

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING
ON THE MOTION FILED BY SUNRISE
ASSISTED LIVING, LLC (SUNRISE)
CASE NO. 16716 (ANC-3G)

+ + + + +

TUESDAY

JULY 10, 2001

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
SUSAN MORGAN HINTON	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning
Sheri Pruitt, Secretary, BZA

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.
Mary Nagelhout, Esq.

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

SUNRISE ASSISTED LIVING

16716 - ANC-3G

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

(1:08 p.m.)

CHAIRPERSON REID: Good afternoon. We'll now proceed with the July 10th Special Public Meeting of the Board of Zoning Adjustment.

MS. BAILEY: Madam Chair, good afternoon. There is a Special Public Meeting, Application #16716. There's a motion by Sunrise Assisted Living requesting that Board Member Anne Renshaw, Chairperson of the Advisory Neighborhood Commission 3-G, be recused from participating in any and all matters relating to the appeal. The appellant in the case is the Nebraska Avenue Neighborhood Association. The intervener or party in interest is the Sunrise Assisted Living.

The Motion was initially scheduled to be heard by the Board on June 26, 2001. However, it was postponed until today, that is July 3, 2001 (sic). The Motion is before the Board at this time.

CHAIRPERSON REID: All right. Board members. Before us today is the Motion in regard to the recusal of Anne Renshaw, and it's precipitated by a request from attorneys for Shaw, Pittman in regard to her participation in the Sunrise Assisted Living Appeal #16716.

Basically, the gist of it is that predicated

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1 upon what is deemed to be Ms. Renshaw's participation
2 in the earlier cases that were germane to this particular
3 case, as well as the fact that there was an issue regarding
4 Ms. Renshaw's participation or attendance at a Zoning
5 Commission meeting in regard to this case, and that there
6 was, at the ANC level, participation by Ms. Renshaw where
7 she voted against Sunrise. On matters relating to the
8 project, they are asking, they are objecting to her
9 participation and asking for her to be recused.

10 So, I'll open the floor up for a discussion
11 by the Board members.

12 COMMISSIONER MITTEN: Madam Chair, I think
13 it would be appropriate to allow Ms. Renshaw to begin
14 and respond to what's been included in the reasoning for
15 the Motion.

16 CHAIRPERSON REID: Well certainly, Ms.
17 Renshaw would have an opportunity to speak. When I said
18 "open it up to Board members" that was not exclusive of
19 Ms. Renshaw, but are you suggesting to her that she
20 initiate the discussion?

21 COMMISSIONER MITTEN: Yes.

22 CHAIRPERSON REID: If she chooses to.

23 VICE CHAIRPERSON RENSHAW: Yes, thank you.

24 Madam Chair, I was going to ask to be heard in any case,
25 because this is the second time in four months that my

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1 integrity has been called on the carpet, so to speak.
2 And for the second time, I will have to speak on my own
3 behalf as a BZA Appointee and also as an ANC Commissioner.

4 Now, I made a Denial of Rights Complaint
5 against the Board of Zoning Adjustment and the Office
6 of the D. C. Corporation Council stemming from an
7 involuntary recusal on February 20, 2001 over BZA Appeal
8 #16646.

9 I recused myself whenever that appeal came
10 before the ANC, that's ANC-3G. The ANC, however, did
11 not take a position on that neighborhood dispute;
12 nevertheless the Board voted me off the panel over my
13 objections.

14 After being involuntarily recused, I wrote
15 to the D. C. Corporation Council and the Council of
16 Campaign Finance in the attempt to ascertain my appeal
17 rights. Both agencies declined to get involved.

18 So, I wrote to Council Members Patterson and
19 Catania requesting legislation to clarify ex parte
20 communication, recusal and disclosure for ANC members
21 serving on D. C. Boards and Commissions. Council Members
22 Mendelson, Graham and Fenti (phonetic) have expressed
23 interest. The ANC assembly supports this request for
24 recusal clarification.

25 Now, today's Motion to Recuse Board Member

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1 Anne Renshaw from Appeal #16716 of the Nebraska Avenue
2 Neighborhood Association, which will be heard next week
3 on July 17th, has been filed by attorneys for Sunrise
4 Assisted Living, LLC a party in interest in the appeal.

5
6 Sunrise's Motion to Recuse argues for
7 recusal by elaborating on a case that has yet to come
8 before the BZA. It previews and disputes the appeal by
9 presenting allegations against me. That's called, what
10 we call in the communications industry, conditioning the
11 message, and it's done both to disqualify an adjudicator
12 from a decision-making panel, which also can be called
13 judge shopping, and to leave a very definite impression
14 of their case.

15 Sunrise's angst starts with the Chevy Chase
16 Advisory Neighborhood Commission's action on a public
17 space matter, not a zoning matter. A proposed closing
18 of an alley stub off Nebraska Avenue, brought Sunrise
19 to the Chevy Chase ANC in February, 2000 prior to my being
20 sworn in as a member of the Board of Zoning Adjustment.

21 I chaired the ANC then as I do now, and
22 participated in the discussion as it was then a public
23 space issue that would go before City Council. Attorney
24 Marine Dwyer, who accompanied the Sunrise representative,
25 Shawn Ambrose, who is with us today, was clear that Sunrise

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1 was "not a project that goes to the BZA. It was a
2 matter-of-right."

3 After analyzing the neighboring property
4 owner's use of the alley, as well as the public safety
5 issues, the ANC voted to oppose the application by Sunrise
6 to close this alley stub, yet Sunrise concludes "her vote
7 against the project in connection with the alley closing,
8 standing alone demonstrates a predisposition to grant
9 the requested appeal."

10 Then came the down zoning of a section of
11 Connecticut Avenue, including the Sunrise site, on which
12 I did not participate. The case went before the Zoning
13 Commission in March of 2000, not the BZA. But now, I'm
14 being criticized for attending the down zoning hearing,
15 where the name of Sunrise could not be mentioned, even
16 though it's representative and attorneys were allowed
17 to testify.

18 I am being faulted for personal bias when
19 I serve in an official capacity on the ANC and have
20 absolutely no financial or other interest in Sunrise.
21 I'm accused of attending the ANC meeting to discuss the
22 appeal, which must mean that while I recused myself from
23 this matter, I sat at the table which is the practice
24 of my ANC. I'm criticized for extensive knowledge of
25 the project from outside the hearing room.

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1 First, I don't live in a hole. The only way
2 you would get a completely unknowledgeable person is
3 either by sequestering the BZA or moving the case, for
4 instance, to Philadelphia. I listen and I read and I
5 don't wear blinders. I know what's going on in the
6 neighborhood and in the City. I take notice and I can
7 still vote objectively on the BZA, basing decisions on
8 the findings of fact presented in this hearing room.
9 I took an oath to do just that.

10 Sunrise argues that this situation is more
11 extreme because "Ms. Renshaw continues to serve as the
12 Chairman of ANC-3G, which has an established track record
13 of opposition to the project, while she serves on the
14 Board."

15 So, it's guilt by association, guilt before
16 the Corporation Council's legal opinion is received, and
17 I have requested a legal opinion from the corporation
18 counsel. Recusal, as I pointed out to the Corporation
19 Council, is illegal not a parliamentary matter.

20 As I maintained in the first recusal episode,
21 this Board is not the body to vote on recusal. Moreover,
22 counsel should be available to an ANC Commissioner. This
23 matter, though, has great significance according to
24 Sunrise. I agree because it's about me. Thank you,
25 Madam Chair.

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1 CHAIRPERSON REID: Thank you, Ms. Renshaw.
2 Board members, discussion?

3 COMMISSIONER MITTEN: Madam Chair, I think
4 there's really two issues that are being put forward
5 related to Vice Chair Renshaw. Some of the objections
6 that are raised by Sunrise go directly to whether or not
7 she has bias against the project, and the other has to
8 do with ex parte communication, which is really, I think,
9 indisputable.

10 I can't say definitively what I think about
11 her level of bias, but I can say definitively, and Ms.
12 Renshaw confirmed it here, that she has extensive
13 knowledge of the merits of this case, of the appeal, that
14 she gained prior to us receiving the formal record in
15 this case, and prior to the public hearing.

16 I think in cases like that, it's nearly
17 impossible for one to separate what they learned outside
18 the context of the hearing and outside the context of
19 the record from what, you know, to separate what they
20 learned outside from inside. I think it would behoove
21 Ms. Renshaw not to put the Board's decision at risk by
22 participating in the appeal, strictly on the basis of
23 her extensive ex parte, the information she's gained and
24 I would ask her to voluntarily recuse herself.

25 CHAIRPERSON REID: Is that a Motion?

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1 COMMISSIONER MITTEN: No, I'm asking her to
2 do it voluntarily.

3 VICE CHAIRPERSON RENSHAW: I want to respond
4 to Ms. Mitten. One of the problems, Ms. Mitten, is when
5 does an ANC Commissioner recuse him or herself? And that
6 has been asked of the Corporation Council because issues
7 come before the ANC, and as I stated in my testimony,
8 we have no notion whether anything is on a track to go
9 before the BZA or the Zoning Commission.

10 And so, we hear the matter, the community
11 matter, or an applicant coming before us on a public space
12 matter, and we deal with it. And then the course is
13 adjusted after that, and goes in a different direction.

14 And so you should be able to vote at one place or another.
15 Now, what I voted on was a public space matter.

16 COMMISSIONER MITTEN: I think you're missing
17 my point.

18 VICE CHAIRPERSON RENSHAW: I'm not missing
19 your point, Ms. Mitten. I understand your point.

20 COMMISSIONER MITTEN: My point really doesn't
21 have anything to do with the public space matter. It
22 has to do with the extensive meetings that have taken
23 place at your ANC, which I believe you were in attendance,
24 even if you did not vote, on the merits of the appeal
25 of the Sunrise building permit.

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1 Whether or not you knew in the beginning that
2 the appeal would go forward to the BZA, is really not
3 relevant because it's no different than me having a client
4 that I have a business relationship with that preexists,
5 and that perhaps continues up to a point, and then they
6 file something that goes to the Zoning Commission or the
7 BZA.

8 I may want very much to participate in that
9 case, but I have a pre-existing conflict, and if somebody
10 rightly objects to the fact that I have that relationship,
11 then I believe that I would be duty bound in that situation
12 to recuse myself, which is why I'm asking you to do that
13 in this case.

14 VICE CHAIRPERSON RENSHAW: Well, I am not
15 going to do anything until I get a written determination
16 from the Corporation Council which I've requested and
17 that's only fair.

18 Moreover, the ANC which has just received
19 the Motion to Recuse, has not had an opportunity to respond
20 and whereas I believe that on July 3rd I was given a packet
21 to give to the ANC because it had not been received.
22 We have to allow for the ANC to have a voice in this also,
23 and that's not in our records.

24 COMMISSIONER MITTEN: Madam Chair, if I could
25 just respond to that particular point. The letter from

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1 the ANC requesting that the matter of the recusal be
2 postponed until the 17th, they say in that letter that
3 they will not have had a meeting prior to today, and they
4 will not have had a meeting prior to the 17th.

5 So, postponing the issue of the recusal will
6 not allow us to get a response from the ANC, because they
7 will not have had the opportunity at a public meeting
8 to take a vote. So, I don't think that there's any
9 additional information from the ANC that could possibly
10 shed any more light on this matter.

11 VICE CHAIRPERSON RENSHAW: The lead party for
12 the ANC is out of town, and I do believe she called in
13 to the office requesting that this matter be delayed,
14 and it could have been delayed and taken up as a
15 preliminary matter next week, and allowed her as the lead
16 person to make a comment.

17 MS. HINTON: Maybe I could jump in here. In
18 my mind, if we put aside the issue of the public alley
19 and the vote on that, the part of this that concerns me
20 is exactly what Ms. Mitten has already talked about, and
21 that is deliberations at the ANC level about whether or
22 not to participate in the appeal of the Zoning
23 Administrator's decision to grant this permit.

24 Anyone who heard those deliberations, or
25 participated in them, is part of that party. The ANC

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1 is a party in the appeal, and so Ms. Renshaw, that's what
2 concerns me about your participation in the case, is at
3 the point that this case got to the appeal of the permit,
4 and there were discussions about that, and the ANC
5 obviously decided to become an appellant, to participate
6 as a party in the case, to the extent that you observed
7 those conversations or participated, I don't believe that
8 anybody could then go on to be a Board Member and be
9 considered to be not privy to information that's not in
10 the record, but privy to information that is one party
11 and not privy to all the other parties. That's the part
12 that troubles me.

13 I think that the BZA has its own rules about
14 recusal, so there isn't any need for us to wait for a
15 written determination by corp council. I mean, our rules
16 about recusal have been on the books for many years.

17 VICE CHAIRPERSON RENSHAW: Some of them are
18 new.

19 MS. HINTON: I don't believe that they are
20 new, and it's always been clear to me when I've been on
21 the Board, that if there is an appearance or, in fact,
22 any of the Board members has information from one of the
23 parties that's not part of the record, that's not privy
24 to the other parties, that person voluntarily recuses
25 themselves. That's the first point.

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1 But failing that, if there's a request from
2 any party to have a person recused, the person recuses
3 whether they believe it's correct or not. That's what
4 has happened and that's how this Board has functioned.

5 I think in the best interest of the Board, and the cases
6 that the Board does try to hear, I think that that's really
7 the best way for Board members to behave.

8 So, I would also encourage you at this point,
9 I understand it's important to you to get a decision from
10 corp council, but not having that and today is the day
11 when we need to make this decision, I think that everything
12 else is pointing towards the right thing to do is to recuse
13 under the circumstances.

14 VICE CHAIRPERSON RENSHAW: Well, I would say
15 that today is not the day you need to make a determination.

16 Again, it can be taken up as a preliminary matter prior
17 to calling the case next week, which would allow the ANC
18 to make a statement to the Board if it felt that it wanted
19 to, shall we say, put the oar in the water.

20 I'm looking at a recusal document that was
21 handed me today, that's dated April 4, 2001. Perhaps
22 this is an update of something that we had in our packet.

23 I don't know. I will have to review it. But, it's a
24 relatively recent, I would say, piece of information for
25 us.

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1 In any case, I think this is an aspect of
2 participation on a Board which is particularly difficult
3 to all concerned. Because I am an ANC Commissioner, I
4 have abided by the standards with which our ANC has
5 comported itself about recusal matters, and it is not,
6 has never been our practice where an ANC Commissioner
7 has to get up and leave the room.

8 And, until that is really defined in a piece
9 of legislation, that it's attached to the ANC laws, I
10 feel that that should not be a question, that should not
11 be something that puts me at a disadvantage here.

12 COMMISSIONER MITTEN: Madam Chair?

13 CHAIRPERSON REID: Allow me?

14 COMMISSIONER MITTEN: Please.

15 CHAIRPERSON REID: I think that what we have
16 to look at as a Board is a greater issue here, and that
17 is, we're charged with service to the citizens of the
18 District of Columbia, and as such once you take the oath
19 of office to serve on this Board, then there are rules
20 and procedures that we must abide by.

21 Typically, when there is a case that comes
22 before us in which there is any semblance of conflict
23 of interest, Board members will voluntarily either
24 disclose that, whatever interest they may have, and ask
25 is there any objection, and they will also attest to

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1 whether or not they feel they could serve on that
2 particular case impartially. If there is an objection,
3 then of course they would not.

4 In this instance, it is a very difficult
5 situation we find ourselves in, Ms. Renshaw, because we
6 consider you a colleague and it is definitely not
7 comforting to us to have to take a position to ask you
8 to recuse yourself. Nonetheless, we have the
9 responsibility of our charge to the citizens of the
10 District.

11 The reason why we don't allow people to come
12 up and speak to us, or to talk to us, even asking us about
13 our children or asking us about the weather, is because
14 of the appearance of impropriety or the appearance of
15 some conflict of interest. And it's not necessarily what
16 is actually the reality, it's the perception, and
17 perception often as we all know is reality.

18 In situations where your ANC has come before
19 us, for the most part, if there is no objection, you have
20 served, you've been allowed to serve and there was no
21 problem. Wearing the hat of ANC Chairperson and sitting
22 on this Board as Vice Chair is a very difficult position,
23 and it's hard for you to be able to actually juggle both
24 roles without any type of, I hate to use the word bias,
25 but without any impartiality. It's very, very difficult.

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1 In a situation where we have a party to the
2 case who has raised an objection and who has set forth
3 reasons why they feel that you should recuse yourself.

4 Our rules and regulations require that we do no less.

5 So, in order for us to be in compliance with our rules
6 and procedures, and let me also point out that it has
7 nothing to do with the ANC rules and regulations because
8 we operate independently.

9 The way that they operate and the way that
10 we operate are not always in tandem. There are situations
11 where our rules differ from their rules, and it appears
12 that sometimes you get confused as to whether you're
13 sitting on the ANC or whether or not you're sitting on
14 the BZA, and this is what we need to clarify at this
15 juncture if, in fact, you're asked to recuse yourself
16 and you feel that you shouldn't recuse yourself, then
17 you put us in a very difficult decision to have to take
18 a vote to do so, which is not something that we are happy
19 to have to do.

20 VICE CHAIRPERSON RENSHAW: Well, it's
21 difficult for both the Board and it's difficult for myself
22 as the issue at hand. I do want to say that when I was
23 before City Council for my confirmation hearings, I was
24 asked pointedly, very directly, by the Chairman, how was
25 I going to handle both my role as an ANC Commissioner

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1 and as a BZA Member.

2 I stated at the time that I would recuse
3 myself at the ANC level, and I have done so. I was never
4 asked at that time "you know, Ms. Renshaw, the BZA is
5 going to force you to leave the room." That never came
6 up and so, I have done what I said I would do. I would
7 recuse myself and that is that.

8 So, in any case, I understand the Board's
9 difficulty because we are colleagues. We work very
10 closely together on some enormously difficult cases, and
11 we interact and we have to admire the points of view that
12 each person brings to this Board and the stamina that
13 each person brings to the Board.

14 It is up to me to know how to handle myself,
15 and it is up to me to say to the Board that I either have
16 a problem or I don't have a problem, that I am either
17 going to be biased because, or I'm going to be able to
18 rely on the findings of fact, and I am going to make my
19 judgment on that record.

20 And, as I have stated: 1) I am waiting for
21 a legal opinion from the Corporation Council's office
22 which is due me; and, 2) I am saying to you that I can
23 rely on the findings of fact to make a determination in
24 this particular case.

25 I stand on my own good name, and I have to

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1 speak up for myself and I say this very emphatically and
2 very strongly. I am only sorry that we have had to take
3 up any time at all on this matter, because it is
4 uncomfortable to all parties.

5 CHAIRPERSON REID: Any comments, Mr. Griffis?

6 MEMBER GRIFFIS: First comment, I think Ms.
7 Renshaw, I think this is taking up so much time because
8 of your good name and because of the work that you're
9 doing within the community. I think your point in opening
10 was very pertinent in terms of it's difficult to find
11 somebody that lives in a vacuum, which would be
12 appropriate to sit on a Board of Commission in this City.

13
14 However, I think the points made by the other
15 Board members seated today are very pertinent, and that
16 is that the specifics of this particular case in instance,
17 draw into question the impartiality that might be
18 perceived or might be real in terms of your role on the
19 ANC and in terms of the case that would be before us.

20 I think the point ought to be stressed that
21 sitting on the BZA is independent of its own unique
22 responsibilities to that of being an ANC member,
23 Commissioner, or the Chair, and those ought to be looked
24 at individually and independently.

25 And I think what's being said today, and with

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1 the information that's in the case filed before us, is
2 that it is appropriate and I think you're hearing from
3 your colleagues, the urging for you to recuse yourself
4 based on your past roles and the perceived conflict that
5 you may have.

6 CHAIRPERSON REID: Ms. Mitten, I'm sorry.

7 COMMISSIONER MITTEN: Just as a final point,
8 before we bring this to some kind of closure. I think
9 the issue here is really not Anne Renshaw's good name,
10 but putting the integrity of the BZA and the BZA process
11 above your personal feelings.

12 I feel very strongly just as the Chair and
13 others have pointed out, that the perception very much
14 exists because it is widely known, not in dispute, that
15 you have gained extensive information about the appeal
16 outside of the context of the record. We're just really
17 asking you to protect the integrity of the BZA process,
18 which is why we're so strongly urging you to recuse
19 yourself.

20 MEMBER HINTON: And, if I could just add to
21 that. The part of it that was compelling to me as I was
22 reading some of the reasoning behind why the Board does
23 this, is that the applicants and the appellants have a
24 right to due process, and the way that that is written
25 out and explained, is that the information that the Board

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1 members hear and consider should be done in a public open
2 meeting or hearing.

3 Applicants and appellants and all parties
4 have a right to cross-examine or have the opportunity
5 to cross-examine and so all the parties are aware of what
6 information each Board member has heard and they know
7 what's in the record.

8 That's the difficulty that I see in listening
9 to conversations, even if you're not participating, is
10 that you get information that then the parties are not
11 privy to. They don't know what was said. They don't
12 know what was heard, and they don't have an opportunity
13 to cross-examine those who were saying that information,
14 and so they are then denied their right to due process.

15 So, I think this case has much more to do
16 with that and not really anything to do with Anne Renshaw's
17 personal good name or reputation. I think that that's
18 why Board members have tried, if there is any possibility
19 that there might be the appearance of someone having
20 information in addition to the record, that they recuse,
21 even voluntarily, just to protect the right of the
22 applicants and all the parties to their due process in
23 front of the Board.

24 VICE CHAIRPERSON RENSHAW: I would just like
25 to ask Ms. Mitten, as Chair of the Zoning Commission,

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1 does this also mean that the Zoning Commission members
2 who sat on the down zoning case will also have to recuse
3 themselves?

4 COMMISSIONER MITTEN: What would be the basis
5 for that?

6 VICE CHAIRPERSON RENSHAW: Because they have
7 heard aspects of the case.

8 COMMISSIONER MITTEN: We have not heard any
9 of the merits of the appeal. I carefully tried to protect
10 the Zoning Commission during the hearing from that, and
11 in fact, I don't know anything about the merits of the
12 appeal even now.

13 VICE CHAIRPERSON RENSHAW: And yet, what do
14 you have to say about that aspect being brought against
15 me?

16 COMMISSIONER MITTEN: I think the issue was
17 not that you were in the hearing room for the rezoning
18 on the three blocks of Connecticut Avenue, but that you
19 went to the trouble of going to the hearing and the fact
20 that you made that effort was an indication that you had
21 more than passing interest in the outcome.

22 VICE CHAIRPERSON RENSHAW: Well, I disagree
23 with that. But in any case, I wanted to just make note
24 of the fact that there could be an issue there also.
25 So, in any case, I am stating that, again, just for review

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1 that I am waiting for, I want to wait for, I have a reason
2 to wait for the Corporation Council's written
3 determination of my request for a legal opinion, and will
4 leave it at that.

5 CHAIRPERSON REID: All right. Board
6 members? I think that we have certainly aired this
7 particular issue out quite adequately. At this point
8 in time, I think that it would be proper and appropriate
9 for us to have a motion on the floor as to what the position
10 of the BZA will be in this regard.

11 MS. MITTEN: Madam Chair, we have a Motion
12 to Recuse Board Member Anne Renshaw from Case #16716,
13 and I would move that we grant that Motion.

14 MEMBER HINTON: I'll second.

15 CHAIRPERSON REID: All in favor.

16 (Chorus of ayes.) Opposed? (Aye.)

17 MS. BAILEY: Staff will record the vote as
18 4-1 to recuse Ms. Renshaw from Appeal #16716. Motion
19 made by Ms. Mitten, seconded by Ms. Hinton. Mr. Griffis
20 and Ms. Reid in support. Ms. Renshaw in opposed to the
21 motion.

22 SECRETARY PRUITT: Excuse me, Madam Chair,
23 I believe

24 CHAIRPERSON REID: All right. We do have
25 another motion to pick up, and that was, there was a motion

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1 also that we just got, even after we had convened this
2 meeting, and that was from the Neighborhood Association,
3 the Nebraska Avenue Neighborhood Association to
4 basically, to dismiss the Motion, a Motion to dismiss
5 the Motion. Actually it's moot now, by Sunrise Assisted
6 Living to recuse Anne Renshaw. So, even though the motion
7

8 VICE CHAIRPERSON RENSHAW: I object Madam
9 Chair. This should have been brought up prior to the
10 Board's taking a vote.

11 CHAIRPERSON REID: Well, the Board did not
12 have it.

13 VICE CHAIRPERSON RENSHAW: Well, the Board
14 has it.

15 CHAIRPERSON REID: But the Board had already
16 voted.

17 VICE CHAIRPERSON RENSHAW: When did it come
18 in?

19 CHAIRPERSON REID: Did you see the Director
20 after the vote came in?

21 VICE CHAIRPERSON RENSHAW: Yes, but it's
22 here.

23 COMMISSIONER MITTEN: Madam Chair, perhaps
24 we could take a moment. Everyone could review it, and
25 if anyone would like to reconsider the vote that we just

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1 took, we can do that.

2 CHAIRPERSON REID: I have no problem with that
3 Ms. Mitten. Just for purposes of the record being kept
4 straight, then perhaps the thing to do is to look over
5 this, as you just mentioned, and to vote on it. And I
6 think then, after we vote on this vote, then I think that
7 we should re-vote on the Motion to Recuse Anne Renshaw,
8 so it could be sequentially correct.

9 MS. HINTON: You will note that it arrived
10 at 1:11, after this meeting had started.

11 VICE CHAIRPERSON RENSHAW: But it could have
12 been brought to our attention.

13 (Pause.)

14 CHAIRPERSON REID: Okay. Are you ready?

15 MS. HINTON: Yes.

16 CHAIRPERSON REID: All right. The Motion on
17 the floor by the Nebraska Avenue Neighborhood Association
18 is a move to dismiss the Motion by Sunrise Assisted Living
19 to recuse Anne Renshaw.

20 MS. HINTON: Madam Chair, I'd like to respond
21 to the Motion. The first paragraph of the Motion speaks
22 to the fact that notice was sent from the Office of Zoning
23 and not from the petitioner, not from Sunrise. I believe
24 that that's true and that was also discussed in the public
25 meeting that the Board had, that because the Board's

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1 requirements as to notice on motions isn't as clear as
2 it might be, the Office of Zoning decided that the best
3 thing to do would be to notice this motion on all the
4 parties.

5 Our regulations don't specifically say
6 that's required, which is why apparently why the party
7 did not do it themselves. But nevertheless, I think the
8 first paragraph acknowledges that the information was
9 sent and at that point it's immaterial who sent the
10 information.

11 CHAIRPERSON REID: Okay.

12 MS. MITTEN: The second paragraph, I think
13 that the Board members have already discussed this.
14 "According to the Board's own rules, the need for recusal
15 comes from a Board member having information from one
16 party that's not available to all the other parties."

17 And so, the petitioner does not have to prove
18 bias, which I think would be really difficult to prove,
19 but the issues that they have brought up demonstrate that
20 one Board member has information from one of the parties
21 that has not been shared with all the other parties.
22 In my mind, that's the reason behind the Motion and that's
23 the reason that the Board voted.

24 CHAIRPERSON REID: Thank you very much. Now
25 can we move on this particular Motion. Let's take a vote.

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1 I would move that we not dismiss the Motion by Sunrise
2 Assisted Living to recuse Anne Renshaw. Is there a
3 second?

4 COMMISSIONER MITTEN: Although I think this
5 is moot, I'll go along with it for procedure, if it will
6 make you feel better, and I'll second that.

7 CHAIRPERSON REID: All right. All in favor.

8 VICE CHAIRPERSON RENSHAW: Can I have a
9 discussion?

10 MS. HINTON: I think that maybe the Motion
11 that we want to be taking here, this is a Motion to dismiss
12 the other Motion, and I think what we want to do is

13 CHAIRPERSON REID: The Motion was to not
14 dismiss it.

15 SECRETARY PRUITT: This is a Motion to
16 Dismiss.

17 VICE CHAIRPERSON RENSHAW: Motion to dismiss
18 the Motion of Sunrise.

19 CHAIRPERSON REID: Okay.

20 MS. HINTON: So you may want to consider
21 denying this particular Motion directly.

22 CHAIRPERSON REID: Okay. All right.

23 SECRETARY PRUITT: It would be a motion to
24 deny the Motion to Dismiss.

25 MS. HINTON: Exactly.

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1 CHAIRPERSON REID: Okay.

2 VICE CHAIRPERSON RENSHAW: Then you have to

3

4 CHAIRPERSON REID: A motion to deny the
5 request to dismiss, okay.

6 SECRETARY PRUITT: That would be the amended
7 motion and Ms. Mitten, do you accept that?

8 COMMISSIONER MITTEN: Yes.

9 VICE CHAIRPERSON RENSHAW: All right,
10 discussion. I want to point out in the second paragraph,
11 that the Nebraska Avenue neighbors have stated, and it
12 should be noted by this Board, that the notification was
13 not received by the association until July 3rd and there
14 was a request in the Motion for them to respond by July
15 6th, and that was not enough time for either, obviously
16 either the neighbors to do so, although they did put
17 something into our file. However, the ANC did not have
18 enough time to do that and that should be noted.

19 Also, this should have been taken up prior
20 to the other vote, and as it was stamped in at 1:11, our
21 proceedings could have been interrupted to bring this
22 to our attention.

23 CHAIRPERSON REID: All right. Thank you very
24 much. The fact of the matter is that we didn't receive
25 it until after the meeting had convened and we did not

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1 receive it until after the vote was taken. All right,
2 so all in favor?

3 (Chorus of ayes.)

4 VICE CHAIRPERSON RENSHAW: Opposed.

5 CHAIRPERSON REID: Okay, now should we
6 re-vote.

7 SECRETARY PRUITT: You need to record the
8 vote.

9 MS. BAILEY: Staff will record the vote as
10 4-1. The motion was the deny the request to dismiss.
11 The motion was made by Ms. Reid, seconded by Ms. Mitten.
12 Mr. Griffis and Ms. Hinton in agreement. Ms. Renshaw
13 is opposed.

14 CHAIRPERSON REID: Okay. Thank you. All
15 right, then that will then conclude our Special Meeting
16 for July 10th at 1:00.

17 MS. HINTON: It's probably clear from the
18 record Madam Chair, but I would just like to say, based
19 on the fact that we've just voted to deny the Motion to
20 Dismiss, there's no reason to go back and reconsider the
21 first action that the Board took in this meeting.

22 CHAIRPERSON REID: Okay. I think that we had
23 basically taken that position because I had said, "should
24 we re-vote" and the feeling was that we really didn't
25 need to and I understand why. Because often we will take

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1 a Motion to Dismiss after we've already voted, so that
2 would be consistent with what we generally do. All right.

3 Thank you very much.

4 (Whereupon, the above-entitled matter was
5 concluded.)

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