



**Testimony to the Committee on Government Operations  
Oversight of the Office of Administrative Hearings  
Thursday, February 28, 2019**

*Rebecca Miller on Behalf of the DC Preservation League*

Good morning, Chairperson Todd. My name is Rebecca Miller and I am Executive Director of the DC Preservation League (DCPL), Washington's citywide nonprofit dedicated to the preservation and protection of the historic and built environment of our Nation's Capital. I thank you for the opportunity to provide our perspective on the Office of Administrative Hearings (OAH).

As explained in prior oversight testimony, DCPL's interest in OAH relates to its adjudicatory services for agencies responsible for enforcement of building codes, permits and related activities. This means primarily the Department of Consumer and Regulatory Affairs (DCRA), but also the Historic Preservation Office (HPO) within the Office of Planning (HPO and, for certain issues such as the use of public space, the Department of Transportation (DDOT).

Illegal construction remains a major problem in the District of Columbia, as is the failure to enforce general property maintenance standards. The results are all around us – in all sectors of the city and all kinds of buildings. While the causes are diverse and go back many years, the absence of reliable public information about the permitting and enforcement processes is one of them. DCRA is still not complying with the legal requirement to make its permit files available to the public online. That issue was raised again yesterday in the DCRA oversight hearing. While DCRA is now recording stop work orders in its online permit tracking system, there is no way for members of the public – who may well have reported the illegal construction in the first place -- to follow the enforcement process to its end, including any adjudication by OAH.

In prior appearances, DCPL has asked that OAH give priority to the need for public information about the disposition of individual cases related to illegal construction. We have asked about case management, coordination with DCRA and HPO, and how information systems at the different agencies work or should work together. In 2015, we asked that, in conjunction with inter-agency exchanges of information regarding caseloads, a system be developed for reporting caseload to the public utilizing the same categories of information being used by the agencies. In 2016, we asked that performance measures be established to improve coordination among DCRA, HPO and OAH. In every appearance, we have asked for a public docket – to ensure that the public has notice of upcoming hearings on these cases.

In reviewing the current situation, we were pleased to see that OAH is now posting final orders for HPO and DCRA cases. However, there is a problem. OAH does not identify the cases by

their street address, let alone square and lot numbers, which is standard for all preservation review cases and building permits. OAH uses instead the violation number and name of respondent, which may be an individual or a company. Thus, it is impossible to match most final orders to a property based on the information on the OAH website.

The Vice President of DCPL's Board of Trustees went through all 52 HPO orders individually to review their content and found relatively few orders that even included the address in the text. Moreover, many discussed purely procedural issues such as notice and failed to identify the underlying violation at issue. What specific action had the property owner taken that was not permitted? Was it a window replacement, which is indeed a serious issue for historic properties, or something else? Needless to say, she did not subject the 1147 final orders for DCRA to a similar review. It is evident that OAH remains far from "ensuring that final orders issued in OAH cases are available online in a searchable, user-friendly format," an objective stated in its 2014 Open Government Report.

In reviewing individual orders, we found that fines initially imposed were almost always significantly reduced with the concurrence (tacit or otherwise) of HPO. The objective seems to be to "fix" the situation – not to exact any penalty for violation of the law. We understand, furthermore, that this attitude is government-wide. That is certainly not the attitude with parking tickets. Why should there be more leniency for violations of the building code or preservation law? We will be addressing this problem in oversight testimony for other agencies and in discussions with members of the Council in the future. How can we deter continued wholesale violations of these laws if all a violator has to do if he gets caught is to bring the property into compliance with the law?

Regarding the docket, we understand that a daily docket is now posted at OAH – but that is not effective to provide notice to the public at large. Three years ago, we asked that OAH be required to begin posting on-line, no later than the end of the fiscal year, its schedule of cases and final orders as they are issued, as well as to develop agreed systems for recording and exchanging information about cases with both DCRA and HPO that will allow for public tracking of such cases. We renew that request today – along with a request that OAH include the address and square/lot information in all final orders so that cases may be searched in that fashion. It would also be helpful to the public if final orders identified the violation beyond just being a failure to obtain a building permit or to comply with one that had been issued.

Thank you for your attention.