

BLOOMINGDALE CIVIC ASSOCIATION

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DATE: July 21, 2014

TO: DC Zoning Commission, Anthony J. Hood, Chair

FROM: The Bloomingdale Civic Association

SUBJ: Request to temporarily re-open the record of the hearings related to case 13-14 (PUD application for the McMillan development submitted by Vision McMillan Partners and the DC DMPED)

The Bloomingdale Civic Association (BCA) requests that the hearing record on the above noted case be temporarily re-opened to allow the following statement of response to certain post-hearing submissions. This request is made in consideration that the above noted Applicants submitted substantial information, after the record was closed, related to the PUD's Community Benefits Agreement (CBA) and other matters of demonstrated concern to the Bloomingdale Civic Association (BCA) (as evidenced by materials it submitted to ZC and testimony provided by BCA Executive Committee members Bader, Holliday, Howard, Quinn and Ray – see Exhibits 31, 523, 526, 528, 533, 771, 772, 773, 823, 826).

Rationale

From its inception, the McMillan development process has been characterized by a strategy marked by a lack of transparency in pursuit of maximum profit regardless of community input to the contrary, 'insider' partnerships, disregard and marginalization of legitimate community interests and concerns, and vestment of nearly all control and decision-making with the Applicants. This is most vividly illustrated by the contract between VMP and Fontaine & Company, which focused on "shifting community dialog and perception to that of majority local support for VMP plans, provide continuous political cover to local elected officials, nurture and grow deep grassroots support for the project. ..., neutralizing/diminishing the impact of opposition" (Exh. 115). Consequently, the Applicants have failed to create strengthened community relations through use of a strategy of engaged partnership, but instead have created and deepened fractures in the thriving, diverse and rapidly changing communities abutting the McMillan development.

The Applicants' strategy is reflected in the negotiation process and content of the CBA and other information submitted, which often are marked by internal inconsistency, side-stepping of major issues and realities, and absence of full disclosure, explanation,

and calibration as elaborated below. Consequently, the Bloomingdale Civic Association recommends:

- The ZC DEFER all decision-making regarding the McMillan PUD Application until such time as the applicants (VMP and DC DMPED) re-engage a CBA negotiation process involving ANC 5E, the McMillan Advisory Group (MAG), and civic associations of abutting communities. ALL SHOULD BE SIGNATORIES TO THE RE-NEGOTIATED CBA.
- In consideration of community fractures created and deepened to date, such negotiations be conducted by an independent certified professional mediator (paid for by Applicants), jointly selected by majority vote of all participating parties.
- A legal review prior to ratification of the re-negotiated CBA by the DC General Counsel's Office by legal personnel representing the interests of ANC 5E and other community parties.

CBA Concerns

- BCA was provided no opportunity to engage in direct negotiations of the CBA with VMP.
- CBA has not been signed/ratified.
- The chart comparing values of proffers of VMP, ANC 5E, and MAG (Exh. 832G2) is ill-conceived and incomplete, For example:
 - Chart includes mostly VMP proffers – not all of those of ANC 5E, MAG or abutting Civic Associations.
 - Provides no rationale for VMP rejection of community proffers, or reduction in their values.
 - Does not include several major CBA proffers made by the BCA such as the development of specific CBA administrative, financial, and accountability structures that reflect public/private partnership; use of Phase 2 land as public park space until such time as Phase 2 construction is initiated; creation (in collaboration with the District) and landscaping of roundabouts on First St., NW; construction of tennis courts on Community Center roof; exterior maintenance assistance for residences of low-income senior citizens residing in abutting neighborhoods.
- CBA lacks cost estimates and dollar commitments for certain benefits e.g. public art creation and installation.

- Historic preservation of underground structures – CBA fails to identify 2 or 3 additional cells for structural analysis for potential re-adaptation.
- Proposed Project Association/Business Improvement District has broad authority including “contributing to funding for programming and staging events within the PUD for the benefit of the public” – without any public/community participation. Post-hearing submissions fail to describe differences in the authority, structure, and operations of these two types of governing entities and criteria for final selection of type of governing entity. We are especially concerned that the Community Center and Park do not become the recreational hub for the development’s employees – most of whom will not be DC residents (consistent with the known residential distribution of current Washington Hospital Center employees) – and that accordingly, the BID community center programming becomes most responsive to that population. Employee recreation/exercise facilities should be located in the development’s commercial office buildings. We urge a public/private model (involving designated representatives of ANC 5E, MAG, and abutting Civic Associations) for all of the project’s governance and advisory groups – especially those related to the Community Center and Park -- as a means for ensuring responsiveness to public community needs and concerns– especially those of abutting neighborhoods.
- Identified transportation infrastructure improvements are limited to the McMillan site and its immediate egress/ingress. Applicants continue to sidestep community concerns related to a 2 million square foot development with 3500 employees plus hundreds of daily patient visits in the midst of a fundamentally residential area (e.g. no Metro access; limited traffic circulation and capacity). In particular, BCA has expressed its strong concerns about the volume of south-bound traffic (to Virginia via I-395 and Maryland via I-295, Baltimore-Washington Parkway, and U.S. Highway 50) – most of which will need to travel through the entire Bloomingdale and Bates neighborhoods to New York Avenue, primarily through use of North Capital and First St., NW. Both of these streets along with New York Avenue currently have ‘failed’ status during rush hours and hospital shift changes, resulting in traffic ‘dissipations’ to alleys and narrow neighborhood streets. As BCA Treasurer Howard noted in her ZC testimony, no one has provided a satisfactory answer to the development’ s neighborhood traffic issues “because there isn’t one” (Exh. 526).
- Traffic mitigation efforts.
 - CBA provides no timelines for accomplishing such efforts (e.g., improved bus routes, accelerated planning and development of streetcar service, Circulator Bus service) .
 - CBA includes no detail related to proposed interim shuttle service, (e.g. hours and frequency of service, detailed route). We also question whether such service should be construed as a ‘community amenity or

benefit' as it will be a necessary amenity that any matter-of- right developer of the site/location would need to provide to attract tenants.

- We continue to question the advisability of including a bike lane on First St., NW, which is a congested 2-way, 2-lane street with parking on both sides.
- The manner in which many proposed CBA benefits are stated render the CBA virtually impossible to both evaluate its accomplishments and enforce. This results in the CBA lacking any substantial accountability. For example:
 - It is unclear if some of the benefits and their stated value are re-occurring (e.g., workforce development and scholarships, Ward 5 STEM contributions, business start-ups, neighborhood beautification); it is unclear when VMP will provide funds, and associated sanctions if not provided as scheduled. In most instances, the CBA does not specify major specific activities, efforts or expected outcomes of proposed benefits.
 - Many benefits are not stated in quantified, measurable terms, as required by law.
 - A construction management plan is not attached to the CBA submitted by ANC 5E (Exh. 833). However, VMP's earlier submission (Exh. 809) did include such a Plan. That plan lacked significant details including specification of streets on which trucks will queue, provisions for pre-construction inspections of neighboring homes, bonding or escrow fund and related amounts for property damage, and specific procedures and timelines for residents' reports of property damage due to construction activities.

Internal Inconsistencies of CBA Submissions

The shortcomings and inability to enforce the CBA are further exacerbated by internal inconsistencies of statements within the CBA and provisions of other Applicant post-hearing submissions. Consequently, one is unsure as to which statements are the most salient and accurate – and binding. For example:

- Varying messages have been conveyed by the Applicants related to the development and management of the Community Center. In its post-hearing chart on 'Roles & Responsibility' (Exh. 785) VMP indicates that it will be the developer of the park, community center and historic assets, while the District will be the financier of these. It is also indicated that VMP will manage and program the Community Center and park, with reports to the District. However in Exh. 832N3, VMP states, "The District will own, maintain, and manage the community center".

- The contribution schedule, transfer, holding, escrowing and distribution of funding in support of the CBA is unclear. For example:
 - In post-hearing Exh. 832J, VMP discusses in significant detail its creation of the Opportunity/McMillan Fund of \$1 million in support of workforce training (\$700,000) and scholarships (\$300,000) to be administered by the Community Foundation for the National Capital Region. It is also noted that, “A schedule and budget for the contribution and distribution of these funds is included in Exhibit 3 and Exhibit 4”. Exh. 3 includes a \$1 million project budget (that does NOT include designated funds for scholarships); Exh. 4 is a timeline for project activities and not for contribution and distribution of funding.
 - The ANC CBA submission (Exh 833) indicates that ALL funding in support of the CBA will be transferred to and held by a single entity – the Community Foundation – but continues by noting specific contributions to be provided in the Project Association/BID budget. The VMP CBA post-hearing submissions, (Exh. 832G1 & 832M) indicate that it will incorporate non-workforce training/scholarship funding into the budget of the Project Association/BID for its administration. No related statement of a contribution schedule is provided.

Other Concerns

- Although VMP has identified the healthcare buildings as the “economic engine of the project” (Exh. 832N1), there is continued concern about who will be the primary tenant(s) of the healthcare buildings, and their specific uses. The President and CEO of Children’s National Medical Center submitted a very gracious letter of interest in and support of the overall development (Exh. 832I), but included no specific statement of commitment to or interest in leasing of space in the near future. Similarly, in its ‘Conclusion of fact...’ submission, VMP simply states that the buildings will involve “Medical office and related healthcare uses” (p.20, Exh, 836). Until such time as a primary healthcare tenant(s) and related specific healthcare building uses have been identified, it is impossible to assess the project’s economic feasibility and benefits, and the appropriateness of and need for requested variances to density and height, and requested C(3)(c) zoning of the healthcare buildings.
- Affordable housing and potential discrimination. The Applicants request the right “to vary the location and configuration of the affordable units on Parcels 2 and 4...” (Exh. 836, p. 24). The Applicants continue by noting: “The affordable units shall be of a size equal to the market-rate units, provided that the affordable units may be the smallest size of each market-rate type [studio, efficiency, 1-bedroom] and have no luxury-scaled unit counterpart.”. We are both uncertain of the exact meaning of the later statement and concerned as to whether it serves to promote discrimination in availability to housing options.

Conclusion

The Bloomingdale Civic Association appreciates your consideration of these issues. We reiterate our recommendation that all decisions related to the VMP/DMPED McMillan PUD be DEFERRED until such time as the CBA is re-negotiated.

Sincerely,

A handwritten signature in blue ink that reads "Teri Janine Quinn". The signature is written in a cursive style and is underlined with a horizontal line.

Teri Janine Quinn
President

A handwritten signature in blue ink that reads "Bertha G. Holliday". The signature is written in a cursive style.

Bertha G. Holliday, PhD
2nd Vice President

This letter was approved on July 21, 2014 by membership at a duly called meeting of the Bloomingdale Civic Association by a vote of 15 ayes, 1 nay, and 0 abstentions.