee if ever.

CHAIRPERSON REID: If we dismissed it, they would have to just start over again, when they got ready to and --

MS. PRUITT: Yeah.

CHAIRPERSON REID: They're not losing

anything, except for their position in the queue, huh?

MS. PRUITT: Right, and I mean, and in fact, that we're putting in an awful lot of staff time for a fee that never got paid.

CHAIRPERSON REID: What are you doing?

MS. PRUITT: I mean we're dealing with this now. You had a whole hearing, you had a decision and a fee was never paid. The fee should be paid up front. As to why it was deferred I'm not sure.

CHAIRPERSON REID: They, well they didn't have the money. So that's, that's why. And they haven't had the money. And I don't know when they will get the money. Did you hear from them?

MS. PRUITT: Yes.

CHAIRPERSON REID: What did they say this time?

MS. PRUITT: Um, give us more time. I mean that's been the problem. We've never been able to get anything hard. They say we'll we're talking with HUD, we're talking with other people. It's a $6,000 fee, they did pay one, $60,000, excuse me --

CHAIRPERSON REID: Yeah, uh --

MS. PRUITT: -- they did pay $1,000 of

it.

CHAIRPERSON REID: Well Parkside is a, a non-profit low-income development, and I don't, it's in an area where they're trying to stimulate housing, which is direly needed. And the intention is good, they have a wonderful program over there.

And this is why I think the Board has been very lenient and giving them more time, and more time, and more time, but $60,000 is a lot of money.

MS. PRUITT: And we're into our fourth year of deferring --

CHAIRPERSON REID: Yeah, and they paid how much?

MS. PRUITT: $1,000.

CHAIRPERSON REID: $1,000. So, I don't know that this, unless they have, I think that it's a HUD financed, HUD grant, and I know that there was some contribution by HUD. It's one of those kinds of projects, like some type of joint partnership with the City and HUD and funds, sometimes are tied up for whatever reason, due to bureaucratic red tape and they can't get the funds out, they have to wait.

And I think that that project has been sitting dormant for some time now. And I don't understand what's happening with it.

VICE CHAIR SOCKWELL: What do you mean dormant? Part of it's occupied. I don't understand what you mean.

MS. PRUITT: This is Phase II.

CHAIRPERSON REID: There's another Phase II, there's another phase that hasn't gotten off the ground. You know, the first phase is going well, but, it's some kind of problem, and I don't know what it is. I wish they would let us know, what the problem is cause I really, because I know that these grass roots organizations have a difficult time.

I just had to completely just dismiss it. And even if we gave them a time certain, I wish they would let us, that they could let us know why it is that they, that it is taking them so much time, not to be able to get here.

Why it's taken so much time for them to get here.

VICE CHAIR SOCKWELL: May I ask Staff a question Madam Chair? How much actual staff time is being devoted to this project?

MS. PRUITT: Um, aside from the hearings? I can't speak for the hearings because I wasn't here.

VICE CHAIR SOCKWELL: Aside from that

which has already taken place. The hearings.

MS. PRUITT: Well we've sent out five letters and numerous calls.

VICE CHAIR SOCKWELL: Okay, so we're not talking about a lot of staff time.

MS. PRUITT: No. It's just more of a matter of we're trying just to --

CHAIRPERSON REID: Yeah, --

MS. PRUITT: We originally gave them an indefinite continuance.

VICE CHAIR SOCKWELL: Uh-huh.

MS. PRUITT: We would really like to not do that anymore, to give them a definite continuance, because it, what happens is you can lose track of cases, things fall through the crack.

So if we have a time certain when they have to respond one way or another, and then you can make another decision, that's fine. But this indefinite one puts us in a limbo forever.

VICE CHAIR SOCKWELL: All right, the question I would raise is again one of appropriateness. The community has received a great deal of accolade, it's been written up in the press on many instances as to the neighborhood feeling that it had generated the kind of activity, the street

level, low level even scale of the project, all sorts of things that we architects like to hear about.

But at the same time it is among several developments in that neighborhood that are at least a kernel of hope for regeneration of a viable community. And we may wish to if there's not enough staff time involved, we may wish to give them a rather special preference in that regard simply because of what the project stands for.

Not necessarily that it is hurting our schedule or doing anything other than leaving one case undone. We'll soon have no back-log at all and this would just be a hangout.

And I think maybe it is an opportunity for us to step away from what we would normally do.

MS. PRUITT: We --

MEMBER RENSHAW: I would like to point out that this doesn't excuse the management of this project from informing the Board exactly why there is such difficulty.

And I would hope that the management of the project would be corresponding with HUD if this is a HUD financed project, to explain the need to pay and to work out some kind of an agreeable schedule with the Board to pay what is due.

I had, when I reviewed this I wasn't quite sure whether this was a special exception or a variance. What are they asking for?

MS. PRUITT: To be honest Mr. Renshaw, I can't remember, I'd have to go back and look. It's been. I wasn't even here then. I never, so I'd have to go back and --

MEMBER RENSHAW: So it predates both of us.

MS. PRUITT: Yes.

MEMBER RENSHAW: But in any case I think that the Board should send a letter to this, the project management with a CC to HUD and to state the facts of the case, that it's been four years and we have received 1,000 of $60,000.

And we would like to have a response by a date certain as to what the schedule of payment is going to be, and that we encourage them to come forward with the information.

And that it will be shared at a public session of the Board, and that we, of course have good feelings for this project and hope very much that it will succeed.

VICE CHAIR SOCKWELL: May I make a suggestion to Ms. Renshaw's request, and that is we

contact the developer with a request for information on when and why and what the problems are, and that we give the developer 30 days to respond, at which time we can decide whether or not to send another letter and CC HUD at that time, once we know exactly what's going on.

And then, the 30 days would be, after 30 days if they don't respond then the Board would take action.

MS. PRUITT: Well the original letters have gone to the developer with those types of questions.

CHAIRPERSON REID: Yeah. --

VICE CHAIR SOCKWELL: -- 30 day turnaround absolute --

MS. PRUITT: No, actually we've given them a lot more time.

CHAIRPERSON REID: Let Mr. Hood --

COMMISSIONER HOOD: Can I just say that I think that this, the Board of Zoning Adjustment as well as the Commission, we've been under scrutiny, of putting things, and just putting them on to the side and leaving them there.

I think the staff is not being unreasonable. I think that we can give them a date

certain today of three months, and then if we take, after those three months, if we extend it another three months, then that's fine.

But let's, at least if we say three months now, we should hopefully get some type of response. We're going to act on this in three months. You know whether they, and I agree with low income and I understand all that. But we still have this lingering on and it's considered as far as I'm concerned back-log.

CHAIRPERSON REID: Well scrutiny or no scrutiny, I think that what we have to also remember is that we're the ones who have the charge to dispose of this or to handle this in a way that we deem to be appropriate.

I don't want, and I want to be very clear on the record. I don't want to feel as though we have to be pressured, or to be pawns of any political or special interest groups.

I want to be very clear about that.

COMMISSIONER HOOD: I think that we need to start, Madam Chair, if I can interrupt you like you would do me, I think we need to stop speculating again. I think that's speculative, what I'm simply saying is so we can move this operation forward as a

Board of Zoning Adjustment.

Let's give them a time certain, let's move forward. If they're not able to deal with it in three months then we'll approach it again. That's all I'm saying.

CHAIRPERSON REID: You just said that. You just said that.

COMMISSIONER HOOD: Well I know I just said that, but you came back and said that I was talking about politically pressured. I'm not pressured.

CHAIRPERSON REID: No, I didn't say --

COMMISSIONER HOOD: I don't think this Board should ever move in a political context --

CHAIRPERSON REID: I didn't say that you said, I said that that's what these are, that that is the atmosphere. I did not say you Mr. Hood. Nonetheless, nonetheless.

In this particular instance, since let me give you some history on this particular case, this was an appeal that came to us asking for the waives to be, I'm sorry, the fees to be waived, because there was not enough funds in this particular development to make the numbers work to move forward with paying those kinds of fees.

And it appeared from what I can remember of that particular hearing that there was a, an instance where before, in some, I think in the first phase and we'll have to look in the history to see where the phase, the fees were waived.

And when they came this time, the fees weren't waived and that caused a stumbling block, and as a result of that they had to go back and regroup and try to find how they could best move forward.

And for whatever reasons, they have not been able to do that, and each time it's come up we've asked the same questions that they go back, that we have them go to developers, to go to the Applicant, to send letters to find out what's going on because we were reluctant to just dismiss it.

And when we gave the decision to give an indefinite, a continuance was predicated upon the information that was put before us at that time, and that compelled the Board to make that decision.

Now, the problem I have with that, is that I don't have a problem with sending out more letters, and telling them in 30 days, 60 days, whatever it is, to respond, that's no problem, that's just business.

And I think that we should do that, it's

appropriate. But the problem I have with having made a decision, a vote of this Board for an indefinite continuance we said well.

And it was based on what was before us that day was very, very compelling, indefinite continuance, and then you come back with some time later and change that. I have a problem with that. I don't know how you can do it, legally.

MEMBER RENSHAW: I'm really not clear who are the actors in this case. So it's difficult to talk about developer versus the Applicant, if, are they one in the same, I really don't know.

But I do feel that the Board has been generous in its handling of the case over a four-year period. That seems to be quite an indefinite period to me, and I think that it is within the boundaries of the Board to put closure on this to ask of the party what are the circumstances now and what kind of a schedule, a payment schedule, can be made with perhaps the financier which I take it is HUD, with HUD approval to pay what is due.

And I think that it is very businesslike and very much within the realm of this Board, and I don't think that it is shall we say setting aside this indefinite continuance, but I feel that we just

have to put closure to this.

CHAIRPERSON REID: I agree.

COMMISSIONER HOOD: Has Staff exhausted all of its research and finding out you know, who the players are --

CHAIRPERSON REID: Yeah. Over and over.

COMMISSIONER HOOD: Over, and over, okay.

MS. PRUITT: Aside from the letters we've informally called them too. I mean these are official letters.

COMMISSIONER HOOD: You held meetings and --

MS. PRUITT: but in between I know the prior secretary Tracy had been in contact with them much closer to, I mean they were in much closer contact, closer to the actual decision date, to get some understanding.

And then we kind of backed off a little bit. But we have also not only sent letters, but called to find out where they are in the process, and you know, they keep telling us well we have some problems with HUD and we can't get anything more than that.

COMMISSIONER HOOD: Yeah because I think it's important that Staff make sure that they've

exhausted all the research cause you never know with a lot of Federal Funding and appropriations, maybe money is coming in in different phases too, so.

MS. PRUITT: And that's all we were asking for, the some understanding --

CHAIRPERSON REID: Sure.

MS. PRUITT: And they just keep, what we get back is well we're working with HUD. And that's what the letters say coming back. I'm, we're going to get the file. This, we usually get a paragraph back requesting a continuance.

CHAIRPERSON REID: Usually, just one second. Usually, when you, this comes up, there's a letter from them that we can basically glean some background, some information as to where they are at this time.

MS. PRUITT: And that's usually precipitated by a call from Staff earlier, you know, just checking up to find out where things are and what's happening.

COMMISSIONER HOOD: It sounds like this is just some general communication issues that, what's been going on.

MS. PRUITT: Yeah, and I believe, I don't know if Parkside has had some changes in their

management, which I believe they have had some changes in project managers, so some of that information may have fallen through on their end.

VICE CHAIR SOCKWELL: So Ms. Pruitt is this a, this was Telesys at one time, and Telesys is, or is not still involved with the project.

MS. PRUITT: I'm not sure. In fact the last letter that went out was, we, I, was actually April first of this, 1999.

CHAIRPERSON REID: No.

MR. HART: No, from them.

MR. PRUITT: From them, I'm sorry, that came back it says this is in reference to BZA Application 16144 in connection with Parkside. We have previously requested consideration, reconsideration fees to be charged in connection with this application. We are hereby requesting a postponement of such. Your assistance is graciously appreciated.

VICE CHAIR SOCKWELL: Okay, so it doesn't --

MS. PRUITT: And that's been the sort of party line.

VICE CHAIR SOCKWELL: So, so --

MEMBER RENSHAW: Who signed the letter?

MS. PRUITT: Marian MacKinnon (phonetic).

MEMBER RENSHAW: And who is she?

MS. PRUITT: Uh --

MR. HART: The Director of the Project.

MEMBER RENSHAW: Is she --

MR. HART: Didn't they say something to Mr. Sockwell as if Telesys is still in charge, is still running the project. That I'm not sure about, but late last year, I checked -- and -- answered and since then I've been speaking to someone else because I got the impression from her that she was passing the project over to some other entity.

So, but the point is I spoke to the representative for the new entity, whoever that may be, and they again gave me the sort of information we heard here. We are looking into, to financing and it wasn't anything definitive.

VICE CHAIR SOCKWELL: On that basis then, perhaps I can suggest that rather than contact the developer that we contact HUD directly, providing HUD with the pertinent details of the project so that if it's a Section 20 whatever, that the person in charge of that for the Region would be able to respond to us as to where, where HUD stands on this.

If, if HUD tells us what we need to know

and the developer is not, then we will know. Because HUD will say either that that project has been de-listed --

MR. HART: Right. Mr. Sockwell you're assuming that HUD is the only --

VICE CHAIR SOCKWELL: That was an assumption.

MR. HART: Yes.

VICE CHAIR SOCKWELL: And I assume that you have a full record. I haven't seen the full case load, case record, so I don't know. But somewhere we --

CHAIRPERSON REID: --

VICE CHAIR SOCKWELL: They can hold us, they can hold us off on the fee for ten years, while the neighborhood improves or development potentials improve, or maybe the economics of the original project didn't pan out and they're trying to secure additional funding, et cetera, et cetera, et cetera.

And if they're not giving us any definitive information on why they have not paid, then we should put a date certain to get that information. That's all we're asking for immediately is some facts.

Now to say please and thank you isn't

enough.

CHAIRPERSON REID: Yeah, in the, the original hearing submission there is information about the project and about the figures, if I'm not mistaken, some figures that are coming from different entities to make this project work.

And it could be that they have, I think the numbers were worked without the $60,000. And, as you well know with projects, that $60,000 difference can make or break a project.

So they may have had to go back. My understanding was that if they had to regroup and go back and to have that money allocated. Now, I think that HUD, I really think that, and this is speculation, that that's what the holdup is.

So if we can --

VICE CHAIR SOCKWELL: Madame Chair?

COMMISSIONER HOOD: Can I just ask --

VICE CHAIR SOCKWELL: Let me just say this Mr. Hood. Madam Chair, for a project that I would assume to be the size of Phase II, $60,000 should not be a make it or break it dollar number.

CHAIRPERSON REID: Well, that's what they, that is what, that, the day of the hearing, and look at it, that was a major, major stumbling block that

appeared, because they did not anticipate that, having to put that out.

COMMISSIONER HOOD: Well I --

CHAIRPERSON REID: Excuse me. Let Mr. --

COMMISSIONER HOOD: I agree with, I agree with the last statement that Mr. Sockwell made, but I'm just curious. The first time, since you gave us that eloquent history. The first time was you said the fees were waived.

CHAIRPERSON REID: No, no, no, Phase I fees were waived.

COMMISSIONER HOOD: That's what I'm saying, Phase I.

CHAIRPERSON REID: Yeah, they're coming back with Phase II.

COMMISSIONER HOOD: Phase I's fees were waived. Other than being short of money in the office why wasn't, and I'm just asking, why wasn't Phase II waived?

MS. PRUITT: Unfortunately Mr. Hood I can't answer that.

CHAIRPERSON REID: We stopped waiving fees period, on all non-profit. We just didn't waive any more fees after --

COMMISSIONER HOOD: After a certain time.

CHAIRPERSON REID: When we went through that, s steer period when we didn't have funds, we just stopped waiving fees. Mr. Hart, please?

MR. HART: Thank you. To follow-up on the point you made. The differences started to come up when the Applicant made the $1,000 down payment in an effort to get the Order which has been written.

When we came up with that ruling that we would give them, there was no relief for them, that started the whole thing and it all focuses on the fact that they had not anticipated paying the 60,000 and just by talking to them and reading the files here, I get the impression that there may be more to it than just.

Or, what is the main thing is about not thinking that they should pay the fees and -- that is what I hear --

MEMBER RENSHAW: All right, well I think that we, to move this forward we can speculate and kind of break some ground there, but let's get the letter off to HUD, I agree with Mr. Sockwell that that's an appropriate avenue, and set a date when the information is to be received by the Board and stress in the letter that we would like to bring it up at a certain public hearing, and dispose of it at that

time.

But it seems to me that if they are, if this project is getting any HUD money, that they may be delinquent with their, the HUD arrangement if they are not paying the fees that have to be paid on this project.

And I would again, we're all guessing, but it could be that HUD just doesn't know that this is an outstanding debt.

MS. PRUITT: Ms. Renshaw, I just want to be clear, you'd like the letter to go to HUD and the letter would include a date certain in which they would provide back to the Board a payment schedule or, where they are in the process?

CHAIRPERSON REID: We could ask --

MEMBER RENSHAW: No.

CHAIRPERSON REID: We could ask them. Go ahead.

MS. PRUITT: I just wanted to get clear some --

MEMBER RENSHAW: I'm just kind of duck-tailing on the very good recommendation of Mr. Sockwell that the correspondence go to the Regional Director of HUD and that we have a date certain for a response from HUD for information on this project,

whether it is going forward, and explain a little bit about the difficult, the fees that have not been paid, and that we are looking from the Applicant for a date certain when these fees will be paid.

And it's been going on for four years.

MS. PRUITT: Okay.

CHAIRPERSON REID: When you forward the letter to HUD, I think that you should talk to the Applicant and find out who is the Project Manager at HUD, because if you send it just to HUD it can get lost for days before it gets to the right person.

But ask specifically to identify for you the key person at HUD that they have been dealing with.

MEMBER RENSHAW: Madam Chair, I would send it to the Regional Director of HUD.

CHAIRPERSON REID: You can do both.

MEMBER RENSHAW: The top person and CC the Project Manager.

CHAIRPERSON REID: Yeah, you can do both.

VICE CHAIR SOCKWELL: It, Madam Chair, it would go to Region 3, I believe, and it would go to Housing, perhaps Housing Management, and in fact if necessary I could make a couple of calls to HUD where I have friends and perhaps could get a more targeted

location.

MS. PRUITT: We'd appreciate that, thank you.

CHAIRPERSON REID: But why do that when you can just ask the, ask the Applicant, who the persons are? You can do both.

MS. PRUITT: We can double check.

VICE CHAIR SOCKWELL: Yeah, you can take it either way. And I think that it probably is appropriate to go to the Applicant. At least verbally before going to HUD because that's the fair way to do it.

And if the Applicant becomes forthcoming as a result of not wanting us to go to HUD or feeling that it would be more appropriate to protect his interests for him to make the correspondence with HUD, then that's fine.

I'm not sure that we should tell HUD that they owe us $60,000, da, da, da, da, da, necessarily. But I do think that we need to push this thing forward, and we can use the velvet hammer, which is to go to the Applicant verbally and say without information from you we are forced to correspond directly with the Department of Housing and Urban Development, which we understand is one of your

primarily lenders, da, da, da, da, da. See what they do.

MEMBER RENSHAW: But I want, I want to be clear that this Board is sending the letter to HUD to ask the status of the project. I think we need some, something in the file that tells us as of this date that the project is a viable project. All right?

CHAIRPERSON REID: Okay? Is that the last item? All right, then this concludes, no it, it wasn't, it wasn't something put up a vote. This was just for information.

MS. PRUITT: Right.

CHAIRPERSON REID: And we weren't making any kind of or taking any kind of position, except for to direct Staff as to what we would like to get from them and then once they receive it they will then bring it back to us in a meeting.

Okay? All right. This then concludes this morning's hearing. Thank you.

(Whereupon the public meeting was concluded.)