

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + +

Wednesday, July 7, 1999

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The public meeting was held in Room 220, 441 Fourth Street, N.W., Washington, D.C., pursuant to notice, at 12:59 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson

BETTY KING, Vice Chairperson

GERRY GILREATH

ANTHONY HOOD

STAFF PRESENT:

JOHN NYARKU, Staff

PAUL HART, Staff

PATRICIA YOUNG, OCC

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1 case, except for any materials specifically requested. The Board and  
2 the staff will specify at the end of the hearing exactly what is expected.

3 The decision of the Board in these contested cases  
4 must be based exclusively on the public record. Avoiding any  
5 appearance to the contrary, the Board requests that persons present  
6 not engage the members of the Board in conversation.

7 The Board will make every effort to conclude the  
8 public hearing as near as possible to 6:00 p.m. If the afternoon cases  
9 are not completed before 6:00 p.m., the Board will assess whether it  
10 can complete the pending cases or case will remain on the agenda.

11 At this time the Board will consider any preliminary  
12 matters. Preliminary matters are those which relate to whether a case  
13 will or should be heard today, requests for postponement, continuance  
14 or withdrawal where proper and adequate notice of the hearing has  
15 been given.

16 If you're not prepared to go forward with a case today  
17 or if you believe that the Board should not proceed, now is the time to  
18 raise such a matter. Are there any preliminary matters?

19 MR. PARKER: Good afternoon. My name is Arthur  
20 Parker on behalf of the District of Columbia Corporation Counsel's  
21 Office. We are appearing here today on behalf of the Zoning  
22 Administrator Agency of the District of the Department of Consumer  
23 Regulatory Affairs.

24 We have filed as of yesterday a request to continue  
25 this matter, and I don't know if the Board has sufficient copies before it  
26 or they've have a chance to review the request.

27 Briefly, the normal procedure, as I understand how

1 matters proceed before the BZA, is that the Zoning Administrator  
2 comes forward to defend the position below and is not generally  
3 represented by counsel from the Corporation Counsel's Office.

4 I also understand the rules to be that when the  
5 notices go out, the notices go just to the Zoning Administrator and not  
6 to any other council. Now, in front of other administrative tribunals,  
7 there tends to be a notice that if a party -- if an applicant is  
8 represented by counsel, a notice also goes to the Corporation  
9 Counsel for them to have an opportunity to decide whether to  
10 represent the agency or to come into the case.

11 That procedure isn't in place here. We found out  
12 about the hearing some time just prior to the filing of the applicant  
13 statement on June 23rd in our office, and when I mean our office, I'm  
14 referring to the Enforcement Division of the Corporation Counsel's  
15 Office. We are the division that's charged with representing agency  
16 interests before administrative tribunals.

17 We have made a determination that there are  
18 significant interests involved in this hearing that put it on a plane  
19 different than the average matter that comes before this Board, that  
20 there needs to be representation for the agency.

21 We have made a diligent effort to try to become  
22 prepared to go forward today, but because of the significance of the  
23 issues that involve not only the applicant, but similar applicants, and to  
24 the state of litigation that involves the solid waste handling industry,  
25 we feel it is incumbent to request additional time to prepare for this  
26 case, also to permit the request that the ANC representative to be  
27 honored, and so that we have a chance to consider the propriety of

1 offer to resolve this matter short of a hearing before the Board.

2 As we put in the motion, there has been discussion  
3 between the applicant and the District regarding resolution of this  
4 matter, but we cannot announce that there is a resolution or that there  
5 will be only because we don't feel we've had proper time to have the  
6 parties that need to make the actual decisions on these matters fully  
7 reflect and consider all of the ramifications that deal not with only the  
8 applicant, but with the entire matter.

9 So for those primary reasons, we ask the Board to  
10 consider a continuance of whatever time that this matter needs to be  
11 turned around for us to take into consideration all of those matters.

12 CHAIRPERSON REID: Thank you.

13 MS. KING: How much time are you asking for?

14 MR. PARKER: I understand a new notice would have  
15 to go out with 45 days prior to the hearing.

16 MS. KING: So it would be September.

17 MR. PARKER: I guess that's what we're --

18 MS. KING: That would be adequate for your  
19 purposes?

20 MR. PARKER: I believe that would be. We'd have  
21 adequate time --

22 MS. KING: I mean, I don't know from the staff  
23 whether there's an opening, but I mean the earliest would be the first  
24 week in September.

25 MR. PARKER: I think that would be more than  
26 adequate for us because one of the things we ran up against here is  
27 obviously the holidays and vacation schedules, and it was just difficult

1 to assemble the decision makers necessary to -- either to tell us to  
2 resolve this matter or to go forward with it, and that's just simply where  
3 we are.

4 MR. GILREATH: Well, isn't there a possibility, from  
5 reading the material and what you've said, that Corporation Counsel  
6 or your agency and the applicant may possibly resolve this without us  
7 even having to deal with it? Isn't that a potential?

8 MR. PARKER: That's the potential outcome, but I  
9 don't want to mislead the Board --

10 MR. GILREATH: I understand.

11 MR. PARKER: -- and I'm sure the applicant wants to  
12 make it very clear that there is no -- there is no settlement here, and  
13 that we have not committed to that, and that they're like to oppose this  
14 request because of that.

15 MR. GILREATH: But that would give you extra time  
16 at least to explore this more fully with the possibility, of course, that if  
17 it's not resolved --

18 MR. PARKER: Right.

19 MR. GILREATH: -- and we don't reach agreement,  
20 then we go forward.

21 MR. PARKER: And I think the Board should be  
22 mindful of one thing, and that is this is different from the typical  
23 application where a business has not actually begun. The applicant is  
24 in business, is operating. The essential prejudice to them is just the  
25 time on the calendar, and they're not losing time in their operations.

26 So I would ask the court to keep that or the Board to  
27 keep that in mind.

1 MS. KING: Is there a representative here from 5A  
2 who can speak to their letter? I mean, the letter is self-explanatory,  
3 but I just wondered if there was anybody here from 5A.

4 Apparently not.

5 CHAIRPERSON REID: Okay. For the record --

6 MS. KING: Yes.

7 CHAIRPERSON REID: -- with 5A.

8 MS. KING: Yes. Five A has not had time, and the 5A  
9 designated to act or this is the person designated to act requesting a  
10 continuance until September because there's a long history and  
11 serious environmental impact, and it's a very convoluted case. They  
12 need more time to prepare and asked that it be postponed until  
13 September.

14 CHAIRPERSON REID: And that was a letter dated  
15 July 1st --

16 MS. KING: That's correct.

17 CHAIRPERSON REID: -- from Karen Lancaster,  
18 Commissioner of ANC-5A.

19 Okay. Thank you.

20 MR. PARKER: Thank you.

21 CHAIRPERSON REID: Now, the -- excuse me?

22 MR. HOOD: Madame Chair, if it's in order, I wanted  
23 to do a disclosure.

24 I have done some community work with Waste  
25 Management, and I feel and I know that this will not have any bearing  
26 on my decision in this case.

27 CHAIRPERSON REID: You don't feel it will impair

1 your ability to be objective?

2 MR. HOOD: No, it won't.

3 CHAIRPERSON REID: Okay. If there are no  
4 objections to Mr. Hood taking on this case, we will proceed.

5 Sir? Excuse me, sir. Thank you very much.

6 MR. GLASGOW: Madame Chairperson, as a  
7 preliminary matter, I have given Mr. Hart application to intervene in  
8 this case.

9 CHAIRPERSON REID: And you are, sir?

10 MR. GLASGOW: My name is Myles Glasgow, Your  
11 Honor. I faxed to the commission -- the Board yesterday an  
12 application on behalf of George Gaelich and Auto Bodies Supply  
13 Company, neighbors of 2160 Queens Chapel.

14 We filed a lawsuit as a nuisance against the site in  
15 1994. We have intervened in another companion BZA case, which  
16 our application addresses, and we ask that these three cases be  
17 consolidated with that fourth case, which is submitted by their partner,  
18 Caslin Associates, and I have submitted three copies to Mr. Hart, if we  
19 could present it to you.

20 What we would like is to be approved as intervenors  
21 on behalf of George Gaelich and Auto Bodies Supply Company, and  
22 we'd also like the commission to consolidate these three cases with  
23 what was previously filed in 1997 by Caslin Associates, which  
24 essentially handles the same legal issue at a later time.

25 They waited three years before now filing these  
26 appeals in 1999. They're appealing a 1996 denial of a 1995  
27 application, essentially having sat on it and waited, but Caslin did

1 appeal in '97 from a '96 decision or '97 decision that denied the '96  
2 application.

3 What we would like is to be able to argue many of  
4 those same issues that are in that Caslin case that is apparently now  
5 being held in abeyance by the BZA without any notice to us so that  
6 their partner, Waste Management, can now come in late in the game  
7 and try to raise issues that essentially are deal or should be dead.

8 We'd like the approval to intervene, and we'd like the  
9 one case consolidated with these three cases.

10 CHAIRPERSON REID: Okay.

11 MS. KING: This --

12 CHAIRPERSON REID: Wait, wait, Ms. King.

13 MS. KING: Deal with this first?

14 CHAIRPERSON REID: Let me ask questions.

15 MR. GLASGOW: Yes.

16 CHAIRPERSON REID: You are referring to which  
17 case numbers?

18 MR. GLASGOW: I am referring to -- if Mr. Hart could  
19 pass my three applications.

20 CHAIRPERSON REID: To all three of the  
21 applications? The appeal?

22 MR. GLASGOW: These are three copies, three  
23 copies --

24 CHAIRPERSON REID: Okay. No, wait a minute.  
25 There is --

26 MR. GLASGOW: -- of just one application.

27 CHAIRPERSON REID: -- one application and there

1 are two appeals.

2 MR. GLASGOW: Correct, Your Honor. We'd like to  
3 have our case, which is 16236, I believe, consolidated with these  
4 three cases.

5 We'd also like these three cases consolidated,  
6 although they are appeals and an application. The issues, the factual  
7 issues, many of the factual issues and many of the legal issues will be  
8 the same, and it doesn't make sense for this commission to waste a  
9 lot of time which only benefits an illegal operator at 2160, which still  
10 doesn't have --

11 CHAIRPERSON REID: Do not get --

12 MR. GLASGOW: -- a certificate of occupancy.

13 CHAIRPERSON REID: -- into the merits of the case.

14 MR. GLASGOW: I understand that.

15 CHAIRPERSON REID: Just basically this is a  
16 preliminary matter, but let us try and get this straight first. What is  
17 your case number?

18 MR. GLASGOW: Our case number is 16236.

19 CHAIRPERSON REID: One, six, two, three, six.

20 MR. GLASGOW: One, six, two, three, six, which is a  
21 BZA case, and the point is that they haven't brought that to your --  
22 they did bring it to your attention as a footnote. So if you look at a  
23 footnote in their pleading, you'll see that already in front of the BZA,  
24 filed in perhaps February of '97, was an application by Caslin  
25 Associates for a certificate of occupancy to operate a carting and  
26 hauling yard at 2160.

27 We intervened on behalf of lots of neighbors, George

1 Gaelich and Auto Body Supply Company. We filed pleadings. We've  
2 been waiting for an evidentiary hearing on those issues.

3 They realized that because the zoning regs. had  
4 already been noticed for 96-5, by the time Caslin had filed that  
5 certificate of occupancy, that certificate of occupancy had the clear  
6 hand of 96-5 on top of it.

7 That case has been waiting for an evidentiary  
8 hearing. What they say in their pleading is that apparently the BZA,  
9 without any notice to the intervenors, has somehow decided to hold,  
10 quote, in abeyance 16236 so that they can now come three years  
11 later, after a '96 decision, and appeal that decision in 1999 when so  
12 much has gone underneath the bridge.

13 CHAIRPERSON REID: That case -- are you saying  
14 that that case has been heard?

15 MR. GLASGOW: Has not been heard. We have  
16 been waiting to be heard.

17 CHAIRPERSON REID: You said that the BZA -- wait  
18 a minute. You said that the BZA is holding that case in abeyance.

19 MR. GLASGOW: Correct, Your Honor. That's their  
20 language, and without any notice to the intervenors in that case, which  
21 are many neighbors.

22 CHAIRPERSON REID: Okay, but where is that  
23 case? Where is that case now?

24 MR. GLASGOW: Physically it's in your files.  
25 Physically it's right out there.

26 CHAIRPERSON REID: It has not been heard?

27 MR. GILREATH: It's not before us. It's not on our

1 agenda.

2 MR. GLASGOW: And we're moving --

3 CHAIRPERSON REID: But you said that this case  
4 was from 1997.

5 MR. GLASGOW: Yes. It was filed -- it was filed in  
6 February of 1997.

7 CHAIRPERSON REID: Okay. Is that in the pipeline  
8 to be heard?

9 MR. HART: The files are here, but it is not on --

10 CHAIRPERSON REID: No, but is that something that  
11 we were planning on putting on the agenda in the future?

12 MR. HART: Yes.

13 CHAIRPERSON REID: And is that related to this  
14 case?

15 MR. HART: It's the same --

16 MR. GLASGOW: Same property.

17 MR. HART: That's right. Same address.

18 MR. GLASGOW: The same partner of Caslin  
19 Associates.

20 CHAIRPERSON REID: I'm trying to get some clarity.  
21 Wouldn't that have automatically have been included in this?

22 MR. HART: There are several -- well, there are a  
23 couple of different things. Because of the three cases that we should  
24 have spoken about today or dealt with today, one has been requested  
25 to be postponed by the applicant so it will further fragment the whole  
26 thing, and 16236 was not brought forward for today. These --

27 CHAIRPERSON REID: My question was should it not

1 have been included here since it is a related case.

2 MR. HART: Well, based on the fact that it's the same  
3 property and it's essentially the same problems and the same  
4 applicant, the same opposition, yes, but for some reason these were  
5 the two that were -- that were --

6 CHAIRPERSON REID: Three.

7 MR. HART: The three actually. These are the three.  
8 There is a problem there because the applicant has requested that the  
9 first -- the special exception be postponed.

10 CHAIRPERSON REID: Okay. You're requesting that  
11 the Case No. 16236 be included at the time that we consider these  
12 other three cases.

13 MR. GLASGOW: Absolutely, and we're also  
14 requesting that George Gaelich and Auto Body Supply Company be  
15 approved as intervenors in this case.

16 CHAIRPERSON REID: All right. All right. Now, you  
17 are a party?

18 MR. GLASGOW: I am an attorney for Auto Body  
19 Supply Company.

20 CHAIRPERSON REID: And Auto Body Supply  
21 Company has not been granted party status? Are you asking for party  
22 status?

23 MR. GLASGOW: Correct, Your Honor. We're asking  
24 for party status and --

25 CHAIRPERSON REID: And party status by virtue of  
26 the fact that you are an abutting property?

27 MR. GLASGOW: We are diagonally across from two

1 of the entrances used by Waste Management on Adams Place for  
2 their long haul trucks to come into the site.

3 CHAIRPERSON REID: How far are you away from  
4 the site?

5 MR. GLASGOW: Thirty feet, Your Honor. We're 30  
6 feet across the street from the most western entrance on Adams  
7 Place that their trucks use to encircle CMC properties to come back  
8 into 2160 Queens Chapel.

9 So they're technically 2160 Queens Chapel, but they  
10 have two entrances on Adams Place, which is essentially a 30 foot  
11 wide street.

12 CHAIRPERSON REID: Okay. Is there any --

13 MR. GLASGOW: And we have property abutting their  
14 eastern entrance on Adams Place and their western entrance.

15 CHAIRPERSON REID: Okay. Is there any reason  
16 why your concerns could not be handled through the ANC?

17 MR. GLASGOW: Your Honor, we are the property  
18 owner who's losing the property value. We've gone to the tax  
19 assessor three times. They've agreed with us each time that our  
20 property value has significantly decreased, by 30 percent, by this  
21 property value.

22 CHAIRPERSON REID: But my question was your  
23 particular position cannot be aired through your ANC?

24 MR. GLASGOW: Absolutely not, Your Honor. The  
25 ANC has no attorney. The ANC is essentially not representing my  
26 client's specific interests, nor is it capable of doing it, Your Honor. The  
27 ANC is capable of articulating issues, but they have none of the funds

1 necessary to bring attorneys before this committee. They have not --

2 CHAIRPERSON REID: Okay.

3 MR. GLASGOW: They have not been suffering the  
4 problems. They are a governmental body.

5 My client has employees who have for five years  
6 suffered severe disturbance by this kind of activity, the odors, the dust,  
7 et cetera, et cetera.

8 CHAIRPERSON REID: All right. Now, are you  
9 saying that you want party status -- are you requesting party status for  
10 all four cases or just for the 16236?

11 MR. GLASGOW: No, Your Honor, we are already a  
12 party in 16236.

13 CHAIRPERSON REID: Okay. You're already a party  
14 there.

15 MR. GLASGOW: Correct.

16 CHAIRPERSON REID: So you want party status in  
17 these three cases.

18 MR. GLASGOW: Exactly.

19 CHAIRPERSON REID: And you want that 16236 to  
20 be combined with these three?

21 MR. GLASGOW: Correct, Your Honor.

22 CHAIRPERSON REID: Okay.

23 MR. GLASGOW: Because these are similar factual  
24 issues, and they should be addressed so that the delay strategy of  
25 waiting three years to appeal a 1996 decision is not continued, so that  
26 we then have decisions appealed from the first two appeals and those  
27 two cases -- it's like a leapfrog delay strategy, Your Honor, that will tie

1 us up for ten more years unless we get all of these issues wrapped up  
2 together.

3 CHAIRPERSON REID: Okay.

4 MR. GLASGOW: Your Honor, I'm just bringing to  
5 your attention on the pleading that BZA has already heard 16041, and  
6 16041 is where the BZA ruled that the original 1994 certificate of  
7 occupancy, which is the only one that exists for this property, should  
8 have been revoked in 1994. That was orally decided in May of '95. It  
9 was written and --

10 CHAIRPERSON REID: Okay. Excuse me, sir. One,  
11 six, zero, four, one, that's another -- that's another related case?

12 MR. GLASGOW: Yes, Your Honor. That is in front of  
13 the D.C. Court of Appeals, but essentially the BZA ruled that the  
14 certificate of occupancy that they are standing on should have been  
15 revoked in 1994, and they have hung their hopes on undoing that BZA  
16 decision, but that BZA decision is a voluminous decision, and there's  
17 no sense in your ignoring that decision. It has a record. It has  
18 testimony, descriptions of how all of this came about.

19 So part of the problem has been that they have been  
20 able to piecemeal their attacks without the government having a broad  
21 enough perspective of exactly the problems, legally as well as  
22 factually, and I'm asking your --

23 CHAIRPERSON REID: Okay.

24 MR. GLASGOW: -- I'm asking your commission to be  
25 aware of the many public records that have already been established  
26 on the Zoning Commission 96-5, on the Zoning Commission 91-17, on  
27 the City Council's Solid Waste Facility Permit Act hearings that led to

1 the 1995 adoption of that act, the hearings that led to the NCP  
2 review of 96-5, as well as the hearings that led to the amendments of  
3 the Solid Waste Facility Permit Act.

4 These are all public records that you are certainly  
5 more than entitled to include through your administrative notice so that  
6 prior to this hearing, there is a great deal of body of knowledge and  
7 information that your commission can apprise itself of.

8 CHAIRPERSON REID: Okay.

9 MR. GLASGOW: Thank you very much.

10 MR. GILREATH: Madame Chair, I also think one of  
11 the things he covered in terms of background, including BZA previous  
12 acts, is right in our materials so we have access to that.

13 CHAIRPERSON REID: Okay, and then what we'll do  
14 is we will before we make any decisions, we'll hear what everyone has  
15 to say. All right? Yes.

16 MR. WILSON: Are you prepared to hear from us  
17 now?

18 Thank you, Your Honor.

19 My name is Benjamin Wilson. I'm with the law firm of  
20 Beverage & Diamond here in Washington, and we represent Waste  
21 Management in this application.

22 With your permission, what I'd like to do is first  
23 address the points made by Mr. Parker and then my colleague, Mr.  
24 Mishkin, will address the points made by Mr. Glasgow.

25 CHAIRPERSON REID: Okay. Well, what is your --  
26 what is your -- are you going to --

27 MR. WILSON: We represent Waste Management,

1 which is the applicant, with respect to these C of O applications that  
2 are the subject of the appeals today.

3 CHAIRPERSON REID: Do you have a position in  
4 regard to the request for postponement?

5 MR. WILSON: Yes, ma'am.

6 CHAIRPERSON REID: And so preface whatever you  
7 have to say with that, your position.

8 MR. WILSON: That's precisely what I will do.

9 CHAIRPERSON REID: Okay.

10 MR. WILSON: First of all, we do not have an  
11 objection, as Mr. Hart has indicated, to postponing the special  
12 exception hearing, and the reason we do not have an objection, it's  
13 different than that advanced by Corp. Counsel, but we believe that we  
14 are entitled to our certificate of occupancy as a matter of right.

15 I will not go into the merits of that. We'll have that  
16 perhaps later today in our hearing, but we believe that if, indeed, we  
17 have this hearing today on that C of O for carting and hauling, and if  
18 we are granted it as a matter of right, then it will not be necessary to  
19 have the special exception hearing, and as a matter of judicial  
20 economy, it won't be necessary for this Board to address that issue.

21 CHAIRPERSON REID: Wait, wait a minute. Are you  
22 saying -- what are you saying? That the carting and hauling aspect of  
23 your case is a matter of right?

24 MR. WILSON: Yes. We're saying that we are entitled  
25 to a certificate of occupancy as a matter of right for carting and hauling.

26 CHAIRPERSON REID: Well, why -- why is that an  
27 application for a special exception?

1 MR. WILSON: Well --

2 CHAIRPERSON REID: This is rather perplexing.

3 MR. WILSON: -- it is somewhat perplexing, but the  
4 fact of the matter is it was never intended that that special exception  
5 hearing issue be heard now, and indeed, it is our position that the  
6 special exception requirement should not apply to a 1995 application  
7 that was filed prior to the passage of amendments which created the  
8 special exception.

9 In short, we should be governed by the rules as they  
10 existed in 1995 at the time our application was filed, and at that time  
11 there was no requirement for a special exception hearing.

12 CHAIRPERSON REID: So you're saying you're  
13 grandfathered?

14 MR. WILSON: Yes, ma'am, we're grandfathered.  
15 We're entitled based on the rules as they existed at the time we  
16 applied.

17 MS. KING: Is there a grandfather provision in the  
18 legislation?

19 MR. WILSON: Literally, Your Honor, yes. What the  
20 legislation indicates is that one is, in fact, entitled to a C of O for  
21 carting and hauling to a terminal or yard. That's precisely what we do  
22 with solid waste, and the regulations indicate, and, Ms. King, we say  
23 so on pages 14 and 15 of our prehearing statement, that the new  
24 regulations that were set down in February of 1996 and that became  
25 final in March of 1998 are to apply prospectively.

26 The regulations specifically say they shall not apply  
27 retroactively, and therefore, we say as a matter of right we are entitled

1 under the regulations as they then existed at the time of our  
2 application in 1995.

3 CHAIRPERSON REID: Okay, but how did you get  
4 here?

5 MR. WILSON: Well, we got here by --

6 CHAIRPERSON REID: The Zoning Administrator?

7 MR. WILSON: Yes. The Zoning Administrator, but  
8 we also filed the appeal, and the appeal that is before you today -- we  
9 have two appeals that are before you today, one for carting and  
10 hauling, C of O application of November 21, 1995; and there is a  
11 second appeal of that same date for the name change application.

12 There, again, we would agree with Corporation  
13 Counsel that that name change application C of O hearing can be  
14 postponed. Why? Because that issue is the subject of a hearing  
15 before the Court of Appeals of the District of Columbia right now. The  
16 briefing on that has been completed. The arguments have not taken  
17 place.

18 And so that may be an issue, again, that this Board  
19 would not have to spend its good, valuable time on if, in fact, the Court  
20 of Appeals rules as we anticipate that they will, that the name change  
21 application C of O is appropriate.

22 In the meantime, Your Honor, Waste Management  
23 has expanded a great deal of time and a great deal of effort to be  
24 prepared for this C of O hearing on carting and hauling today. A  
25 continuance will cost us more, contrary to what Corporation Counsel  
26 has said.

27 Yes, we've gotten ready, but if we have to hurry up

1 and wait, as they say in the Army, until September, we're going to  
2 have to spend time getting ready a second time.

3 Notice of this hearing on our C of O application for  
4 carting and hauling has been in the D.C. Register since May 14, more  
5 than 40 days. Yes, I believe them when they say that they were not  
6 contacted by DCRA until recently, that DCRA wanted their assistance  
7 of counsel. I have no reason to disbelieve that. They are honorable  
8 people.

9 But Waste Management should not be penalized.  
10 Justice delayed is justice denied.

11 Very briefly, and you've been very patient with me,  
12 and I'll try to be brief, our C of O application for carting and hauling  
13 has been pending since November of 1995. Now the District  
14 government seeks to have this hearing delayed further.

15 There are some who believe that the District of  
16 Columbia should have no solid waste transfer stations, and we believe  
17 that they're wrong. In a time of economic development, we don't  
18 understand why the District of Columbia would be the only major city  
19 in American without any --

20 CHAIRPERSON REID: Wait. Now, you're getting  
21 into the carriers.

22 MR. WILSON: No, ma'am.

23 -- without any solid waste transfer station, and  
24 ultimately, Your Honor, respectfully, the question is going to turn on  
25 this. Ultimately, who is going to run this? Will it be the rogues who  
26 have dominated the solid waste transfer stations in the District for  
27 years?

1 CHAIRPERSON REID: Well, no, no, no.

2 MR. WILSON: Or responsible --

3 CHAIRPERSON REID: I have to stop you right there.  
4 What you have to do is basically just capsulize the reason why you do  
5 not want to see this case continued today, and you've done that.

6 MR. WILSON: Yes, ma'am.

7 CHAIRPERSON REID: You've done that.

8 MR. WILSON: All right.

9 CHAIRPERSON REID: We hear you.

10 MR. WILSON: Okay.

11 CHAIRPERSON REID: What we're going to do, I  
12 think --

13 MR. WILSON: Ms. Reid, may I respectfully ask that  
14 Mr. Mishkin be heard on the points that Mr. Glasgow raised?

15 CHAIRPERSON REID: Yes.

16 MR. WILSON: Thank you.

17 MR. MISHKIN: I'm Andrew Mishkin. I'm with the law  
18 firm of Dwayne, Morris & Butcher, also representing Waste  
19 Management.

20 Just one point of clarification and then a response on  
21 the proposal by the proposed intervenor.

22 Caslin Associates is the owner of the property on  
23 which the facility that Waste Management is the manager of is  
24 located. Waste Management and Caslin are not partners. They are  
25 independent entities that have no other relationship other than  
26 contractual, and we would like the record to reflect that.

27 With respect to the request by the proposed

1           intervenor that the Caslin case be consolidated with the Waste  
2           Management case, it's Waste Management's position, and we believe  
3           it's also Caslin's position, that that should not be done.

4                           In the first instance, Caslin is not -- Caslin is not here  
5           today. Its counsel is not here today. So we would respectfully request  
6           that it would be inappropriate for the Board to grant a move to  
7           consolidate a case with the Waste Management case where counsel  
8           for the party whose case is to be consolidated is not even present to  
9           express his views.

10                          Now, the record does show, and it was disclosed in  
11           Waste Management's prehearing statement that Caslin did file an  
12           appeal of a denial of a request for a certificate of occupancy. That  
13           appeal is pending before this Board. Caslin has requested and Waste  
14           Management has joined in that request that the Caslin proceeding be  
15           held in abeyance pending the resolution of the Waste Management  
16           appeal and/or request for special exception.

17                          And the reason for that is very simple, which is that if  
18           the Waste Management matter is resolved in favor of Waste  
19           Management, then the Caslin proceeding would be withdrawn, and  
20           there would be no need for the Board to hear the Caslin appeal.

21                          So we would request that at this point the Board not  
22           grant any motion to consolidate these cases at this time.

23                          CHAIRPERSON REID: I think that --

24                          (The Board conferred.)

25                          CHAIRPERSON REID: Because of the rather  
26           convoluted nature of the request and the opposition to the request, I  
27           think what we're going to do is take a few minutes and go into

1 executive session and discuss the merits, and then we'll come back  
2 and give you a decision in just a few minutes.

3 (Whereupon, the foregoing matter went off the record  
4 at 1:30 p.m. and went back on the record at 2:02  
5 p.m.)

6 CHAIRPERSON REID: All right. We will please  
7 come back to order.

8 After having taken the various issues that we have  
9 heard this afternoon into consideration, we have determined that the  
10 responses to the various requests are as follows.

11 One, the request for intervenor status by Mr. -- is it  
12 Glasgow?

13 MR. GLASGOW: Correct.

14 CHAIRPERSON REID: We have decided to grant  
15 you the intervenor status.

16 MR. GLASGOW: Thank you.

17 MS. KING: Madame Chair, may I say --

18 CHAIRPERSON REID: Un-huh.

19 MS. KING: -- that we've asked also as Corporation  
20 Counsel to tell us exactly what the privileges are of intervenors in an  
21 appeal such as this. Are they identical to parties in a regular  
22 application or is there some other?

23 So we've asked for clarification of that so that we will  
24 know what it is before we hold the next hearing.

25 MR. GLASGOW: Could I ask that I share in whatever  
26 input they give to you?

27 CHAIRPERSON REID: Yes, you will be so notified.

1 MS. KING: Or you can consult with the staff.

2 MR. GLASGOW: Thank you.

3 MS. KING: With Paul.

4 CHAIRPERSON REID: The second item was in  
5 regard to the continuation, the request from the ANC, as well as from  
6 Corp. Counsel's office. We have determined that we would continue  
7 this case until September, given the fact that the ANC's letter to us  
8 stipulated that they had not had adequate time to prepare, and also  
9 the letter from Corp. Counsel likely stated that they needed additional  
10 time to be able to correctly assess and to make whatever  
11 recommendations or whatever -- the proffer to us whatever they need  
12 to proffer. So they will be granted the continuance, the additional  
13 time.

14 And may I add that we will try to schedule a day, one  
15 day, to be able to address this issue, this particular case fully because  
16 of the fact that it is very involved.

17 And, Mr. Hart, can you give us a date certain?

18 MS. KING: Well, Mr. Gilreath has to check his  
19 calendar, but it will probably --

20 CHAIRPERSON REID: It will be after the first week in  
21 September.

22 MS. KING: It will probably be Wednesday of the  
23 second week in September.

24 MR. GILREATH: I will definitely be here then, and I  
25 may -- it may be possible I may just take maybe a day or two to take  
26 my daughter to school. So there may not be any conflict, but I will let  
27 you know in a matter of days what the situation is the first week of

1 September.

2 MR. HOOD: Madame Chair, may I also add that we  
3 also asked the Department of Health to give us any environmental  
4 issues affecting this case.

5 CHAIRPERSON REID: Okay. You requested that  
6 through the Director.

7 MR. HOOD: Right. I just wanted to put that on the  
8 record.

9 CHAIRPERSON REID: Okay.

10 MS. KING: And I think that we -- that we decided that  
11 we would not -- that we were going to instruct staff to contact the  
12 Advisory Neighborhood Commission. The Corporation Counsel is  
13 here, but that we would not be sympathetic to a further request for a  
14 postponement. We are sympathetic to the fact that ANCs don't  
15 usually meet during July and August, but since we are continuing this  
16 for them, that they will need to take official action at some point before  
17 the whatever date we establish in the second week of September or  
18 whenever it is.

19 CHAIRPERSON REID: I'll recognize you. Just a  
20 moment.

21 Mr. Hart, are you still looking for the --

22 MR. HART: Oh, I thought the --

23 CHAIRPERSON REID: What date?

24 MR. HART: Mr. Gilreath -- is he --

25 MR. GILREATH: Well, right now the first week of  
26 September is uncertain.

27 MR. HART: Right.

1 MR. GILREATH: Now, the second week I will be  
2 here.

3 MR. HART: Why don't we work --

4 MR. GILREATH: And I may be here most of the first  
5 week. I'm just not sure, but there's some question about the first week  
6 of September for me.

7 MS. KING: When's our first September meeting?

8 MR. HART: Our first September meeting would be on  
9 the September 1.

10 MR. GILREATH: That's close.

11 MR. HART: And the hearing will be the 15th. So  
12 we're talking about I would suggest that we go after the hearing either  
13 the 8th or the 22nd. It does not have to be on a Wednesday; is that  
14 correct?

15 CHAIRPERSON REID: Yes, but Wednesday is okay  
16 since we --

17 MR. HART: All right. The 8th or the 22nd.

18 CHAIRPERSON REID: The 8th, does that seem to  
19 jibe with most everyone's calendar? The 8th at 9:30, September 8th  
20 at 9:30. All right.

21 MS. KING: But there will be a proper publication and  
22 proper circulation of notice and so forth, will there not?

23 CHAIRPERSON REID: Mr. --

24 MS. KING: Or will there be?

25 CHAIRPERSON REID: Mr. Hart?

26 MR. HART: They would have to do -- let me see.

27 MS. KING: There will be -- we're not required to give

1 notice to the parties?

2 MR. HART: Yes, we need the party -- we need --

3 MS. KING: Let's not set an absolute date now.

4 MR. HART: Yes, I would prefer that.

5 MS. KING: But let's -- I mean, it has to be done 40  
6 days in advance.

7 MR. HART: That's right.

8 MS. KING: And even though it's not required,  
9 Madame Chair, I would suggest that we ask staff to inform the  
10 intervenors, the petitioners, and the ANC and the Corporation Counsel  
11 to make sure that everybody knows.

12 CHAIRPERSON REID: All right. Why not set a date  
13 certain?

14 MS. KING: I don't care.

15 CHAIRPERSON REID: I prefer to do that because  
16 when we -- Mr. Hart?

17 MR. HART: Yes.

18 CHAIRPERSON REID: When we set a date, a  
19 continuance date, at this hearing, then we don't have to publicize it  
20 then, do we?

21 MR. HART: That's correct. We don't have to  
22 publicize it.

23 CHAIRPERSON REID: So this is notice at this  
24 hearing, as well as the fact that since the ANC is not here and was  
25 specifically so notified that entity --

26 MR. HART: Yeah, but that was the other case has  
27 not been noticed, the Caslin case. You know, that case has not been

1 noticed, and --

2 CHAIRPERSON REID: Oh, I see.

3 MS. KING: We haven't got into that yet.

4 MR. HART: Okay.

5 CHAIRPERSON REID: Okay.

6 MR. HOOD: But I still think that if we could, I know  
7 that if we announce a certain date here that we don't have to publicize  
8 it, but I still think it would be in the best interest of the city that we still  
9 publicize it if at all possible.

10 MS. KING: Oh, no, we have to publish notice.

11 MR. HOOD: Right, but she was saying if we make a  
12 certain date here now --

13 CHAIRPERSON REID: At the hearing we didn't have  
14 to.

15 MR. HOOD: -- we didn't have to publicize it, but I  
16 would still like to encourage us to.

17 CHAIRPERSON REID: In this instance, she wants it  
18 to be --

19 MR. HOOD: In this case we need to publicize it.

20 CHAIRPERSON REID: Okay. Well, I have no  
21 problem with that.

22 Mr. Glasgow?

23 MR. GLASGOW: Thank you very much, Madame  
24 Chairperson.

25 The issues in this case are significant, and they are  
26 legal issues, that even if this hearing had begun today would have had  
27 to had preliminary legal determinations.

1 I would propose that the commission recognize that  
2 and set up a briefing schedule on parties so far to identify key legal  
3 issues, giving, you know, a briefing date, for example, to me to identify  
4 what legal issues I see; have the proponents identify the legal issues  
5 that they see; and then have a chance, an opportunity for the other  
6 parties to respond to that so that when you first meet in September  
7 those issues can be resolved by you.

8 For example, one of the key issues is is it customary,  
9 is it traditional, is it useful, is it possible for somebody to sit on a  
10 Zoning Administrator order of 1996 and wait three years and then  
11 appear it in 1999.

12 CHAIRPERSON REID: Okay, but, Mr. Glasgow, and  
13 I'm cutting you off, this is what Mr. Hart will be doing. He will, in  
14 developing the time line, determine what time to give each entity to be  
15 able to submit, and then the prehearing submissions, and then to give  
16 the other side an opportunity to respond to that submission before the  
17 hearing.

18 MS. KING: Have you done --

19 MR. GLASGOW: What I would propose, Madame  
20 Chairperson, is that one of the key issues is to dismiss delayed, sat on  
21 appeal, and if that is ruled in favor of dismissing the appeal, then the  
22 preparation for the evidentiary hearing will not have been necessary.

23 What I would suggest is that there be a separate date  
24 for determining the underlying legal issues, which will also be  
25 evidentiary issues.

26 CHAIRPERSON REID: That's not something -- just  
27 one second. That's not something that we commonly do.

1 MS. KING: No, I mean, timeliness would be an issue  
2 in any presentation by the -- by the intervenor or whomever, and then  
3 you respond to each other's presentations.

4 CHAIRPERSON REID: That's the way it's commonly  
5 done. We don't usually set a date for briefings per se.

6 MS. KING: But there will be dates for submission.  
7 Have we dealt with the issue of the Caslin case?

8 CHAIRPERSON REID: No, we haven't gotten to that  
9 yet.

10 MS. KING: Maybe we should deal with that before  
11 the two attorneys start talking.

12 CHAIRPERSON REID: Okay. Let us finish what our  
13 determinations have been, and then you can continue if you have  
14 anything else you'd like to say.

15 MS. YOUNG: May I just say this? The rules do  
16 provide in 11 DCMR 3320.3 -- it provides for you to request at any  
17 time that the parties, the respective parties, state their positions  
18 concerning any issue in the process, the theory -- and theory in  
19 support of the issues, and it also says that you can hold conferences  
20 on various issues sent to the parties.

21 So although it's not your normal procedure, I think if  
22 you wanted to have that kind of briefing schedule, that's available to  
23 you based on a request, if you consider it as a request that they state  
24 their respective positions concerning the different issues.

25 CHAIRPERSON REID: Let me hear from -- give me  
26 your name again.

27 MR. WILSON: My name is Benjamin Wilson.

1 CHAIRPERSON REID: -- Mr. Wilson on this matter.

2 MR. WILSON: I just wanted to note that Section  
3 3320.3 relates to procedures that occur during the course of a  
4 hearing, not as to what occurs prior to hearing. So I would respectfully  
5 disagree.

6 I did want to ask, Your Honor, that if this is to be reset  
7 for hearing just two very brief points. One, I believe Corp. Counsel  
8 joins with us on that, and I believe it may have been a staff  
9 recommendation, but I'm not certain, but when this is to be heard, we  
10 would still respectfully request that the appeal related to carting and  
11 hauling be heard and resolved first, and that the special exception  
12 hearing be held in abeyance because it may not prove necessary  
13 depending on your ruling.

14 And the second point I did wish to make, and Mr.  
15 Parker?

16 MR. PARKER: Yes.

17 MR. WILSON: He pointed out that we are not going  
18 to be harmed if we -- if this hearing is delayed because we are an  
19 ongoing business, and we have been subject to citation for operating  
20 without a C of O permit, and in light of the fact that it is Corp. Counsel  
21 and DCRA who are asking for this extension, we would respectfully  
22 request some restraint during this time period until such time as these  
23 appeals are resolved.

24 MS. KING: I'm not sure that we have the authority to  
25 do that.

26 MR. HOOD: And I, Madame Chair, wouldn't be in  
27 favor of that because they may be having some other violations over

1           there aside from what we are dealing with. We don't want to try to  
2           push anything like that. So I'm against any set-aside violations.

3                       MR. WILSON: No, we're not referring to -- we are  
4           only referring to citations with respect to operating without a C of O.  
5           I'm not referring to any other matters, Mr. Hood. I respect your point  
6           and agree with it.

7                       CHAIRPERSON REID: We've done that before, Mr.  
8           Hood.

9                       MR. HOOD: In that case I can agree with that.

10                      CHAIRPERSON REID: Yeah.

11                      MR. HOOD: As long as we're delaying, which is  
12           clear.

13                      MR. WILSON: Okay. Thank you, sir.

14                      CHAIRPERSON REID: And I have to talk to Corp.  
15           Counsel more about how it's done, but if, in fact, it is a matter of us  
16           continuing the case, that you should not have to be penalized in the  
17           interim until we get to the hearing date.

18                      MR. PARKER: I'd just like to state our position for the  
19           record. I've consulted with --

20                      CHAIRPERSON REID: Give your name, please.

21                      MR. PARKER: I'm sorry. Are you back on?

22                      Okay. Arthur Parker, again, on behalf of the District  
23           of Columbia and DCRA.

24                      I've discussed with DCRA this situation, and we can  
25           take the position that during this period of time until the next hearing  
26           we're not going to take any enforcement action regarding their failure  
27           to have appropriate C of O --

1 CHAIRPERSON REID: Okay.

2 MR. PARKER: -- on this facility only, and we reserve  
3 all our rights to issue enforcement citations for other issues --

4 CHAIRPERSON REID: Okay.

5 MR. PARKER: -- outside of the C of O issue.

6 CHAIRPERSON REID: I think that's understood, Mr.  
7 Wilson.

8 MR. WILSON: That's satisfactory. It's understood.  
9 We appreciate it. Thank you.

10 CHAIRPERSON REID: Thank you.

11 MR. PARKER: You wanted to finish your ruling.

12 CHAIRPERSON REID: Okay.

13 MR. PARKER: I have some other comments, but I'd  
14 like you to finish your ruling.

15 CHAIRPERSON REID: The other item was in regard  
16 to the consolidation. Given the fact that there is no attorney present  
17 for Caslin today, we, therefore, rule that it would not be appropriate to  
18 consolidate the cases.

19 However, what we have agreed to do is to schedule  
20 the cases on the same day, and when we -- the date that we have the  
21 actual hearing, which is supposed to be September 8th, we will then  
22 make the determination as to whether or not we will consolidate at that  
23 time.

24 MS. KING: In the meantime, Caslin will be given a  
25 copy of the motion to consolidate, and we will make a decision in the  
26 consolidation after they have had an opportunity to comment.

27 CHAIRPERSON REID: Okay. In addition, we will

1 hear Case No. 16451 and 16452, the cases that deal with the appeal,  
2 prior to and if it is necessary for the hearing of Case No. 16453, which  
3 is the special exception case.

4 Now --

5 MR. HOOD: Madame Chair, I have a point of  
6 clarification.

7 CHAIRPERSON REID: Sure.

8 MR. HOOD: Did we decide on September the 8th?  
9 Was that going to be the date?

10 CHAIRPERSON REID: I think so.

11 MR. HOOD: No, it is my understanding that we were  
12 supposed to -- you know, I had to work up some dates, and we hadn't  
13 --

14 MS. KING: No, it's September the 8th, Paul.

15 MR. HOOD: What is September the 8th?

16 CHAIRPERSON REID: If, in fact, that's available and  
17 if no one has a scheduling conflict there, then we can go ahead and  
18 set it now.

19 MR. HOOD: Okay. Set it now.

20 MR. GLASGOW: May I reply?

21 CHAIRPERSON REID: Okay. Now.

22 MR. GLASGOW: I'm not sure that that's going to give  
23 parties enough time to do the work and also go on vacation. I'll  
24 certainly do my work. I always do even if I don't have vacation.

25 MS. KING: It's two months.

26 MR. GLASGOW: But it seems to me that --

27 CHAIRPERSON REID: Two months from today?

1 MR. GLASGOW: -- to identify issues, to get replies  
2 back, then to prepare for the hearing, September 8th is acting as  
3 though everyone's at work in August when half of us will be in Chicago  
4 on vacation.

5 CHAIRPERSON REID: Wait. Mr. Glasgow, let's just  
6 see.

7 Mr. Hart, have you developed a time line?

8 MR. HART: Yes, a time -- well, first, the longest time  
9 line, the longest parameter is 40 days, and we'd have to start working  
10 almost immediately. We are about two to three weeks left in July and  
11 through August, you know, that's --

12 CHAIRPERSON REID: We'll recess.

13 MR. HART: It's going to be real close.

14 CHAIRPERSON REID: Well, do we think that  
15 perhaps we may want to do it the 26th of September. Would that be  
16 more realistic?

17 MR. HART: The 22nd of September?

18 CHAIRPERSON REID: The 22nd?

19 MR. HART: Yes, I -- you know, I think that would give  
20 us more wiggle room.

21 CHAIRPERSON REID: Is that amenable to everyone  
22 here, the 22nd of September?

23 MS. KING: That will be nine days before --

24 MR. WILSON: That will be fine, Your Honor.

25 MS. KING: It will have to be concluded by the end of  
26 October or there's no point in my sitting.

27 CHAIRPERSON REID: Okay. We'll make sure we

1 do that.

2 MS. KING: I mean the decision and everything all in.

3 CHAIRPERSON REID: Yes, yes, by the end of  
4 October.

5 September 22nd, 9:30.

6 MR. WILSON: Madame Chair, I did not appreciate  
7 what Ms. -- should we -- I didn't understand what Ms. King was saying  
8 to you.

9 MS. KING: I was saying my term ends on the -- at the  
10 end of September.

11 MR. WILSON: Yes, ma'am.

12 MS. KING: And I will not be -- although the law  
13 permits me to serve beyond the end of my term, I will not be available  
14 beyond the end of October. So by scheduling it on the 22nd of  
15 September, you know, I can come back, and that will be the last case  
16 I'll ever hear. I can come back in October for decision making, but will  
17 not be available after the 30th, 29th or 30th of October.

18 MR. GILREATH: And the Board feels that Ms. King,  
19 who has served in various capacities in the District government over  
20 the years, she's very knowledgeable and very able, and hopefully this  
21 could be concluded while she's still on the Board. To lose her  
22 presence would be a significant loss.

23 MS. KING: Besides which my successor would have  
24 to read so much material it wouldn't be fair.

25 MR. PARKER: I wanted to be heard on --

26 CHAIRPERSON REID: Your name?

27 MR. PARKER: Oh, again, I'm sorry. Arthur Parker on

1           behalf of the District of Columbia.

2                           On the proposal to possibly have a date in advance of  
3           the evidentiary hearing date to discuss the legal issues, I'm not sure if  
4           the Board is of the mind that they can do that or not do that at this  
5           point, but to the extent that you need some input from the District, we  
6           would think that would be productive, to have a hearing in advance of  
7           the 20 -- the 26th or whatever the date is --

8                           MR. HART: Second.

9                           MR. PARKER: -- that we're going to have the --

10                          CHAIRPERSON REID: 22nd.

11                          MR. PARKER: -- evidentiary hearing on the legal  
12           issues only because I can foresee that based on the number of parties  
13           that are attempting to be involved in here and address these issues,  
14           and that some of the issues as outlined by the intervenor could very  
15           well be dispositive; that it makes sense to try to do that, but I defer to  
16           the Board in the exercise of its discretion as to how it wants to  
17           schedule that.

18                          MS. KING: Do we have to make a decision on that  
19           now?

20                          MR. PARKER: Yeah, there's no need to make it now.  
21           You just have to notify the party that you want to bring this in.

22                          MS. KING: Notify the parties, of course, but if we're  
23           not doing the -- if we're not doing the case until the 22nd of  
24           September, we give ourselves some more wiggle room to fiddle  
25           around with dates and so forth, but it seems to me that that might be  
26           wise.

27                          CHAIRPERSON REID: Yeah, Mr. Parker. What we'll

1 do is take it under advisement and then make a decision.

2 MR. PARKER: And that should be -- when you make  
3 that decision, that should be in conjunction with your briefing schedule  
4 order so that the briefs are in place and the responses are in place  
5 and that we then appear for the arguments.

6 CHAIRPERSON REID: Okay. Thank you.

7 Mr. Wilson.

8 MR. WILSON: Yes, Benjamin Wilson for Waste  
9 Management, Your Honor -- Madame Chair. Excuse me.

10 While I do believe that you all have the right to waive  
11 your rules, the rules literally do contemplate the departure that's being  
12 suggested here would happen during a hearing and not before a  
13 hearing, and again, we just think that to the maximum extent possible  
14 if this can be done in accordance with your ordinary process with as  
15 few departures as possible, we think that's the better course, and  
16 that's just our --

17 CHAIRPERSON REID: Thank you.

18 MR. WILSON: Thank you.

19 MR. GILREATH: You're saying the evidentiary part of  
20 it should not occur, and it all occur at the actual hearing itself is what  
21 you're saying?

22 MR. WILSON: I say if that's the way -- that's my  
23 understanding as to how you normally conduct these, and our request  
24 would be that you handle it in the manner that you normally conduct.

25 MR. GILREATH: What if they submit -- the various  
26 parties submit their legal briefs, we get them ahead of time, and we  
27 read them and are able to discuss the matter with our Corporate

1 Counsel. Do you think we can become sufficiently knowledgeable and  
2 so forth to be able to make a decision?

3 CHAIRPERSON REID: I think if we need a departure  
4 from what we commonly, normally -- our normal course or procedure  
5 would have to be discussed more in depth with Corp. Counsel before  
6 we make a decision on that, and then we will do that and --

7 MS. KING: And not the part of Corporation Counsel  
8 that is --

9 CHAIRPERSON REID: No, not the Enforcement  
10 Division.

11 And then we'll -- you take that to each entity.

12 MR. GILREATH: Then they'll need to be advised  
13 early on as to particularly if they need to prepare for an evidentiary  
14 hearing.

15 CHAIRPERSON REID: And we'll make sure that's  
16 done.

17 MR. GILREATH: Okay.

18 CHAIRPERSON REID: Yes, Mr. Glasgow.

19 MR. GLASGOW: Your Honor, it seems to me that we  
20 began the hearing already, that the objection from Waste  
21 Management --

22 CHAIRPERSON REID: No, no, no, no. This is not a  
23 hearing.

24 MR. GLASGOW: That what we're asking for is a  
25 continuance.

26 CHAIRPERSON REID: This is --

27 MR. GLASGOW: What has been asked for is a

1 continuance of the hearing.

2 CHAIRPERSON REID: Yeah, no what this is --

3 MR. GLASGOW: So that it opened and now it's being  
4 continued.

5 CHAIRPERSON REID: No, what we're doing is  
6 preliminary matters only. We have not gotten to the hearing and the  
7 scope of the case at all.

8 MR. WILSON: Madame Chair, just one final point.  
9 Our preliminary statement or brief has been submitted. Obviously we  
10 would like to have an opportunity to respond to what others may say in  
11 opposition, and we'll do so at whatever time this Board says.

12 We thank you very much.

13 CHAIRPERSON REID: Okay. Mr. Hart, did you  
14 make that time line now based on the 26th, the date of the 26th?

15 MS. KING: The 26th of September or the 22nd of  
16 September?

17 MR. HART: It's the 22nd.

18 CHAIRPERSON REID: The 22nd, the 22nd of  
19 September.

20 MR. HART: All submissions should be in no later  
21 than the 16th of September.

22 MS. KING: They have got to have time to respond to  
23 each other.

24 CHAIRPERSON REID: The 16th of September?

25 MR. GLASGOW: I'm sorry, Your Honor. I didn't hear  
26 that.

27 MS. KING: Put it earlier. Put it a week earlier than

1 that --

2 MR. HART: Okay, all right.

3 MS. KING: -- and then responses to submissions.

4 MR. HART: Okay. I just had submissions to get to  
5 the Board.

6 CHAIRPERSON REID: We've got with that the whole  
7 month of August.

8 MR. HART: All right.

9 MR. PARKER: Could we suggest some dates --

10 MS. KING: Yeah, do.

11 MR. PARKER: -- inasmuch as we're the ones that  
12 are going to have to deal with the rulings?

13 I would suggest that we have until what, the 15th or  
14 20th of August for initial submissions?

15 MR. GLASGOW: I'd do it earlier.

16 MR. PARKER: That's my request.

17 MR. GLASGOW: I'll defer to the government.

18 MR. WILSON: I can live with that. Let's make it  
19 August the 20th.

20 MR. PARKER: And then the response is due on --  
21 when is Labor Day? Can anybody tell?

22 CHAIRPERSON REID: The 7th?

23 MR. WILSON: It's later this year.

24 MR. PARKER: The 6th. How about -- how about the  
25 Monday that follows Labor Day? Is that reasonable?

26 MR. WILSON: That sounds fine.

27 MR. PARKER: The 13th.

1 CHAIRPERSON REID: Who have a calendar? He  
2 has a calendar, right?

3 MR. HART: The 7th is a Monday. The Labor Day is  
4 actually Monday. So you're talking about the Tuesday after.

5 MR. PARKER: Right.

6 MR. HART: Okay. It's the 7th.

7 MR. PARKER: No, no, the Monday after Labor Day.

8 CHAIRPERSON REID: You said the Monday after  
9 Labor Day.

10 MR. PARKER: Right.

11 CHAIRPERSON REID: So that's a week.

12 MR. HART: The 13th.

13 MR. PARKER: That's the 13th, and then we're asking  
14 -- our hearing is when, schedule now the 26th?

15 CHAIRPERSON REID: The 22nd.

16 MR. PARKER: The 22nd?

17 MS. KING: Two, two.

18 MR. HART: Two, two, yeah.

19 MR. PARKER: Okay. So that -- does the Board feel  
20 that's enough time to review the documents or do you want us to  
21 move the final responses back?

22 MS. KING: Say again now. August what?

23 MR. PARKER: August 20 for the initial submissions.

24 MS. KING: Okay, and then?

25 MR. PARKER: And August 13th for the responses.

26 MS. KING: No.

27 MR. PARKER: I'm sorry. September 13th.

1 MS. KING: September 13th.

2 MR. WILSON: And September 22nd for our hearing.

3 MR. PARKER: Then the question goes to the Board  
4 whether that's enough time for you to review all of the submissions.

5 MS. KING: Well, we don't get the documents until the  
6 Friday before the meeting.

7 CHAIRPERSON REID: Before the meeting is the day  
8 that we get all of our packages. So it would be efficient, yes. To  
9 answer your question, yes.

10 MR. HOOD: Madame Chair, I would think hopefully  
11 as documents come in --

12 MR. HART: Yes.

13 MR. HOOD: -- Mr. Hart, if we can get them so that we  
14 can have time to review because it's going to be quite a bit --

15 CHAIRPERSON REID: If that is what you would like  
16 to have done, then that sounds good to me. I have no problem with it.

17 MR. HOOD: It will give us sufficient time.

18 CHAIRPERSON REID: Start to basically distribute  
19 the documents as they come in.

20 MS. KING: Right.

21 CHAIRPERSON REID: And then we'll conclude it  
22 when we get our packages the week before the hearing.

23 PARTICIPANTS: Okay.

24 CHAIRPERSON REID: Board members, do you have  
25 anything else to say? Anything else you want to say?

26 MS. KING: No.

27 MR. HART: Yes, but the absolute cutoff date for

1 these documents coming in would be the 16th.

2 MR. WILSON: No, not the 16th. As I understand it,  
3 it's August 20th for the first brief.

4 MR. HART: Sure.

5 MR. WILSON: September 13th for a response.

6 MR. HART: Correct.

7 MR. WILSON: The absolute cutoff for either of those  
8 is the --

9 MR. HART: The 16th.

10 MR. WILSON: -- 20th of August and the 13th --

11 MR. HART: No, no, no, no.

12 MR. WILSON: -- of -- of -- they're due when they're  
13 due.

14 CHAIRPERSON REID: One more time.

15 MS. KING: No, but -- but --

16 CHAIRPERSON REID: One more time.

17 MS. KING: -- for anybody else who wants to weigh in  
18 on this matter and for the ANC and so forth --

19 MR. HART: Exactly.

20 MS. KING: -- the legal deadline?

21 MR. HART: Is the 16th. That's correct.

22 CHAIRPERSON REID: The 16th of? Mr. Hart, the  
23 16th of?

24 MR. HART: September.

25 CHAIRPERSON REID: Of September?

26 MR. HART: Yes.

27 CHAIRPERSON REID: The initial submission is due

1 August the 20th.

2 MR. HART: Okay. The initial submission is August  
3 20th.

4 CHAIRPERSON REID: All right.

5 MS. KING: Responses?

6 MR. HART: The responses are due to the initial  
7 submissions September the 13th. All right?

8 CHAIRPERSON REID: Okay.

9 MR. HART: That is the Monday after --

10 MS. KING: That's agreed amongst the lawyers here,  
11 but anybody else who wants to weigh in on this and any other  
12 documents in the case have to be received here by the close of  
13 business on the 16th of September.

14 MR. HART: That's exactly right.

15 And also I have the directive to submit the documents  
16 to the Board as they come in.

17 MS. KING: Okay.

18 MR. HOOD: I really think that as you get a batch.

19 MR. HART: Yes.

20 MR. HOOD: Maybe not one by one.

21 MR. HART: Sure, sure, sure.

22 MR. HOOD: Cost effective.

23 CHAIRPERSON REID: Okay.

24 MS. KING: And you need to be in touch with the ANC  
25 to let them know they'll be -- what's happened today.

26 CHAIRPERSON REID: Yeah, they have --

27 MR. HART: Sure.

1 MS. KING: If you'd be so kind.

2 CHAIRPERSON REID: And that we expect for them  
3 to have a meeting in August so that they could be prepared for --

4 MS. KING: Or whenever. If they can do it in July, but  
5 they have to be prepared.

6 CHAIRPERSON REID: Yes.

7 MR. HART: They need to be prepared.

8 MS. KING: And to ask the director to contact the  
9 Department of Health about the environmental concerns.

10 CHAIRPERSON REID: All right. That concludes  
11 today's hearing.

12 MR. HART: Just one more thing, please. The  
13 persons who are here who have been involved in all of this, please  
14 make sure that I have your business card.

15 PARTICIPANTS: Sure.

16 MR. HART: Because that's the best way for me to  
17 keep in touch with you.

18 CHAIRPERSON REID: Okay. Thank you.

19 (Whereupon, at 2:30 p.m., the hearing was  
20 concluded.)