ANDREA C. FERSTER
LAW OFFICES
2121 WARD COURT, N.W., 5TH FLOOR.
WASHINGTON, D.C. 20037

TEL.(202) 974-5142 FAX (202) 223-9257
AFERSTER@RAILSTOTRAILS.ORG
WWW.ANDREAFERSTERLAW.COM

April 3, 2017

Anthony J. Hood, Chairman
Zoning Commission
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

Re; CASE NO. 13-14 (Vision McMillan Partners, LLC and Office of the Deputy Mayor for Planning and Economic Development - Remand from the Court of Appeals)

Dear Chairman Hood and Members of the Zoning Commission:

Friends of McMillan Park ("FOMP"), a party in opposition to the above-referenced application, hereby submits this "response" to the Commission's remand order issued on February 1, 2017, as requested by the Commission at its public meeting on Monday, March 20, 2017.

Preliminary Objections

As a preliminary matter, FOMP joins the procedural objections voiced by others at the hearing on March 23, 2017, to the Commission's decision, announced at its public meeting on Monday, March 20, 2017, to begin the remand proceeding on March 23 with testimony by individual members of the public and organizations, prior to any presentation or testimony by the Applicant, and prior to any testimony by representatives of other agencies. This decision contravenes this Commission's rules of procedure, which plainly provide that the "Applicant's case" is presented first (11 DCMR Subtitle Y, § 408.9(c)), as well as the Commission's own remand order, which stated that the remand hearing would be "heard in accordance with the contested case provisions of Title 11-Z, Chapter 4 of the 2016 Zoning Regulations."

Under the Commission's rules, "[t]he applicant shall carry the burden of justifying the proposal." 11 DCMR § 2403.2, 2407.6 (2016). The normal order of proceeding set forth in the Zoning Regulations, under which the Applicants' case is presented first and individuals and organizations in opposition testify last, properly reflects this burden of proof, by allowing members of the public the opportunity to hear the case of the Applicants and the testimony of agencies, persons and parties in support of the applicants before responding to or commenting on the Applicants' case. The Commission's unilateral decision to radically alter this normal order of proceeding improperly shifted the burden away from the Applicants, and deprived the public of any opportunity to respond to the testimony and evidence presented by the Applicants as well as the agencies, in violation of the decision by the D.C. Court of Appeals and the Commission's own rules. *See Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d at 1027, 1037 (D.C.

2016) ("On remand, the Commission thus must either place the burden of proof on VMP or explain why a different allocation is permissible under the PUD regulations.")

This prejudicial error was compounded by the Commission's refusal to allow members of the public any opportunity to file written comments in the record of the proceeding. The new remand hearing was held precisely because the Court found that neither the Applicant nor the Commission had addressed key issues relevant to the approval of the PUD and map amendment. Therefore, not only was it appropriate to allow persons and organizations to testify at the hearing, which the Commission did allow, it is also necessary to grant persons and organizations who are not able to attend in person to submit their written comments on the remand issues, as provided by the Zoning Regulations. *See* 11 DCMR Subtitle Z, § 206.3 ("Comments may be submitted electronically through IZIS or by e-mail.") The Commission's arbitrary and improper limitations on public testimony foreclosed the ability of members of the public to comment, creating a particular hardship for persons whose health, work, or family responsibilities prevented them from appearing in person There is likewise no support for the Commission's arbitrary refusal to allow persons who were present at the hearing from entering their supporting exhibits into the record.

Other aspects of the remand hearing also strongly suggest that the Commission continues to improperly shift the burden of proof to FOMP. First, at the meeting on March 20, 2017, the Commission elected to interpret its less-than-clear instructions in the remand order (allowing a "written statement responding" to the remand order) as directing the Applicants *and* FOMP to file simultaneous prehearing written statements addressing the remand issues. The remand order also directed that "No response to another party's filing will be accepted." Again, this instruction fails to understand or reflect the fact that the Applicants must retain the burden of proof, and that the role of an opposing party *is* to respond to the Applicants' case. While the Commission, at its March 20, 2017 public meeting, agreed to allow FOMP an opportunity to file a "response" on April 3, 2017, the Commission continued to improperly insist that this written statement could not "respond" to the Applicants' pre-hearing submission.

Finally, the Commission improperly foreclosed counsel for FOMP from posing questions to the Advisory Neighborhood Commission ("ANC") witnesses that were directly relevant to the credibility of these witnesses, despite the fact that questions going to the credibility of witnesses is always a legitimate line of inquiry. This line of inquiry was particularly relevant, since FOMP has obtained, through the Freedom of Information Act, records showing that allegations of "corruption and bribery" have been made to the Office of the Mayor. *See* Exhibit A, attached hereto. This complaint was made by a newly elected commissioner on ANC 5C, who alleged that ANC members "are being bombarded and even bullied to take a vote on the McMillan development plan by VMP, in particular EYA," and that they "have been offered gifts of money, meals and ball game tickets," and that "[s]everal commissioners have accepted these 'gifts.'" *Id.* Other areas of inquiry were foreclosed by *sua sponte* rulings from individual Commissioners other than the Chair, despite the fact that, under the Commission's rules, only the presiding officer is responsible for excluding testimony." 11 DCMR Subtitle Y, § 408.1(e).

These actions all suggest that the Commission continues to place an undue and unfair burden on FOMP, while allowing the applicants and the agencies excessive latitude. These irregularities should be rectified at the April 6, 2017 hearing by, among other things, affording individuals and organizations an opportunity to testify following the parties' presentation of their respective cases and opening the record for the submission of written comments from the public.

Discussion

Issue No. 1

A. Could the other policies cited in the Order be advanced even if development on the site were limited to medium- and moderate-density use?
B. If not, which of the competing policies should be given greater weight and why?

The D.C. Court of Appeals held that "the Commission failed to adequately explain why it was necessary to disregard the policy favoring medium- and moderate-density development on the site in order to advance other competing policies reflected in the Comprehensive Plan." *Friends of McMillan Park*, 149 A.3d at 1035. The Court therefore remanded the case to the Commission to examine whether "other policies reflected in the Comprehensive Plan could be advanced even if development on the site were limited to medium- and moderate-density uses." *Id.*

Notably, neither the Zoning Commission's now-vacated order in this matter, nor the voluminous record upon which it was based, ever identified a single Comprehensive Plan policy that would be advanced by including high-density medical office buildings in the McMillan PUD. To the contrary, the Mayor's Agent for Historic Preservation specifically found, in examining the Comprehensive Plan to "provide the basis for a project's special merit, that "the medical offices themselves do not contribute to the special merit of the project." *Friends of McMillan Park,* 149 A.3d at 1040. Instead, the Commission found that the "clustering" of high-density buildings at the northern end of the "PUD Site is a critical and essential part of fulfilling the parks, recreation, and open space designation of the Future Land Use Map, while at the same time achieving the other elements of the Comprehensive Plan and the city's strategic economic plan." ZC Exh. 873, ¶ 168 (referencing 10A DCMR §§ 305 and 703.13 (LU-1.2 and ED-1.1.5).).[1]

[1] In fact, as the D.C. Court of Appeals implicitly found, the "strategic economic plan" prepared by the Deputy Mayor for Planning and Economic Development ("DMPED") in 2012 provides no support for the Applicants' attempt to rationalize the appropriateness of high-density medical buildings. The D.C. Court of Appeals specifically noted the Commission's reliance on this plan, but still found that the Commission had failed to state any "reasons for giving greater weight to some policies than to others." *Friends of McMillan Park,* 149 A.3d at 1035. In any event, this "strategic economic plan" is not a policy or objective of the Comprehensive Plan, and says nothing about "high-density" medical buildings. Moreover, this "strategic economic plan" was never relied upon by either the Applicants or the Office of Planning in their

Moreover, there was nothing in the record indicating that the parks, recreation and open space designation of the FLUM could not be satisfied without high-density commercial buildings. Since this project was never subject to competitive bidding, as the D.C. Auditor pointed out, DMEPD never even considered alternative proposals or development plans prior to embracing VMP's high-density development scheme. On remand, therefore, the Applicants must satisfy their burden of demonstrating that there is no alternative moderate density development scenario that could satisfy the goals of the comprehensive plan, including the policies specifically referenced by the Commission (10A DCMR §§ 305 and 703.13 (LU-1.2 and ED-1.1.5). ZC Exh. 873, ¶ 168.

As will be discussed in more detail below, the Applicants' plan is inconsistent with the area elements specifically governing the McMillan Sand Filtration Plant. Since the McMillan site is a "special policy area," this element provides a level of direction and guidance "above that provided by . . . the citywide elements," such as LU 1.2. *Id.* § 2010.1. Therefore, the blatant inconsistency with these key area elements is fatal to any finding of overall consistency with the Comprehensive Plan to the extent such a finding is based on citywide elements. However, the plan is also inconsistent with many of the enumerated citywide elements as well, including applicable Land Use Policies.

The D.C. Court of Appeals specifically found that "the high-density use approved in the PUD is not consistent with" Comprehensive Plan Policy MC-2.6.5 – Scale and Mix of New Uses. *Friends of McMillan Park*, 149 A.3d at 1034. Accordingly, since the high-density zoning and medical building is inconsistent with Comprehensive Plan Policy MC-2.6.5., it is also inconsistent with a host of Land Use policies, each of which emphasize the primacy of the area elements.

For example Land Use Policy 1.2: "Large Sites and the City Fabric." specifically reinforces that "the mix of uses on any given site should be generally indicated on the" FLUM and the Area Elements, and that zoning "should be compatible with adjacent uses." 10A DCMR § 305.7. *See also id.* § 305.3 (LU Policy 1.2.3, ("The Area Elements should be consulted for a

---

extensive expert reports and testimony prior to these remand proceedings; nor was this report even placed in the administrative record prior to this remand proceeding. The first mention of this report was made in the Applicants' proposed order filed on July 7, 2014 (ZC Exh. 836, ¶ 144), and it appears that the Zoning Commission simply adopted this language verbatim from the Applicants' proposed order (*Compare* ZC Order 13-14, ¶ 168 *with* ZC Exh. 836, ¶144). The D.C. Court of Appeals has made clear that a "more searching inquiry" may be necessary where an agency adopts a party's briefs and arguments verbatim, since "[a]dvocates are prone to excesses of rhetoric and lengthy recitals of evidence favorable to their side but which ignore proper evidence or inferences from evidence favorable to the other party." *Durant v. District of Columbia Zoning Comm'n*, 99 A.3d 253, 258 (D.C. 2014). In any event, this five-year plan has now been superseded by a new economic plan, which does not identify McMillan as the site of a "medical office hub."
http://dceconomicstrategy.com/wp-content/uploads/2017/03/Econ-Strategy_Full-Report-for-Distribution_03.07.17-1-1.pdf.

profile of each site and specific policies for its future use."). As discussed in more detail below, the Applicants' plan is in consistent with Policy LU-1.2.1: **"**Reuse of Large Publicly-Owned Sites," in that it fails to **"**remove barriers between neighborhoods, or "improve and stabilize the city's neighborhoods. *Id.* § 305.5. Policy LU-1.2.2: "Mix of Uses on Large Sites," hammers this point home**,** stating "{t]he particular mix of uses on any given site should be generally indicated on the Comprehensive Plan Future Land Use Map and more fully described in the Comprehensive Plan Area Elements. Zoning on such sites should be compatible with adjacent uses. *Id.* § 305.7.

The Applicants' plan for "affordable housing" also fails to advance the goals set forth in LU-1.2.5. "Public Benefit Uses on Large Sites**."** The 20% "affordable housing" provided on the site, while greater than what a purely private development must include to comply with the inclusionary zoning requirements, certainly does not satisfy the Comprehensive Plan's priorities and targets. Specifically, Policy H-1.2.2: "Production Targets," provides that **"**one-third of the new housing built in the city over the next 20 years should be affordable to persons earning 80 percent or less of the area wide median income (AMI)." 10A DCMR § 504.7. The failure to provide any low-income housing whatsoever most certainly is inconsistent with Policy H-1.2.4: "Housing Affordability on Publicly Owned Sites," which requires that "a substantial percentage of the housing units built on publicly owned sites, including sites being transferred from federal to District jurisdiction, are reserved for *low* and moderate income households. *Id.* § 504.11.

The Applicants tout the 85 housing units provided for seniors, but these units are only available to persons with incomes between 50 and 60% of the Area Mean Income ("AMI"), and are therefore considered "moderate income households." D.C. Code § 10-801(n) (4). However, city-wide housing policies relating specifically to seniors (H-4.2: "Meeting the Needs of Specific Groups") emphasize the need to "help seniors "age in place" through home retrofits" and by providing "higher levels of assistance . . . to help senior homeowners on fixed incomes and to protect elderly renters from displacement." 10A DCMR § 516.2. The Applicants' plan does nothing to meet these needs. To the contrary, as discussed in more detail below, the development on the site will exacerbate the displacement of seniors in the community.

Current data reinforces that the moderate-income senior housing provided on the site does not serve the greatest need in the District of Columbia. As the Office of Planning's own data shows, the biggest loss of unassisted affordable housing in the period between 2009 and 2014 occurred to housing affordable by *families* earning less than 60% of the AMI. *See* District of Columbia Housing Preservation Strike Force– Final Report, at 10 (Nov. 16, 2016) (attached hereto as Exhibit B). This Report also found that "the loss of unassisted housing is an urgent concern." *Id.* Moreover, the greatest need for the city's senior population is to "[c]reate programs to **Allow Low Income Senior Renters to Age in Place."** *Id.* at 20 (emphasis in original). As a direct result of gentrification, the population of seniors in the Bloomingdale neighborhood and other nearby census tracts has declined and continues to decline. *See* Julius S. Levine, FAICP, "Bloomingdale: the Intersection of Gentrification, Race, and Aging-in-Place in a District of Columbia Neighborhood," at 32 (Summer 2015) (excerpts attached as Exhibit C).

Accordingly, the provision of 85 units of housing on the site for moderate-income seniors does not advance the Comprehensive Plan's goals to prioritize affordable housing for where there is the greatest need.

Likewise, the so-called "workforce" housing set aside for households earning 80% of the AMI, which makes up the bulk of the project's "affordable housing," does not serve the greatest need. According to a study by the Coalition for Smarter Growth of public land development projects in the District of Columbia, there is a small surplus of units for households earning between 53% and 80% of the AMI that are both affordable (rent is no more than 30 percent of income) and available (not occupied by a higher income group), and that "the District had a surplus of affordable and available housing units, citywide, for those households earning about 80 percent of AMI." Coalition for Smarter Growth, "Public Land for Public Good: Making the Most of City Land to Meet Affordable Housing Needs," at 12 (Oct. 2012) (attached as Exhibit D).

That leaves only 11 units of housing – two rental apartments and nine row houses -- approximately one percent of the total number of housing units – that are designated for moderate income households. There is no evidence that these rental units will even be suitable for families. As a result, only the two row houses -- less than 0.3 percent of the total housing -- would potentially serve low- or moderate-income families. Accordingly, the Applicants' proposal does not advance citywide goals for affordable housing or large site development.

Further, the Applicants' plan is blatantly inconsistent with the citywide housing goals calling for preservation of existing affordable housing, Comprehensive Plan Policy H-2.1: "Reservation of Affordable Housing." 10A DCMR § 509. As will be discussed in more detail below, the long planning timeline for the McMillan Site has contributed significantly to the skyrocketing home values and rents in the neighborhood, and the gradual displacement of low- and moderate-income residents. None of the amenities in the PUD help low and moderate-income neighborhood residents stay in their homes by incorporating any of the strategies and assistance recommended in Policy H-2.1 or the District of Columbia Housing Preservation Strike Force report.

Finally, as discussed in more detail below, the Applicants' development is inconsistent with Policy LU-1.2.7: "Protecting Existing Assets on Large Sites," which specifically calls for protecting **"**historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are redeveloped." *Id.* § 305.12. The Applicants' plan, which would eliminate the key historic open space features of the McMillan site— the spatial organization in which a key feature is the open space surrounding the sand towers and other historic structures – and constructs high-density buildings that block key viewsheds and vista, cannot be reconciled with this Citywide land use policy**.**

Issue No. 2.
Do these or other Comprehensive Plan policies cited by FOMP in the record of this case

weigh against approval of the PUD?

The Applicants' plan is inconsistent with area elements for the McMillan special focus area, which as noted above, must be given the greatest weight by this Commission. First, as noted above, this plan is inconsistent with MC-2.6.5 – "Scale and Mix of New Use," stating that development on the McMillan site "should consist of moderate- to medium-density housing, retail, and other compatible uses." 10A DCMR § 2016.9. As the D.C. Court of Appeals already held, "the high-density use approved in the PUD is *not* consistent with that policy." *Friends of McMillan Park*, 149 A.3d at 1034 (emphasis added).

The plan is also inconsistent with the direction provided in MC-2.6.5 that "[a]ny development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development." 10A DCMR § 2016.9. The Commission's 2014 order confirmed the Commission's view that "historic views and viewsheds across the site should be protected." (¶ 144). That requirement, however, will not be satisfied by the Applicant's plan. Instead, the wall of high-rise buildings at the center of the site facing North Capitol Street and the high-density medical office building on the north portion of the site would block the majestic views across the McMillan site, including the open view of Howard University and Howard's iconic Founders' Hall Clock Tower, in addition to the views south to Washington's majestic skyline, the views east across the site to the towers and the domes of Trinity and Catholic University, and the views west to the National Cathedral. Certainly, the massive scale and height of the proposed new development would overwhelm, obscure, and dominate most of the significant character-defining features of the site itself, especially the North Service Court, and would obliterate important views of the striking rows of sand towers from Michigan Avenue.

Another inconsistency with MC-2.6.5 is the permanent blockage of historically significant viewsheds and vistas from President Lincoln's Cottage on the grounds of the Armed Forces Retirement Home (AFRH) to the north. These vistas currently extend from President Lincoln's Cottage across the McMillan site and south to the Capitol Dome. These views of the Capitol Dome were highly significant to President Lincoln himself, and have long been featured in the historical interpretation of President Lincoln's Cottage for the members of the public who visit there.

Back in 2014, the Zoning Commission referred the review of this project to the National Capital Planning Commission (NCPC) for a review of potential impacts of the development on the federal interests under the Comprehensive Plan. However, the NCPC's review was severely and fatally flawed, for several reasons, and in our view, it is imperative that the Zoning Commission re-initiate a new referral to the NCPC.

At the NCPC's public hearing on the matter, on November 6, 2014, NCPC staff made a presentation to the Commission members asserting that the views from President Lincoln's Cottage to the Capitol Dome were either non-existent or not significant. This presentation was

blatantly false—and could have been explicitly contradicted by the Executive Director of President Lincoln's Cottage, who sees the Capitol Dome from President Lincoln's Cottage on a daily basis—but the false statements were made *after* the testimony had already been presented by the National Trust for Historic Preservation and President Lincoln's Cottage, so those parties did not have the opportunity to rebut the false presentation made by staff at the end of the public hearing. Although the National Trust and President Lincoln's Cottage immediately submitted objections and requests to correct the record on November 10, 2014 (ZC Exh. 868A, 868B), those requests were not taken into account in the final zoning order, which was issued on the same day.

What was unknown at the time those objections were submitted was that the NCPC staff member who handled the review and made the false statements to the NCPC – Shane Dettman -- had a significant conflict of interest. Immediately after the NCPC's review was completed, he was hired by the law firm that represents the Applicant (Holland & Knight), where he still works to this day, including work on this matter. This conflict of interest, and the false statements made by the staff member whose objectivity was accordingly tainted, necessitate a new referral to the NCPC.

In addition to the conflict of interest and false information from NCPC, it is also important for the Commission to address the erroneous assumptions that underlie the conclusions about the viewsheds from the AFRH across the McMillan site. Originally, the AFRH had submitted a letter to the NCPC dated August 21, 2014, which explained in detail why several of the viewsheds from the AFRH are important, and described the extensive planning effort undertaken by the AFRH itself to manage the future development of its property in a way that would minimize harm to those viewsheds. The proposed development at the McMillan Park site threatens to undermine all of that careful planning by obstructing the very viewsheds that the AFRH has worked so hard to preserve. Citing this letter and relying on its own viewshed analysis, the NCPC staff initially advised the Zoning Commission, on August 25, 2014, that the building heights proposed in the plan would have "substantial impacts" on these publicly accessible historic viewsheds.

The subsequent letter sent to the Zoning Commission by NCPC staff on September 15, 2014 attempted to back away from the staff's earlier concerns about the proposed medical building, and its negative impacts on the historic viewsheds from the AFRH grounds, because the Applicants agreed to cut 15 feet off the height of the medical building and move the building's western wing 15 feet to the east. However, the NCPC's September 15 letter (and the shifting of the medical building) focused solely on the viewshed from the Scott Statue, to the exclusion of the other highly significant historic viewsheds (especially President Lincoln's Cottage). The NCPC's September 15, 2014 letter stated that the view from the Scott Statue "is the primary view identified in the 2008 AFRH-W Master Plan, and the one we consider most important to the federal interest." However, two significant changes have occurred since the AFRH Master Plan was completed in 2008, which make the historic viewshed from President Lincoln's Cottage much *more* significant than the viewshed from the Scott Statue. First, President Lincoln's

Cottage is now open to the public, together with the Visitor Education Center in the nearby Administration Building, and this Historic Site now receives more than 30,000 visitors every year. By contrast, the Scott Statue is not accessible to the general public. Second, at the time of the AFRH master plan in 2008, the viewsheds from President Lincoln's Cottage were blocked by the non-contributing Scott Building. However, the AFRH has since demolished the Scott Building, and thus has reopened these significant viewsheds. Because of these two significant changes in the past nine years, the fact is that *far* more people (tens of thousands more) now have the opportunity to see these historic viewsheds from President Lincoln's Cottage than those few who may see the historic view from the Scott Statue. So in terms of the federal interests, and the level of impact on the public interest, it is imperative that the Commission ensure that the development's impact on these historic viewsheds from President Lincoln's Cottage are thoroughly evaluated -- which has NOT been done to date – and that the Commission require the proposed development to be modified in order to avoid and minimize the negative impact on these historic viewsheds. For these reasons, we urge the Commission to re-initiate a referral to the NCPC for an objective review of potential impacts on the federal interest.

The plan is also inconsistent with Policy MC-2.6.3: "Mitigating Reuse Impacts." The Applicants' plan does not "increase connectivity between Northwest and Northeast neighborhoods." 10A DCMR § 2016.7. Rather, the site design utterly fails even to attempt any real connectivity to the adjacent Northeast (Stronghold) neighborhood or the Northwest (North Bloomingdale) neighborhood. The new development streets are internal streets, and indeed are private, not public streets. There is almost no integration into the existing street grid. None of the streets on the west side of North Capitol Street extend into the site with the exception of Evarts Street, which is not even a through street on west side of North Capitol Street. Of the three internal north/south streets, only Half Street is acceptable to Michigan Avenue. The nine story medical building and the six-story multi-family apartment building fronting on North Capital Street would create an enormous barrier between the Stronghold and Edgewood neighborhoods. On the south side, there would be a 25-foot berm creating a visual and physical barrier from Channing Street, with only one steep walkway going up the berm to the proposed community center.

The Plan also fails to "reduce parking, traffic, and noise impacts on the community, or "improve transportation options to the site and surrounding neighborhood." *Id.* The Applicants' own traffic studies demonstrate that the proposed development would vastly increase, not reduce, traffic impacts. Necessary transportation "improvements" such as traffic signals further increase traffic impacts, particularly on North Capitol Street, and the "improved transportation options," while they claim to address the needs of persons travelling to and from the site but actually add to the traffic burden on the surrounding neighborhood. As FOMP's unrebutted traffic analysis previously presented to the Commission demonstrates, the Applicants own traffic studies show that the development will add 31,500 additional vehicles onto the area congested area streets. Moreover, the Applicants studies project that the development will generate 24,000 transit trips. Because McMillan is located over a mile from the nearest Metro Station, the Commission

imposed a condition requiring the Applicants to provide additional transit capacity for 1,100 persons (approximately 100 additional buses) during the peak hour. ZC Exh. 862; ZC Exh. 873, at 58-58 (Decision, ¶ D.1(c)). Yet the Applicants' own studies show that 1,710 persons will use bus transit in one hour, leaving over 600 transit trips un-accounted for. ZC Exh. 696.

The Plan is also inconsistent with Policy MC-2.6.2: Historic Preservation at McMillan Reservoir, as the plan does not "[r**]**estore key above-ground elements of the site in a manner that is compatible with the original plan." To the contrary, the plan completely destroys one of the spatial relationship between the open space and the sand towers and structures on the north and south service courts – by so densely clustering development - a feature that the Applicants' own historic preservation report identifies as a "key" historic feature. In addition, a majority of the architecturally distinctive portals to the cells will be destroyed -- an above-ground feature also identified by the Applicant as a "key" historic resource. The decision to locate the park and open space at the south end of the side rather than at the center, where these spatial relationships would have been preserved, was made solely to accommodate DC WASA's plans not historic preservation. Accordingly, this plan failed to provide adequate consideration to the "cultural significance of this site, and its importance to the history of the District of Columbia. . . . as part of the site design. 10A DCMR § 2016.6.

Finally, the Applicants' plan is inconsistent with **Policy MC-2.6.4: Community Involvement in Reuse Planning," which requires that development on the site "[b]e** responsive to community needs and concerns in reuse planning for the site. Amenities which are accessible to the community and which respond to neighborhood needs should be included." 10A DCMR § 2016.4. Here, the development completely disregarded the recommendations from community input assembled in 2002 by the D.C. Department of Housing and Community Development, which specifically said that high-rise offices and medical facilities were undesirable for the site. In addition the comments of the McMillan Advisory Group were disregarded and not incorporated into the Community Benefit Agreement, in spite of the letter of commitment signed by all parties. ZC Exh. 842, 843.

Issue No. 3: Is the high-density development proposed for the site the only feasible way to retain a substantial part of the property as open space and make the site usable for recreational purposes?

As noted above, the Applicants, not FOMP, have the burden of proof in this and all other remand issues. The Applicants' pre-hearing submission" provides no evidence that high-density medical offices are needed to advance other policies in the Comprehensive. FOMP respond to any testimony at the zoning hearing purporting to demonstrate that high-density medical facilities are necessary to advance "other polices" in the Comprehensive Plan.

The Applicants of course will contend that the high-density medical building is critical to *their* proposed development, plan. However, the issue on remand is not simply whether the Applicants' proposed development plan requires high-density medical building, but whether any

development within the site's moderate density designation could advance Comprehensive Plan policies. As evidenced by the attached letter from Douglas Development (attached hereto as Exhibit E), moderate density development proposals are reasonable and feasible. If this project had been subject to competitive bidding, there would indeed be evidence that the McMillan site could be feasibly developed in accordance with its Comprehensive Plan designation as parks, open space, moderate density commercial and medium density residential.

Issue 4:

A. Will the PUD result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record of this case.?

B. If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and these potential adverse effects.

As the D.C. Court of Appeals found, the Commission's prior order completely failed to consider or adequately address issues of gentrification, land values, and displacement. *Friends of McMillan Park,* 149 A.3d at 1038. It is undeniable that housing prices, home values, and rents have skyrocketed in the neighborhoods surrounding McMillan over the past decade, in which the District of Columbia's development plans for McMillan were well-known and underway.

Existing and available data as well as on-the-ground observations confirm that moneyed millennials are moving in and investors are gutting and flipping houses on Channing Street in anticipation of the new development at McMillan, which will reel from the disruption of construction. Some residents remaining in their homes are without utilities or water, some neighbors report offers of cash for their houses, and both RealtyTrac and Zillow show significant housing distress with many houses in pre-foreclosure, foreclosure, or at auction. Census tract data show a decrease in youth and seniors and racial turnover as well, indicating a loss of families or that extended family households under stress must triage their more difficult members.

.

The McMillan development will also lead to Indirect displacement by increasing pressure on landords to raise rents. The large apartment buildings in Edgewood, just east of the McMillan site, currently provide many affordable and subsidized unit. These landlords will be pressured to convert to more expensive housing, given that this neighborhood saw its property tax assessments rise by 11% last year due to development at Chancellors Row, RIA, Union Market, and a new proposal for Eckington, as well as projects at the Soldiers Home and Catholic University. Affordable housing in this part of the city where many people moved because of affordability is at great risk. The intensive development at McMillan will also result in exclusionary displacement – the displacement that results when an area becomes unaffordable to people who could have lived there.

As noted above, of the 677 units of housing, only nine row houses and two units of rental housing are designated for moderate-income families with incomes no higher than 50 % AMI. Accordingly, the real irony here is that the production of new housing at the McMillan site does not even come close to mitigating the loss of affordable housing in the surrounding neighborhood that will be accelerated by the intensive development planned for McMillan, much less provide a benefit that justifies the extraordinary expenditure of taxpayer funds for this development. Other adverse effects include the adverse effects of adding 31,500 vehicles per day on the already congested streets providing access to the site, and the significant adverse effects associated with these vehicle emissions, including the very dangerous particulate emissions from the 100 additional Metrobuses that must be added during the peak hour to serve this site. When all of these adverse effects are weighed against the touted benefits, it is clear that these adverse effects far outweigh the relative value of the project's benefits and amenities.

Conclusion

The Applicants' plan is inconsistent with the Comprehensive Plan policies and objectives entitled to the greatest weight – the area elements – and fail to advance core citywide goals and objectives. FOMP will address these points in greater detail at the hearing now scheduled for April 6, 2017. The Commission must therefore reject the Applicants' proposed development plan and remapping request.

Sincerely,

Andrea C. Ferster

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on April 3, 2017, by **email** to:

Norman Glasgow, Jr.
Shane Dettman
Holland and Knight
norman.glasgowjr@hklaw.com
shane.dettman@hklaw.com

Steingasser, Jennifer (OP)
Jennifer.steingasser@dc.gov

Barnes, Dianne (SMD 5E09)
5E09@anc.dc.gov

Bradley Thomas, Chair
ANC 5E
5E05@anc.dc.gov

Ronnie Edwards, Chair, ANC 5A
5A05@anc.dc.gov

ANC 1B
1bANC.gov

Andrea C. Ferster