

**Before the D.C. Zoning Commission
Washington, DC**

Re: Case No 13-14 -- McMillan Sand Filtration Site
Limited Scope Public Hearing: Statement of Laura M. Richards
for the Friends of McMillan Park

I am Laura M. Richards, testifying on behalf of the Friends of McMillan Park (FOMP) as an expert on the D.C. Comprehensive Plan. This statement addresses certain issues raised in the Notice of Remand issued by the Zoning Commission as to whether the development proposal of Applicant Vision McMillan Partners, LLC complies with the D.C. Comprehensive Plan. The issues in the Notice of Remand are the same issues raised by the D.C. Court of Appeals in its Order remanding this matter for further proceedings.

Generally, this testimony concludes that in order to be "not inconsistent" with the Comprehensive Plan, the McMillan Sand Filtration Site should be developed at moderate commercial and medium residential densities and uses. It concludes also that the proposed healthcare facility -- a high-density, high-intensity institutional use -- is not contemplated anywhere in the Plan and is inconsistent with it. Finally, it concludes that the nature of the activity to be carried out at the proposed healthcare facility is not established on the record with sufficient clarity to permit a determination on the extent of adverse impacts it may present, apart from its sheer bulk.

Consistency with the Comprehensive Plan:

The Commission's Notice of Remand first asks this two-part question:

- 1A. Could the other policies cited in the Order be advanced even in development on the PUD [Planned Unit Development] site were limited to medium- and moderate-density use?
- 1B. If not, which of the competing policies should be given greater weight and why?

The Order referred to is the Zoning Commission's decision of November 10, 2014 approving the Applicant's proposal to develop the McMillan site with a project that includes a very high density commercial element. The Commission concluded that "The high-density zoning and corresponding building heights at the northern end of the site are appropriate given that they cluster the high- intensity uses and largest buildings on the portion of the site adjacent to existing intensive uses with similar building heights, and allow the southern end of the site to remain open space and low-density residential uses." ZC Order, ¶ 172. The Commission further concluded that the Plan contemplates that its sometimes overlapping or competing policies will be interpreted flexibly. Finally, the Commission concluded that the high-density element was

permissible in this case because the overall density (FAR) of the site -- taking into account all proposed buildings and open space -- fell in the moderate to medium range of density.

The first question, whether the other Plan policies cited in the Order could be provided if development is limited to moderate- and medium densities, is being addressed separately by FOMP.

The second question asks which policies should govern if the answer to the first question is no. As stated below, the policies establishing moderate- and medium densities for the McMillan site should be given governing weight. This conclusion is compelled by a reading of the Land Use Element, the Future Land Use Map (FLUM) section MC-2.6.5 of the Mid-City Area Element and the Plan's interpretive rules. Read together, these provisions instruct the reader to give prevailing weight to the low- and moderate-density policies.

The FLUM, which is adopted into law as part of the Plan and carries the same weight as the text, designates uses and densities on the McMillan site (through multi-colored striping) as a mix of medium density residential, moderate density commercial and green space. The Land Use Element addresses the McMillan Site only in general terms. It identifies McMillan as one of 10 large sites scattered throughout the city that the District anticipates will be locations for significant amounts future of housing and employment opportunities. See generally section LU-1.2. McMillan, at 25 acres, is the smallest of these. The Land Use Element contains a number of policies and action items regarding the 10 sites that "focus on broader issues that apply to all sites" and directs that "[t]he Area Elements should be consulted for a profile of each site and *specific policies* for its future use." *Id.* (emphasis added). The Land Use Element says this more than once, stating at another point:

The 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.

LU -1.2.2 (Mix of Uses on Large Sites). Finally, there is a concluding instruction at the end of section 1.2 once more advising the reader that "Policies and actions for large sites are contained in the Comprehensive Plan Area Elements." The Land Use Element says at least three times that the relevant Area Elements for the 10 large sites must be consulted if one wants to know what uses and densities the District intends for a particular large site. The Plan contains an interpretive rule providing that the Land Use Element "should be given greater weight than the other elements," when overlapping or competing provisions must be reconciled. Implementation

Element, section 2504.6.1 The Land Use Element expressly instructs that its general policies regarding the 10 large sites are to be read and applied in light of the site-specific provisions in the Area Elements. The Plan preemptively resolved any potential or perceived conflicts between the Land Use Element and a site-specific Area Element. They do not compete with each other and do not require balancing against each other; they must be read in tandem, with the more specific Area Element fleshing out the broad, general Land Use Element. As for conflicts or overlaps between the Land Use Element and other citywide elements, the Plan gives greater weight to the former.

The relevant Area Element in this case is the Mid-City Element, which contains five policies regarding reuse of the McMillan site. The preeminence of the Mid-City Area Element over the city-wide elements is even more pronounced with respect to areas such as the McMillan Sand Filtration Site, which is designated as “policy focus areas.” 10A DCMR § 2010.1 (MC 2010- Policy Focus Areas). Area elements that are “policy focus areas” such as the McMillan Sand Filtration Site “require a level of direction and guidance above that provided by the prior section of this Area Element and in the citywide elements.” *Id.*

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 profile of each site and specific policies for its future use.”). As discussed in more detail below, the Applicants’ plan is 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 Applicant's pre-hearing submission, particularly Exhibit A, cites numerous other provisions of citywide elements (Housing, Transportation, Environmental Protection, Economic Development, etc.) that purportedly support this project. The policies are necessarily general in

¹ Recognize the overlapping nature of the Comprehensive Plan elements as they are interpreted and applied. An element may be tempered by one or more of the other elements. As noted at Section 300.2, since the Land Use Element integrates the policies of all other District elements, it should be given greater weight than the other elements. From the interpretive module.

nature and must be construed and applied in light of the specific provisions that speak particularly to the McMillan site, its particular features, *e.g.*, its unique historic resources, and its immediate neighborhood. The citywide elements were not meant to be read in isolation, but as the starting point before a deeper dive into the particular guidance of the Area Elements and, where available, Small Area Plans. Because the Applicant discusses the citywide elements in isolation, its bare recitation of broad goals should be accorded slight weight. The Mid-City Area Elements relating to the McMillan Sand Filtration Site address, in order:

- preservation of contiguous open space
- preservation of the site's historic resources
- mitigation of reuse impact
- community involvement in reuse decisions; and
- the scale and mix of new uses.²

Section MC-2.6.1 - 2.6.5.

That last key policy states:

Recognize that development on portions of the McMillan Sand Filtration site may be necessary to stabilize the site and provide the desired open space and amenities. Where development takes place, it should consist of moderate- to

² McMillan site policies MC-2.6.2 - 2.6.4 are reproduced below. Policy MC-2.6.5 is reproduced above in the text.

MC-2.6.1: Open Space on McMillan Reservoir Sand Filtration Site

Require that reuse plans for the McMillan Reservoir Sand Filtration site dedicate a substantial contiguous portion of the site for recreation and open space. The open space should provide for both active and passive recreational uses, and should adhere to high standards of landscape design, accessibility, and security. Consistent with the 1901 McMillan Plan, connectivity to nearby open spaces such as the Armed Forces Retirement Home, should be achieved through site design.

Policy MC-2.6.2: Historic Preservation at McMillan Reservoir

Restore key above-ground elements of the site in a manner that is compatible with the original plan, and explore the adaptive reuse of some of the underground “cells” as part of the historic record of the site. The cultural significance of this site, and its importance to the history of the District of Columbia must be recognized as it is reused. Consideration should be given to monuments, memorials, and museums as part of the site design.

Policy MC-2.6.3: Mitigating Reuse Impacts

Ensure that any development on the site is designed to reduce parking, traffic, and noise impacts on the community; be architecturally compatible with the surrounding community; and improve transportation options to the site and surrounding neighborhood. Any change in use on the site should increase connectivity between Northwest and Northeast neighborhoods as well as the hospital complex to the north.

Policy MC-2.6.4: Community Involvement in Reuse Planning

Be 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.

medium-density housing, retail, and other compatible uses. Any development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development.

MC 2.6.5.

This policy is the linchpin upon which decisions for the site must turn. It speaks with greater specificity and clarity than any other Plan policy as to how the city's legislative authority envisioned the future of this site. The dominant Land Use Element states that its general policies for large sites should be channeled through specific Area Element Policies. It precisely mirrors the FLUM designation for this site. It is internally consistent with Plan policies calling for preservation of open space and historic resources at the site. The moderate density commercial and medium density residential standards contained in the policy mitigate reuse impact on the surrounding low- and moderate-density residential neighborhood, which is consistent with Plan policies that seek to avoid juxtaposing very tall commercial structures and low-density residential buildings.

In short, Policy MC-2.6.5 establishes the planning envelope for this particular site. Deferring to the Mid-City Element guidance complies with the axiom of statutory construction that gives more weight to specific provisions of law than to general statements. As described above, the Land Use Element expressly embodies this principle. Reciting Land Use Element policies in support of the project without tying them into the McMillan-specific policies of the Mid-City Area Element subverts the intent of the Plan. In addition, the FLUM, like the Land Use Element, directs readers to Area Elements for "additional detail on the specific mix of uses. If the Plan envisioned the inclusion of high density commercial buildings as part of the mix of densities and uses on this site, it easily could have done so, in the text of the Plan and/or by adding a red stripe on the FLUM. The Plan does neither. The bright red high density designation does not appear on the FLUM outside downtown. Accordingly, the D.C. Court of Appeals was clearly correct in finding 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 v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1035, 1037 (D.C. 2016)

The Applicants' proposed development is blatantly inconsistent with Policy MC-2.6.5. The development will 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 add to the traffic burden on the surrounding neighborhood.

The site design lacks any real connectivity to the adjacent Northeast Stronghold neighborhood or the Northwest North Bloomingdale neighborhood. The 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 accessible to Michigan Avenue. The nine story health care building and the six-story multi-family building fronting on North Capital Street will create an enormous barrier between the Stronghold and Edgewood neighborhoods. On the south side, there is 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.

Averaging densities over the entire site will not achieve compliance with the Comprehensive Plan

The Commission determined that the very high density medical building to be built on Parcel 1 of the McMillan site is “not inconsistent” with the moderate density designations in the Comprehensive Plan because its bulk (floor area ratio or FAR), when combined with the open space and lower densities of other planned buildings, results in an overall site density within the moderate/medium range. However, the Commission also rationalized the adoption of a high density zone district, that permits greater heights than permitted in moderate density zone districts, was also “not inconsistent” with the Comprehensive Plan based on a “clustering” rationale – that “high-density zoning and corresponding building heights at the northern end of the site are appropriate given that they cluster the high- intensity uses and largest buildings on the portion of the site adjacent to existing intensive uses with similar building heights, and allow the southern end of the site to remain open space and low-density residential uses.” ZC Order 13-14, ¶ 172.

While such aggregation of FAR across a PUD site is done routinely under PUD provisions of the D.C. Zoning Regulations, nothing in the Zoning Regulations permit a similar “cluster” rationale to justify heights in excess of the maximum permitted heights for the applicable zone district. More importantly, there is no authority or precedent for using such a “clustering” rationale to adopt a zone district that is higher and more intensive than that designated in the Comprehensive Plan. Such a “clustering” rationale cannot be lawfully or appropriately used to rationalize mapping the site for a higher density zone district and correspondingly higher heights and densities than those designated in the Comprehensive Plan is not appropriate for determining compliance with the Plan. The assertion that such “clustering” or aggregation *alone* can render a zone district to be “not inconsistent” with the Comprehensive Plan misunderstands the relationship between planning and zoning.

Planning precedes zoning and sets the boundaries within which zoning regulations are promulgated and zoning decisions are made. The Comprehensive Plan determines the planning envelope for a site -- a mix of heights, densities and uses -- and allows some, but not unlimited,

flexibility. This is seen in the Plan text and in FLUM density designations, which are fluid with limited overlap at the edges. For instance, a moderate density residential designation is characterized by two- to four-story buildings, while a medium density area is characterized by four- to seven-story structures. Accordingly, a four-story building would be appropriate in a moderate or medium density setting, depending on its surrounding context, but a seven-story building would be out-of-place in a moderate-density neighborhood.

Similarly, with respect to commercial uses, low-density commercial areas generally do not exceed three stories, moderate densities do not exceed five and medium densities do not exceed eight.³ The fluidity exists between adjacent Plan designations. There is no provision for leapfrogging over intermediate plan density categories to reach a desired result. In this case, the Applicant, faced with Plan text and a FLUM designation calling for moderate density commercial, proposes, on Parcel 1, to bypass medium density and construct Parcel 1 at one of the highest commercial densities. The Applicant contends it complies with the Plan because aggregating density over the entire site -- a mechanical arithmetic calculation -- yields a nominal Plan-compliant consistency. While the arithmetic may work, what would be built on the ground is precisely the kind of inappropriate juxtaposition of heights and densities that the Plan seeks to guard against.

The limited flexibility allowed under the Plan carries through to the PUD process in the zoning regulations, which acknowledge the planning/zoning relationship:

The importance of zoning as a tool for implementing the Comprehensive Plan, particularly the Future Land Use Map, is discussed in several places in the Comprehensive Plan. The Home Rule Charter requires that zoning “shall not be inconsistent” with the Comprehensive Plan. Consequently, revisions to the

³ Moderate Density Commercial:

This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.

Comprehensive Plan should be followed by revisions to the Zone Map, with an emphasis on removing clear inconsistencies.

11 DCMR § 2504.1 (1958 Code).

A PUD in a neighborhood designated moderate density might receive bonuses allowing five stories but the amount of bonus density and heights capped so that the larger PUD structure does not overwhelm its smaller neighbors. The newly adopted 2016 zoning code imposes a fixed 20 percent cap on the total bonus density a PUD development may obtain. The 1958 Regulations, contain qualitative language aiming at the same result.

PUD applications very frequently involve a request for rezoning, usually rezoning to a higher intensity zoning category than what currently exists. The PUD applicant then applies PUD bonus density to the upzoned land, thereby gaining bonus density through two planning tools. The newly acquired density is then distributed over the PUD site. The Comprehensive Plan operates to apply brakes to this process and forestall incongruous runaway development. It does this by designating land use categories that it associates with a range building heights, stated as a number of stories, and a range of typical zoning categories. Only after appropriate zoning categories, i.e., those corresponding to Plan use and density designations, is bonus density applied and the FAR distributed over the site.

In using the aggregate density over an entire site to determine a project's compliance with the Plan, the Applicant applies a zoning tool to a planning determination. In the project under consideration, for instance, the same overall site density could be achieved by a handful of C-3-C sized buildings, clustered or scattered across the site, used for housing, retail and commercial. Such an outcome clearly is outside the Plan. Yet that and similarly incongruous outcomes are what can result by applying the rule urged by the Applicant, which is to bypass inconvenient Plan designations by proceeding to aggregate buildings of different sizes before determining which zone categories belong on the site in the first place. If arithmetic calculations can be substituted for the basic planning envelope, large portions of the Plan become meaningless. The Comprehensive Plan would need only to indicate the desired overall density and let future development reach that density in any manner it chooses.

The C-3-C and CR Zones Allow Maximum Heights that are Inconsistent With the Plan

As formerly Federal property, the McMillan site was unzoned. The immediately adjacent residential neighborhood on the west side of North Capitol Street, on the site's southern boundary, is zoned R-2, a moderate density category. The two-story rowhouses on the east side of North Capitol Street are zoned R-3. Land to the north and west and is Federal unzoned property, including the Armed Forces Retirement Home. The Washington Hospital Center complex (including Children's National Medical Center) contains a mix of zones: MU-2

(moderate density commercial); RA-2 (a moderate-density apartment zone); and SP-2 (a medium-density mixed use zone).

Nothing in the surrounding area is zoned anywhere near the height or bulk of the C-3-C and CR zones proposed for the McMillan site. Neither the Comprehensive Plan Land Use Element nor the Mid-City Element contemplates future development on that scale in the neighborhood. The densities and uses for the site set forth on the FLUM and in the Mid-City Element provide for future growth on the site that is not jarringly incompatible with the existing built environment. C-3-C and CR should not have been considered as zones appropriate for this area. C-3-C allows buildings up to 130 feet, plus a 20-foot penthouse (although the proposed medical building will be "only" 115 feet). The C-3-C maximum height is taller than any in the city other than portions of Pennsylvania Avenue. The Plan designates no high density commercial area outside of the central business district. As a point of comparison, the quite active business district around the Friendship Heights Metro Station is medium density commercial.

The Applicant states that the density of the North Parcel medical building is compatible with the use, height and density of nearby Children's National Medical Center, which stands at 127 feet, and the Washington Hospital Center complex. CNMC is situated on Michigan Avenue at a point where it curves slightly to the northwest, around the reservoir. That curvature, and CNMC's curved facade, further mitigate its visual impact. The entire medical complex is buffered from the surrounding residential neighborhoods by North Capitol Street north of Michigan Avenue, where extensive landscaping and land configuration essentially shield the medical campus from view by McMillan Reservoir to the west and the large parkland of the Armed Services Retired Home on the north and McMillan Park on the South. The hospital complex is a self-contained buffered campus. The Applicant proposes to extend the medical use with a high density and high intensity medical buildings on Parcel 1 and a smaller but still significant medical building on parcel 2. Locating a high-density medical building on Parcel 1 medical building is akin to moving CNMC into the backyard.

The project accordingly is inconsistent with Land Use Element Policy 1.2.2 -- Mix of Uses on Large Sites, which states:

Ensure that the mix of new uses on large redeveloped sites is compatible with adjacent uses and provides benefits to surrounding neighborhoods and to the city as a whole. The 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 generally compatible with adjacent uses.

While some of the uses, particularly the open space and housing, lie within this policy, the very high density scale and zoning for the medical building use do not. The Land Use

Element states, however, states that the "mix of uses" should be compatible with the neighborhood and be indicated on the FLUM and described in an Area Element. It does not authorize the introduction of an incompatible element to subsidize a desirable aspect of a project because an applicant wants an incompatible project for its own purposes.

There Is No Basis for Concluding that the Medical Building Is an "Other Compatible Use"

The scale of the medical building, standing alone, is sufficient to render the structure incompatible. The Applicant states that medical building needs to be 115 feet "solely as a result of the requirement to accommodate the specialized floor-to-ceiling requirements of the healthcare facility building" and that but for the medical use, the building likely would be 90 feet. Applicant's submission on Remand at 6 (Mar. 13, 2017). The Applicant states further that the healthcare facility is a "critical component to the viability of the Project, and to the Applicant's ability to advance many other Comprehensive Plan policies relating to parks and open space, recreation, housing and economic development." *Id.*

This statement makes clear that project planning is being driven to accommodate the Applicant's desired use rather than to comply with the polices of the Plan. While any Applicant is free to pursue a project with its own aims foremost, the Commission cannot rule on that basis. When an Applicant's proposal and the Plan coincide, well and good. In this case they do not, and the Plan must govern. The McMillan site is to be developed with open space, housing, moderate density commercial and "other compatible" uses. The proposed healthcare facility is a high-density public facility use.

Notwithstanding its commercial zoning, the Applicant states that it most likely will provide expansion for the nearby Washington Hospital Center. WHC is a tertiary care teaching hospital with a Level 1 trauma center and a regional burn center, designated as an "institutional use" on the FLUM, a use category distinct from the open space, residential and commercial uses designated for the McMillan. An institutional use may be an "other compatible use" but is not automatically so. Not only is the medical building incompatible on account of its size, but no showing how has been made that the actual use will be compatible. Healthcare facility is a broad concept, embracing inpatient and outpatient acute care, primary care, urgent care, long-term rehabilitation, nursing home and hospice, inpatient or outpatient mental health care, substance abuse treatment, pathology, and sensitive research requiring limited access, among others. Different types of healthcare facilities entail varying levels of traffic, hours of operation and so forth. Any one or more of these might be an "other compatible use," if the scale were appropriate, but the record has not been made that this will be the case. The Applicant has described in some detail that the emphasized that the additional height will accommodate specialized building systems and utilities systems required of a medical facility. This indicates that the building will be decidedly more institutional than commercial.

The record contains part of the District's Five-Year Economic Development Strategy (Ex K to the Applicant's statement on remand) that proposes a medical hub on the McMillan site, with the potential to add 5,000 jobs. This undoubtedly would be consistent with policies in the Economic Development Element of the Plan, but a major medical hub is not what the Land Use Element, as amplified by the Mid-City Element, calls for on the site. When elements compete, the Land Use Element controls. A 5,000 employee medical hub on the McMillan site, but as an expansion of the WHC site, is an entire revisioning of site. A change of this magnitude requires amending the Plan, which cannot be accomplished by attempting to shoehorn a PUD application into the Plan. Neither the flexibility allowed in implementing, nor the merits of a particular use, confer the ability to introduce new uses and densities not contemplated by the Plan. The Applicant's proposal for Parcel 1 introduces a "clear inconsistency," an outcome the Plan instructs should be avoided.

Other Land Use Elements Addressing the 10 Large Sites Do Not Establish that the Applicant's Proposal Complies with the Plan

The foregoing discussion states the principal reasons why the Applicant's proposal is not consistent with the Plan. Because the Applicant relies on other Land Use Element policies that address the McMillan site and the other large sites, these are discussed here briefly, with the caveat that the Plan calls for applying these policies in accordance with the relevant Area Elements.

LU-1.2.1: Reuse of Large Publicly-Owned Sites. Recognize the potential for large, government-owned properties to supply needed community services, create local housing and employment opportunities, remove barriers between neighborhoods, provide large and significant new parks, enhance waterfront access, and improve and stabilize the city's neighborhoods.

LU-1.2.5. Public Benefit Uses on Large Sites - Given the significant leverage the District has in redeveloping properties which it owns, include appropriate public benefit uses on such sites if and when they are reused. Examples of such uses are affordable housing, new parks and open spaces, health care and civic facilities, public educational facilities, and other public facilities.

Comment. These policies are similar and are addressed together. The project provides affordable housing, of which there is a shortage, but the project falls far short of addressing the District of Columbia's demonstrated affordable housing needs. The 85 housing units provided for seniors are only available to persons with incomes between 50 and 60% of the Area Mean Income (AMI), which serve therefore moderate income persons. The 85 senior units therefore do not satisfy the greatest need for affordable housing in the District of Columbia, which is for low income persons or families. That leaves only 11 units of housing – two rental apartments

and nine row houses -- that are designated for households with incomes no higher than 50% AMI . Since there is no evidence that the rental units will be suitable for families, that leaves barely one percent of the total housing that will serve low income families.

The project's pool and community recreation center are desirable community services. No showing has been made as to the recreation center's capacity: how many residents it is designed to serve, the level and range of activities, etc. At 17,000+ square feet, it is about half the size of 31,000 square-foot Turkey Thicket Center. Assessing the significance of this benefit is difficult on this record. The 6-acre contiguous park while not "large," constitutes 25 percent of the available space and therefore is not insignificant. The separate Healing Garden on Parcel 1 will be open to the public but its location adjacent to the highly trafficked Michigan Avenue is undesirable, and distance from the residential neighborhoods raises questions about its accessibility and user-friendliness.

As to removing barriers between neighborhoods, as noted above in addressing Policy MC-2.6.3, the site lacks any real connectivity to the Northwest and Northeast neighborhoods any connectivity of the site's new cross-streets are offset by Parcel 1 medical buildings, which is oriented to the self-contained medical campus to the north. The medical building in effect turns its back to its neighbors to the south and the high side wall to its neighbors to the east. The site employs a generous setback, landscaping and articulated architecture to minimize the impact of the building, but minimizing the impact of a 115-foot building is akin to minimizing the impact of an elephant in the living room.

The degree to which the project will provide healthcare and jobs for the existing community and the community to be built has not been established. As discussed above, the nature of the healthcare facility remains unclear. It may or may not include a community-serving primary care or urgent care component. Whether or not it does, the immediate community, situated across the street from a major medical campus, cannot be said to lack physical access to care. The Applicant claims no more than that the facility "has the potential to ... reduce the shortage of low-income primary care facilities" available in upper Northeast. Applicant's Statement at 18. No guarantees are made.

LU-1.2.6. New Neighborhoods and the Urban Fabric. On those large sites that are redeveloped as new neighborhoods (such as Reservation 13), integrate new development into the fabric of the city to the greatest extent feasible. Incorporate extensions of the city street grid, public access and circulation improvements, new public open spaces, and building intensities and massing that complement adjacent developed areas. Such sites should not be developed as self-contained communities, isolated or gated from their surroundings.

Comment. The healthcare facility conflicts with the guidance to redevelop at "building intensities and massing that complement adjacent developed areas. Its size and use, as well as its orientation toward away from the existing and planned residential communities, and toward the WHC complex, isolates it from the existing and new residential communities. Its specialized use is another isolating factor. The Healing Garden is oriented toward Michigan Avenue and therefore may not be readily accessible or welcoming to the existing and planned residential communities.

The Applicant has agreed to provide "a private shuttle service to serve site-generated transit demand" if neither a city Circulator bus nor streetcar is not provided. The shuttle service will serve McMillan site residents and employees but apparently not the general public. This service, however beneficial to site residents and employees, will create an imbalance between them and the surrounding community with respect to transit access. This imbalance cuts against the policy of integrating new communities with existing ones.

LU-1.2.7. Protecting Existing Assets on Large Sites. Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are developed.

Comment. While the preservation of historic site elements will be addressed in more detail by another witness, it is worth noting here that as a matter of planning, the retention of a small percentage handful of the historic structures does not constitute meaningful preservation of historic elements. The structures have not been integrated into the activities of the new community. Given their specialized nature, re-use is inherently less feasible than repurposing a historic building. Accordingly, compliance with this policy has not been established and cannot weigh in favor of approving the application.

The other principal historic assets of the McMillan site are the open space and the viewsheds. The McMillan site was envisioned as a green space for public use and enjoyment as an adjunct to serving its public utility purpose. It has not been available for public use for a number of decades and it has not been maintained. Even in its accessible and somewhat degraded condition, it is not purposeless. Planners and others recognize that at a minimum, passive open space promotes clean air and human mental health, and provides wildlife habitat.

The decision to redevelop the McMillan site as a mixed-use community with a necessarily smaller open space element was made by the city's legislative body after an appropriate public process. However, the inclusion of the 6-acre accessible park should be treated as baseline compliance with the Comprehensive Plan. It is not an added PUD benefit or amenity that can be used to justify higher densities than the Plan contemplates.

Consistency with the Comprehensive Plan -- Issue 2

The D.C. Court of Appeals, in remanding this case, found that Commission did not address adequately a number of Plan provisions that FOMP asserts weigh against approval of the application, including provisions discouraging the placement of large buildings near low-density residential neighborhoods (10-A DCMR §§ 305.11, 309.10 and 309.15), and a provision encouraging geographic dispersion of health-care facilities CSF 2 (10-A DCMR § 1105.1). The Commission now asks:

2. Do these or other Comprehensive Plan policies cited by FOMP in the record of this case weigh against approval of the PUD?

The Project Concentrates Rather than Dispersing Healthcare Facilities

The project does nothing to further the Plan's policy calling for the dispersion of medical facilities throughout the District. 10-A DCMR § 1105.1. It does the opposite, by proposing to expand an existing medical complex. The Applicant states that the project will constitute part of a medical "hub." A "hub," according to Merriam-Webster's, is "a center of activity." <<https://www.merriam-webster.com/dictionary/hub>> (emphasis added). A hub may be a focus of commerce, tourism, transportation, etc. To "disperse" means the opposite: "to cause to become spread widely [as in] disperse the troops." <<https://www.merriam-webster.com/dictionary/disperse>>. The applicant (and the Office of Planning) make the self-contradictory statements that the project will further the Comprehensive Plan policy of dispersing medical facilities throughout the District and that it will form part of a hub. Both cannot be true.

Section 1105.1 cannot be weighed in favor of the proposal. Additional medical facility space may increase the amount of medical services available to District residents, depending on how it is used. The facility will not serve the policy of making medical services -- principally primary medical care -- more widely distributed and easily available to people in the neighborhoods where they live, without having to travel to a "hub." A more apt example of dispersed medical facilities is the CNMC's new satellite facility at 2101 Martin Luther King, SE, which opened in November 2016 to serve 9,000 children, teenagers and adolescents in Ward 8.⁴

The Proposed Medical Hub Is Not Reflected in the Mayor's 2017 Economic Strategy

⁴ <<https://childrensnational.org/news-and-events/childrens-newsroom/2016/childrens-national-health-system-opens-new-primary-care-center-in-anacostia>>. The new primary care combines, relocates and expands two smaller CNMC satellite sites in Southeast. The new site provides well-child care and urgent care services for infants, children, and adolescents, as well as hearing and speech, mental health, social work, and breastfeeding support. Another CNMC satellite is planned to open at TheArc in Southeast later this year and. *Id.* Other CNMC sites are scattered elsewhere around the city.

The economic development proposal cited by the Applicant in support of its project is unavailing for that purpose. The 2012 Five-Year Economic Development Strategy for the District of Columbia ("2012 Strategy") (Exhibit K to the Applicant's submission) does indeed recommend development of a medical hub at the McMillan site, but the recommendation was neither adopted as a Comprehensive Plan policy nor otherwise given the imprimatur of the D.C. City Council, the District's legislative body. It is not included in the "Family of Plans" discussed in the Comprehensive Plan -- subordinate subject matter plans such as the Transportation Vision Plan and the Public Facilities Master Plan through which the District implements the Comprehensive Plan. 10-A DCMR § 103. "As the guide for all District planning, the Comprehensive Plan establishes the priorities and key actions that other plans address in greater detail." *Id.* at § 103.3.

The 2012 Strategy's recommendation for a medical hub at McMillan was an executive branch initiative of the former mayoral administration. It since has been superseded by a new report, "D.C.'s Economic Strategy" ("2017 Strategy"), which was released by the incumbent administration on March 7, 2017. The 2017 Strategy does not mention a medical hub at the McMillan site. The online version of document contains the following statement about major city-owned sites:

MAJOR DISTRICT-OWNED REAL ESTATE DEVELOPMENTS ✕

Develop major District-owned parcels to increase affordable housing supply, create jobs for District residents, and strategically catalyze business activity and achieve a community-shaped development vision. Plans for District-owned parcels (including Walter Reed, St. Elizabeth's, McMillan, Hill East, Poplar Point and Skyland) will be developed with community input via the OurRFP process, and all will strive to increase affordable housing supply, create quality jobs for DC residents, and catalyze business activity in key sectors. [Click here for more information.](#)

- **Timeline:** FY17-20
- **Lead and key partners:** Office of the Deputy Mayor for Planning and Economic Development (DMPED), Office of the Deputy Mayor for Greater Economic Opportunity (DMGEO)
- **Related core sectors:** real estate and construction, professional services
- **Related opportunity areas:** n/a
- **Related action areas:** space and supports

<<http://dceconomicstrategy.com/>>.

That page links to the website of the D.C. Deputy Mayor for Economic Development (DMPED), which says the following about the McMillan site:

McMillan Sand Filtration Site

The 25-acre former McMillan Reservoir Sand Filtration Site, located at North Capitol Street and Michigan Avenue, is expected to be redeveloped into a mixed-use project that shall include historic preservation, open space, residential, retail, office, and hotel uses. The District, the selected development team, and the communities surrounding the site are currently working cooperatively to determine the master plan and development program for the site. The goal is to create an architecturally distinct, vibrant, mixed-use development that provides housing, employment, retail, cultural, and recreational opportunities for District residents.

On December 7, 2016, Mayor Muriel Bowser, Ward 5 Councilmember Kenyan McDuffie, and Deputy Mayor Brian Kenner broke ground on McMillan Sand Filtration Site.

<<https://dmped.dc.gov/node/567582>>. Again, there is no mention of a high-density medical facility or a linkage to the WHC complex. Nor does the 2017 Strategy's overview of the regional health care industry mention plans for a hub at McMillan.⁵

CNMC, however, announced in November 2016 that it was acquiring 12 acres of the 110-acre former site of the Walter Reed Army Medical Center campus, in order to create a research center, conference center and potential primary care center.

<<http://www.bizjournals.com/washington/news/2016/11/17/its-officialchildrens-national-health-system-to.html>>.

In these circumstances, the demand for a medical hub on the McMillan site, and the level of civic commitment toward this goal, reasonably may be called into question.

⁵ The 2017 Strategy says this about the health care sector as a significant contributor to the region's economy:

HEALTH CARE AND LIFE SCIENCES

With 16 medical centers and hospitals located within the District, DC continues to be a national center for patient care and medical research and the leading medical center of the Greater Washington Area. The healthcare and social assistance sector accounted for 59,000 jobs in the District, with the majority working in hospitals (27,000), ambulatory health care services (20,000), and nursing and residential care facilities (7,000).

The DC metro region also continues to be a hub for biomedical research, anchored by the presence of the world's largest funder of biomedical research, the National Institutes of Health, in Bethesda, Maryland. The heart of the life sciences industry in the metro area is Montgomery County, Maryland, along the I-270 Corridor, which hosts large employers such as Medimmune and Qiagen. DC's research universities and the Children's Research Institute at Children's National Hospital drive life sciences research within the District, including in areas such as medical devices, genomics, health education, pharmacology, and pediatric research. The presence of major federal health agencies in DC and the DC metro area, including the Department of Health and Human Services and the Food and Drug Administration (FDA), also means that the District has significant influence on healthcare policy.

<<http://dceconomicstrategy.com/coresectors/health-care-life-sciences/>>.

Because the Healthcare Facility's Ultimate Use and Occupancy Are Unclear, Adverse Impacts Cannot Be Fully Explored

The Commission's decision approving this project included this finding: "The Healthcare Facility will serve the office needs of physicians and medical service providers affiliated with many of the leading healthcare systems in the area including Children's National Medical Center and the Washington Hospital Center." FF 60. The Office of Planning states in its submission on remand: "[The healthcare facility's] location across from the four hospitals to the north would enable them to satisfy some of the immediate space demands that some of those facilities are experiencing as well as for physicians, research facilities and other healthcare related users." OP Report at 6. The Applicant's submission states that "a large percentage of the proposed health care facility space is expected to be occupied by the systems currently operating in the adjacent WHC campus in order" Applicant's submission at 18. Elsewhere, the Applicant states that it needs certain building features, principally height, in order to secure an anchor tenant. *Id.* at 14.

The principal point is that there is no anchor tenant in place and therefore no clear view of what kind of medical services will be provided. 'Absent a sense of noise of operation, hours and levels of lighting, levels of pedestrian and vehicle traffic, etc., the Commission is not in a position to make a complete determination of adverse impacts and mitigate them as appropriate. This determination is required under the Zoning Code and separately in the Plan, specifically for this site at section MC 2.6.3, 10-A DCMR § 3016.7 ("ensure that any development on the site is designed to reduce parking, traffic, and noise impacts on the community ").

The Project Inappropriately Places Large Buildings Next to a Low-Density Residential Neighborhood, inconsistently with 10-A DCMR §§ 309.10 and 309.15

The absence of a per se rule against exceeding FLUM density designations does not nullify multiple other Plan policies discouraging erecting large buildings, especially large commercial buildings, adjacent to lower density residential neighborhoods. Such conflicts must be reconciled. Key policies protecting the integrity of neighborhood scale not discussed elsewhere herein include the following:

Policy LU-2.1.10: Multi-Family Neighborhoods. Maintain the multi-family residential character of the District's Medium- and High-Density residential areas. Limit the encroachment of large scale, incompatible commercial uses into these areas, and make these areas more attractive, pedestrian-friendly, and transit accessible. (10-A DCMR § 309.15.

The Plan provides guidance in balancing policies like the foregoing against the flexibility granted in implementing the FLUM. As regards the McMillan site, the FLUM establishes relative densities between commercial and residential uses: commercial designated moderate;

residential has the next higher designation, i.e. medium. Plainly, residential is to be the dominant use. Therefore, it is inconsistent to establish a commercial use that (1) ratchets the density up two notches -- moderate to high, skipping over medium; and (2) dominates the medium and low-density residential uses. The proposal is inconsistent with the Plan even though the overall FAR is within the limits contemplated for the site. Also, the high density Parcel 1 building is not integrally related to the new community being established. It is substantively intended to be part of the WHC community to the north and has been presented to the Bloomingdale and Stronghold neighbors as an economic lever to subsidize other site elements. Giving physical prominence to the building whose purpose standards apart from the community undermines the kind of community envisioned by the Comprehensive Plan. It would be closer to the Plan's intent if the high density building was residential.

Shielding smaller buildings from the impact of looming neighboring structures involves more than landscaping or variegated architectural details. Sometimes more space is needed than is available for effecting buffering. As noted above, at 25 acres, the McMillan site is the smallest of the 10 city-owned sites slated for development. The east campus of the St. Elizabeth's site and the entire Walter Reed site each exceed 100 acres.

The Office of Planning incongruously reads LU 2.1.5 as protecting only detached, single family neighborhoods and not the moderate density duplexes and two-story rowhouses in the immediate vicinity of the McMillan site. The houses in question are smaller than many detached houses in the District. The policy is aimed at protecting neighborhood scale. Also, Policy 2.1.10 protects medium and high density residential areas from outsized commercial encroachment. It is not to be supposed that the Plan protects every residential density except moderate. Furthermore, other Plan elements echo the Land Use policies protecting residential scale from encroachment, in particular Policy UD-2.2.7 ("Infill Development: Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs") (10-A DCMR § 910.15). Indeed, the sheer volume of Plan provisions establish the Plan's preponderant concern with preserving the scale and character of stable, cohesive neighborhoods.

Finally, there is the question of whether the healthcare facility's excessive height results from the need to subsidize other site features or to meet the need of the Applicant. The record states at several points that the additional height is due to taller floor-to-ceiling height requirements to accommodate the operational needs of a medical facility, i.e., a non-specialized commercial building could be shorter.

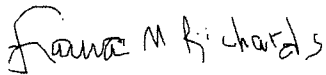
Conclusion

The application is inconsistent with the Comprehensive Plan principally because the height and bulk of the healthcare facility on Parcel 1 unreasonably exceed the scope of the

Laura Richards
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April 6, 2017

commercial presence on the McMillan site contemplated by governing policy MC 2.6.5, even after taking into account the flexibility allowed in interpreting and applying the Plan's provisions.

Submitted,

A handwritten signature in black ink that reads "Laura M. Richards". The signature is written in a cursive style with a large initial 'L'.

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