

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 23, 2001

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:59 a.m., Robert N. Sockwell, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL Chairperson
ANN RENSHAW Board Member

ZONING COMMISSION MEMBER PRESENT:

HERBERT FRANKLIN Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

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

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| | |
| PHIL T. FEOLA, ESQ | 6 |
| Shaw Pittman | |
| 2300 N Street, N.W. | |
| Washington, D.C. 20037 | |
| (202) 663-8789 | |

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

(9:38 a.m.)

CHAIRPERSON SOCKWELL: The hearing will please come to order. Good morning, ladies and gentlemen. This is the January 23rd, year 2001, public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert N. Sockwell, Chairperson. Joining me today is Ann Renshaw, and representing the Zoning Commission is Herbert Franklin.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the board, please give both cards to the reporter, who is sitting to my right. The order of procedure for special exceptions and variances is, one, statement and witnesses of the applicant; two, government reports, including the Office of Planning, and the Department of Public Works, et al.

Three, the report of the Advisory Neighborhood Commission, the ANC. Four, parties or persons in support. Five, parties or persons in opposition; and, six, closing remarks by the applicant.

Cross-examination of witnesses is permitted by the

1 applicant or parties. The ANC within which the property is
2 located is automatically a party in the case.

3 The record will be closed at the conclusion of each
4 case, except for any material specifically requested by the Board,
5 and the staff will specify at the end of the hearing exactly what
6 is expected.

7 The decision of the Board in these contested cases
8 must be based exclusively on the public record. To avoid any
9 appearance to the contrary, the Board requests that persons
10 present not engage the Members of the Board in conversation.

11 Please turn off all beepers and cell phones, or set
12 them to vibrate at this time, so as not to disrupt these
13 proceedings.

14 The board will now consider any preliminary
15 matters. Preliminary matters are those which relate to whether a
16 case will or should be heard today, such as a request for
17 postponement, continuance, or withdrawal, or whether proper and
18 adequate notice of the hearing has been given.

19 If you are not prepared to go forward with the case
20 today, or if you believe that the Board should not proceed, now is
21 the time to raise such a matter. Does the staff have any
22 preliminary matters?

23 MS. BAILEY: Good morning, Mr. Chairman, and
24 Members of the Board. I am Beverly Bailey, and yes, we do have a
25 preliminary matter. The only case for this morning is Application

1 Number 16611, The Burke School, Kenneth Workman, Josef Straka,
2 Carl and Elizabeth Richmond.

3 The Office of Planning is requesting that that case
4 be continued to another hearing date, and the applicant is in
5 support of that request.

6 CHAIRPERSON SOCKWELL: Are there representatives of
7 the Burke School here?

8 MR. FEOLA: Mr. Chairman, for the record, my name
9 is Phil Feola, with Shaw Pittman, counsel to the Edmond Burke
10 School, the applicant in this case.

11 CHAIRPERSON SOCKWELL: Please proceed.

12 MR. FEOLA: Well, I think Ms. Bailey explained the
13 school's position. The Office of Planning suggested a continuance
14 would be prudent for a number of reasons. I think the primary
15 reason is that the Department of Public Works hasn't finished its
16 analysis of this particular application.

17 Traffic, and parking, and circulation, automobile
18 circulation, is the preeminent issue, and we agree that it would
19 not be prudent to move forward without having the Department of
20 Public Works weigh in.

21 CHAIRPERSON SOCKWELL: Mr. Feola, is there -- well,
22 first, is there anyone from the community here to state their
23 feelings about the postponement request?

24 MR. KOGAN: Yes, the ANC-3F representative is here.

25 CHAIRPERSON SOCKWELL: If you can step forward and

1 have a seat. Mr. Feola, you may stay.

2 MR. KOGAN: Turn your mike on and identify
3 yourself, please. Thank you.

4 MR. KOGAN: My name is Phil Kogan, 3635 Vezee
5 Street, Northwest, Washington, D.C. I am an ANC Commissioner of
6 ANC-3F-01.

7 MS. PERRY: My name is Karen Perry, and I am the
8 ANC Commissioner from 3F-02.

9 CHAIRPERSON SOCKWELL: All right. Karen Perry?

10 MS. PERRY: Yes.

11 CHAIRPERSON SOCKWELL: Would you just express your
12 support or your feelings about the request for postponement,
13 please.

14 MR. KOGAN: Yes. I think basically the way I
15 understand the facts is that the neighbors, the neighbors in the
16 area surrounding the Burke School met with Mr. Ken Layton of the
17 Department of Public Works, or actually the District Office of
18 Transportation, last Thursday.

19 I was at that meeting on Thursday, the 18th, and we
20 spoke with Mr. Layton. He expressed agreement with the objections
21 that we had laid out for the project. We had also laid those
22 objections out to the applicant.

23 Mr. Layton told us that he would prepare a report
24 on either Thursday night or Friday morning, and get it circulated
25 through his department, and that that report would recommend to

1 the Office of Planning that the application be disapproved.

2 MR. FEOLA: I am going to object to this. This is
3 testimony from the ANC Commissioner on DPW's decision in this
4 case.

5 CHAIRPERSON SOCKWELL: I understand that. This is
6 really strictly to discuss your representation and the community's
7 position on it.

8 MR. KOGAN: Well, I think these facts are
9 important. My understanding is that the Office of Planning is
10 proposing some sort of mediation, where the ANC would go into
11 mediation because of this postponement.

12 So the postponement and the things that happen
13 after the postponement are directly tied and connected.

14 CHAIRPERSON SOCKWELL: But the idea is to express
15 to this board that you are in support of a postponement on the
16 basis that you believe that a postponement may result in positive
17 conclusions, and a potential reduction of objections or at least
18 the satisfaction of the community that certain issues revolving
19 around this case will be satisfied.

20 And that you will be able to come to some
21 conclusion, some positive conclusions, on some issues as a result
22 of this postponement.

23 MR. KOGAN: So basically you want me to cut my
24 remarks short.

25 CHAIRPERSON SOCKWELL: Yes.

1 MR. KOGAN: So let me give you the bottom line
2 here. The bottom line is that we feel -- well, that the ANC, and
3 I think the community, we have not had a responsive from OP at the
4 staff level.

5 We had not had a response from OP until we got
6 Kathy Patterson involved at the executive level. And we are not
7 feeling very positive that we are going to get a response. And I
8 am not saying agreement.

9 I am saying a response, some indication that those
10 people in those agencies have heard the points that we have laid
11 out, and have agreed to build that into their report. Not to
12 produce a report that agrees with us, but to at least weigh and
13 balance what we are presenting.

14 And so while we are not going to object to the
15 request for a postponement, we would want to get on the record
16 that we feel that if the OP and the applicant feel they are going
17 to use that period of time of the postponement to do whatever they
18 are going to do, we are not sure that quite works for us based on
19 our past experience.

20 CHAIRPERSON SOCKWELL: Understanding that, and the
21 Board has absolutely no position other than that which helps to
22 make a hearing or a case go more smoothly and be more coordinated
23 between the applicant and those around the applicant's property,
24 in terms of satisfying issues that have been raised or will be
25 raised.

1 So it is our belief that if the community is for
2 more time, and that the potential is that more time will give the
3 sides an opportunity to come together on some of the issues, then
4 that is what I am asking for.

5 And I think you have told me that without stating
6 one way or the other that there will be a positive result, that
7 more time would be more beneficial than not beneficial.

8 COMMISSIONER FRANKLIN: Mr. Chair, I am hearing Mr.
9 Kogan, and he is saying that he is not objecting to a continuance.

10 CHAIRPERSON SOCKWELL: Right. And usually a lack
11 of objection means that there is some positive potential.

12 COMMISSIONER FRANKLIN: But he is not at this point
13 willing to say that the extra time will necessarily lead --

14 CHAIRPERSON SOCKWELL: I did not say he was
15 optimistic.

16 COMMISSIONER FRANKLIN: I would like to move, Mr.
17 Chairman, that we continue the hearing since we don't have the OP
18 report and DPW report to a date certain, and I suggest the 10th of
19 April.

20 CHAIRPERSON SOCKWELL: Okay.

21 BOARD MEMBER RENSHAW: Mr. Chairman, I will second
22 that, but I would like to just take a moment to ask Mr. Kogan or
23 Ms. Perry when ANC-3F's next ANC meeting is, and will you be able
24 to have enough time to air the Office of Planning's report, and
25 the DPW's report, and any response from the applicant?

1 MS. PERRY: Our next meeting that we could consider
2 this case -- well, we have an April meeting, but that it is not
3 until April 16th. So in order for us to see any revisions, or
4 take it up again, we would need to do that at our March meeting.

5 In which case we would ask that the applicant, and
6 OP, and everybody, have stuff ready for us at least two weeks
7 prior to our meeting so that we could circulate it, and come up
8 with discussions, and see what was going on.

9 Which means that we are talking about a March date
10 of around March 5th that we would need everything for.

11 CHAIRPERSON SOCKWELL: So your meeting is March
12 16th?

13 MS. PERRY: Our meeting is March 16th.

14 MR. KOGAN: I believe it is the 16th. I don't have
15 a calendar, but it is the third Monday.

16 MS. PERRY: It is the third Monday of the month.
17 Our April meeting would be too late for an April 10th deadline.
18 Right now what we have been experiencing is getting the reports
19 less or maybe a week before our meeting.

20 CHAIRPERSON SOCKWELL: So March 16th would be a
21 Friday.

22 MS. PERRY: Yes. Well, I don't have my calendar.

23
24 MR. KOGAN: So the following Monday.

25 CHAIRPERSON SOCKWELL: The third Monday would be

1 the 19th.

2 MS. PERRY: Okay. Thank you.

3 MR. KOGAN: That's it. You've got it.

4 MR. FEOLA: Mr. Chairman, Phil Feola for the
5 record. So April 17th is the hearing date; is that correct?

6 MS. PRUITT: April 17th has already got a case.

7 MR. FEOLA: Well, I guess I am trying to figure out
8 how Ms. Perry got to April 10th.

9 MS. PRUITT: Well, that is the first available
10 date.

11 MR. FEOLA: So April 10th is a hearing date?

12 MS. PRUITT: That's correct.

13 MR. FEOLA: That's what I am trying to find out.

14 MS. PRUITT: That's correct. I'm sorry, we are
15 going to the first available.

16 MR. FEOLA: This is the first that I heard of the
17 April 10th hearing date.

18 MS. PERRY: And I think what we would ask then if
19 this project is going to be redesigned, or new traffic plans, that
20 the ANC would have a chance to review it and stuff, and have the
21 material early enough for our March meeting.

22 CHAIRPERSON SOCKWELL: So you are saying that March
23 5th, which would be two weeks in advance, is the minimum amount of
24 time that is necessary for you to mobilize?

25 MS. PERRY: I think so, because we have to

1 reproduce these big reports, and meeting with all the
2 constituents, and get a meeting together. The neighbors have a
3 traffic consultant, and there are two sets of lawyers involved.
4 So it takes a lot of coordination.

5 MR. KOGAN: And if there are questions back to the
6 applicant if there are things in the report that are not clear,
7 that gives us some time to have some dialogue if that is needed.

8 CHAIRPERSON SOCKWELL: Well, we are not in a
9 position to make the decision on how the applicant responds to
10 you, but does the applicant's attorney feel that there is any
11 problem with meeting their schedule for at least --

12 MR. FEOLA: Well, no, sir. I mean, as far as the
13 applicant is concerned, we have filed our plan. We are waiting
14 for a reaction from the Office of Planning and the Department of
15 Public Works.

16 So depending on when that reaction happens, we may
17 have to adjust that plan to accommodate an issue, in which case we
18 will do it as quickly as we can.

19 So if DPW doesn't get its report out until March
20 4th, we may have trouble meeting the ANC's March 5th date. That
21 is our only reservation at this point.

22 CHAIRPERSON SOCKWELL: Well, I am sure that if you
23 are within a day or so, it is not going to be a deal breaker.

24 MR. FEOLA: But we can respond fairly quickly is my
25 point.

1 CHAIRPERSON SOCKWELL: All right. Thank you. Now,
2 we have a motion on the floor to postpone to April 10th, and that
3 has been seconded by Ms. Renshaw. Is there any discussion?

4 BOARD MEMBER RENSHAW: Just to ask that we
5 communicate with the Office of Planning and DPW to make sure both
6 agencies understand that we would request this information in hand
7 by March 5th in order to satisfy the needs of ANC-3F, and we trust
8 that that date will be honored.

9 CHAIRPERSON SOCKWELL: I don't see any problem with
10 that. All in favor of the postponement say aye?

11 (A chorus of ayes.)

12 CHAIRPERSON SOCKWELL: Opposed?

13 (No audible response.)

14 CHAIRPERSON SOCKWELL: Then this case has been
15 hereby postponed to the date certain of April 10th. Will that --
16 that is an all day, and so --

17 MS. PRUITT: It will be the first case in the
18 morning. I don't know if we will put on anything else with it,
19 but it will definitely be the first one.

20 MR. KOGAN: So that will be at 9:30?

21 CHAIRPERSON SOCKWELL: Yes.

22 MR. FEOLA: Mr. Chairman, Phil Feola for the
23 record. An additional preliminary matter. I just heard Mr. Kogan
24 suggest that some of the neighbors in opposition have a traffic
25 expert. I think it would be helpful for this board to see that

1 report as well sometime in advance of the April 10th meeting.

2 CHAIRPERSON SOCKWELL: I would agree that the board
3 should have every document that is being passed among you.

4 MS. PRUITT: Mr. Chair, do you have a time certain
5 for that? I mean, if we are having a hearing on April 10th, do
6 you want it so that it can go out in your package?

7 CHAIRPERSON SOCKWELL: Yes.

8 MS. PRUITT: So that would mean that we would like
9 to have it in the office by the 4th of April if that is possible.

10 CHAIRPERSON SOCKWELL: I assume that you can't
11 speak for the community on this?

12 MS. PERRY: No.

13 MR. KOGAN: What was the question?

14 MS. PRUITT: If you could get us any information
15 that you wanted the board to consider for the April 10th meeting
16 by the 4th of April.

17 MR. KOGAN: Yes, I would very much like to be able
18 to do that.

19 MS. PERRY: Unfortunately, it is very hard for us
20 as the ANC to commit the neighborhood.

21 CHAIRPERSON SOCKWELL: I understand.

22 MS. PERRY: They are working on a minimal budget.
23 We will do the best that they can.

24 CHAIRPERSON SOCKWELL: I think that we can make a
25 request, can we not, Ms. Pruitt, for documents?

1 MS. PRUITT: Yes. Well, I'm sorry, I'm not
2 following you.

3 CHAIRPERSON SOCKWELL: The traffic report is not
4 the ANC's responsibility. It is obviously another community, or
5 it is a community organization other than the ANC, and that's what
6 I am saying.

7 If that traffic report is being produced, and will
8 be submitted to the applicant, then it should be submitted to us.

9 But we will have to request it, because I don't think there is
10 anyone here officially representing that part of the community.

11 MS. WISEMAN: No, we are here.

12 CHAIRPERSON SOCKWELL: Will someone who is
13 authorized to speak for the community step forward to represent
14 whether or not you are preparing a traffic study, and whether or
15 not that is going to be made available to the Board.

16 MR. KOGAN: I think I would say that this case now,
17 and this is our third continuance, and I think what is driving
18 these continuances are the late submissions from the applicant.

19 Now, what I wanted to have for you today had we had
20 a hearing would have been a full ANC report. And I did provide
21 you one in November, a rather detailed report.

22 And I was going to have to work on that report this
23 weekend because of the way that the submission came to us on
24 January 11th. We had to meet on January 16th, and a meeting on
25 the 23rd.

1 And that's why Commissioner Perry here is talking
2 about March 5th. And I think what we are saying is that if we
3 could get materials from the applicant in a timely manner so that
4 we could conduct our business -- you know, we need 7 days public
5 notice, and we have to go through our steps.

6 CHAIRPERSON SOCKWELL: I understand. Sure.

7 MR. KOGAN: And if we can do that, and have all of
8 their material in hand, and then make sure that we have responded
9 to their proposal, and that their submission has been made, then
10 sure, we will be ready on April 4th.

11 CHAIRPERSON SOCKWELL: I understand that it is a
12 timing issue, and I understand that.

13 MR. FEOLA: Mr. Chairman, I am going to object to
14 the characterization that the materials got to the ANC late.
15 These materials were given to the ANC before Christmas.

16 They were officially given as part of the pre-
17 hearing submission on January 11th, well in advance of the two
18 week deadline that this board sets by its rules.

19 There is nothing new in that submission that Mr.
20 Kogan didn't see before the holidays, and actually before the
21 November hearing here. So I just want to lay to rest the
22 characterization that the applicant has been late.

23 CHAIRPERSON SOCKWELL: All right.

24 MR. FEOLA: Who has been late has been the
25 Department of Public Works, which we have no control over.

1 CHAIRPERSON SOCKWELL: All right. I am willing to
2 accept that statement. If anyone --

3 MR. KOGAN: And I think I have to respond, because
4 the ANC -- I would not recommend that the ANC vote on a draft
5 report, which is basically what I had, some faxed materials.

6 CHAIRPERSON SOCKWELL: Okay. Well, anyway, you
7 will come together on the issues, and the items that will be
8 submitted among you, and to the board, and then we will receive
9 those, whatever is ready hopefully in the time period that has
10 been requested, within that time period, if everything comes
11 together.

12 MS. PERRY: Yes, if everything comes together, I
13 think we can make that commitment. And my building -- even though
14 I am going to take off my ANC hat for a minute and speak for the
15 community, at least as far as Van Ness, which has requested party
16 status.

17 There is approximately -- well, you know, how many
18 people have applied for party status, and so there is no one
19 spokesman here for that group. It has been working as a
20 coalition.

21 But I am sure that as soon as they can do it that
22 they would be happy to provide the traffic report to the Board.
23 But I think that we also need to say -- and I am not as the ANC
24 now, but as a resident of the neighborhood -- that we have heard
25 that part of the reason for this postponement was that the Office

1 of Planning did not like the traffic report.

2 And that now there is a chance that they might
3 shift the burden of the traffic from Upton Street to Van Ness
4 Street and do that. And if that is the case, then the
5 neighborhood would need more time to put together a whole new
6 traffic report, because they were prepared to go forth today.

7 And we are very disappointed by OP's request for a
8 continuance. They had not been consulted.

9 CHAIRPERSON SOCKWELL: Okay. Well, it is obvious
10 that there are going to be some extenuating circumstances that
11 will determine whether or not we get reports or timely reports
12 from anyone, and we will just have to work within that
13 understanding.

14 MS. PERRY: But I can assure you that the community
15 will respond as quickly as they can, because that is what they
16 have always tried to do.

17 CHAIRPERSON SOCKWELL: All right. Well, I
18 appreciate that. I think the Board can accept that. If anyone
19 from the community has something to say from the audience, if you
20 would select a spokesperson who can come up and identify yourself.

21 MS. SMOLEK: Good morning. My name is Jodie
22 Smolek, and I am at 2945 Upton Street, and I have requested party
23 status at the hearing. And I would just like to go on record that
24 I have been very involved in the community with both meetings with
25 DPW, or the Division of Transportation, as well as the Office of

1 Planning, and with their council member, Kathy Patterson.

2 And it is just distressing, in a sense, with the
3 time frame. As of last Thursday, we were under the understanding
4 that there was an outline of a negative report from DOT, and that
5 was sent to planning.

6 And then I received a call from Friday from
7 Planning saying that they were asking for a continuance because of
8 this traffic situation. So I would just like to go on record with
9 having the meetings and putting together the traffic survey, and
10 raising the funds, that there is a serious issue here.

11 And our concern is with the Office of Planning. We
12 know that we met with them more than a week ago prior to the seven
13 day deadline. So I believe that a report could have been
14 completed.

15 However, like I said, there is a serious concern
16 with the traffic and the circulation, and so I would just like to
17 go on record with that.

18 CHAIRPERSON SOCKWELL: All right. Thank you. All
19 right. Then -- oh, yes, please.

20 MS. WISEMAN: I am Julie Wiseman, and I also
21 requested party status. I am at 2932 Upton Street, and I am right
22 down the street from the school, and I have sort of been the
23 liaison for the neighborhood to try to obtain materials so that we
24 can work together.

25 And I just wanted to say that although I can't

1 speak on behalf of the neighborhood because we have all tried to
2 come together and work cooperatively with the school, but we have
3 different factions on different streets, and all over, and so I am
4 not empowered to speak for them.

5 But I will say that we will do our best to try and
6 get something out as long as we get materials in a timely fashion
7 from the applicant, which has not happened as frequently as we
8 would like.

9 CHAIRPERSON SOCKWELL: Well, let's leave the "has
10 not happened" in the past, and away from this, because this is --

11 MS. WISEMAN: Right, and let's move forward, and if
12 we get them in a timely manner, we will then turn around and try
13 to get them out in a timely fashion.

14 CHAIRPERSON SOCKWELL: And the Board will
15 appreciate all your efforts in that respect.

16 MS. WISEMAN: Okay.

17 CHAIRPERSON SOCKWELL: All right. I think that we
18 have covered this, and I thank all of you for being here, and we
19 will look to see you smiling and happy -- no placards -- on the
20 10th of April in the morning.

21 That being the only item of business on the morning
22 --

23 MS. BAILEY: Mr. Chairman, can I please call the
24 vote on this?

25 CHAIRPERSON SOCKWELL: Oh, yes, I'm sorry.

1 MS. BAILEY: The motion to postpone the hearing
2 until April 10th, the motion was made by Mr. Franklin, and
3 seconded by Mrs. Renshaw; Mr. Sockwell to approve, and Ms. Reid
4 has voted to approve by proxy.

5 Mr. Chairman, I just want to recap some of the
6 dates that were established here today. March 19th is when the
7 ANC is to meet to consider the application.

8 April 10th is the next hearing on this application.
9 OP's report is due to the Office of Zoning seven days prior to
10 the April 10th hearing. And, Mr. Chairman, would you want to set
11 April 2nd as a deadline for when all materials that haven't --

12 MS. PRUITT: April 4th.

13 CHAIRPERSON SOCKWELL: April 4th.

14 MS. BAILEY: Yes, April 4th for all materials to
15 come in that I haven't indicated.

16 CHAIRPERSON SOCKWELL: Yes, that's fine.

17 MR. KOGAN: Does that make April 4th the effect
18 date for Planning; is that what I just heard?

19 MS. BAILEY: The Office of Planning, their report,
20 is due seven days prior to the Office of Zoning. Now, you may
21 want to get their report prior to that seven days.

22 MR. KOGAN: Okay. And the seven days would be
23 April --

24 CHAIRPERSON SOCKWELL: Seven days is April 4th.

25 MS. PRUITT: April 3rd.

1 MS. BAILEY: April 3rd.

2 CHAIRPERSON SOCKWELL: Okay.

3 BOARD MEMBER RENSHAW: But I had requested that
4 this Board notify OP and DPW that ANC-3F really needs this
5 material, this information, by March 5th. So if we could put that
6 in a letter, please.

7 CHAIRPERSON SOCKWELL: I think everybody is now
8 aware of the implications of not putting their nose to the wheel
9 on this to get it done, because this request for postponement
10 having come from the Office of Planning, puts the onus on the
11 Office of Planning to move forward in a very expeditious manner.

12 MR. KOGAN: All right.

13 CHAIRPERSON SOCKWELL: Okay. Is that it?

14 MS. BAILEY: That's it.

15 CHAIRPERSON SOCKWELL: All right. That concludes
16 the morning session.

17 (Whereupon, the hearing was concluded at 10:03
18 a.m.)

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