

TESTIMONY ON THE MCMILLAN COMMUNITY BENEFITS AGREEMENT (on behalf of the Bloomingdale Civic Association)

Presented by Bertha G. Holliday

McMillan PUD hearing #1 - Master Plan, Open Spaces and Park - 5/1/14

(Testimony deferred by ZC to 5/13/14)

Good Evening Chairman Hood and Zoning Commission Members:

My name is Dr. Bertha Holliday. I reside at 49 T Street, NW in the Bloomingdale neighborhood, where I have lived since 1989. I am currently the 2nd Vice President of the Bloomingdale Civic Association (“the BCA”).

The BCA has been closely involved with the development of the McMillan Sand Filtration site for more than 25 years. That involvement has been guided by a distinct and unique vision for the site (see attached Power Point, Slide 2). We believe that at this stage of the development process, the only means to fulfill that vision is the legally required Community Benefits Agreement (“the CBA”).

The McMillan site is located within the Bloomingdale neighborhood and BCA boundaries, which continue south to Florida Avenue, NW. BCA is convinced Bloomingdale will be significantly and negatively impacted by the development. Over the past 5 years, we have continuously shared our vision and concerns with both the Developer and ANC5E, but our advocacy often has fallen on ‘deaf ears’.

We therefore believe that the McMillan Advisory Group (MAG), BCA and other civic associations with boundaries abutting the site should be signatories to the McMillan CBA along with the Government of the District of Columbia, ANC5E, and the Developer. BCA solicits the support of the DC Zoning Commission and Office of Planning in this regard. (Power Point Slide 4)

District law and regulation suggest that in the case of PUD development, the Developer is required to provide amenities to affected communities with consideration of the value of special benefits requested by the Developer. In the case of McMillan, the requested special benefits have been unusually substantial including:

- a no bid right to development;
- continuous significant financial support during plan and PUD development;
- land acquisition at likely significantly below market costs;
- site preparation by the District at a cost conservatively estimated at \$50 million;
- a variety of height, density and zoning variances and exceptions;
- District funding of proposed community center construction and most of its programming;
- privatization of all roads within the development;
- the establishment of a private Business/community Improvement District that will manage/maintain all of the development's property (including the 'public' park);
- possible multi-year tax abatements, etc.

Such substantial special benefits in support of the site's 2 million square feet of development will undoubtedly be associated with staggering profits that will continue indefinitely. Consequently, community amenities should be unusually substantial in their value and scope, and structured to continue indefinitely (Power Point Slide 3).

BCA is gravely concerned about not only the content of the McMillan CBA as proposed to date, but also its viability. Our research reveals that nationwide, amenities promised in CBA's far more often than not are not fully provided to communities. Indeed, the District has recognized this major failures of the District's CBA process, and revised appropriate regulations to forbid the issuance of a PUD's Certificates of Occupancy if CBA benefits have not been delivered. But we are leery of the effective enforcement of this requirement, as it occurs at the end of the development process when denial of occupancy is a lose-lose political and economic proposition for both the District and the Developer.

After reviewing numerous CBAs both within and outside of DC, BCA concludes that the problem of non-delivery of amenities is to a great degree due to the absence of the inclusion in CBAs of provisions related to specific financial,

administrative, and accountability structures and procedures that will ensure delivery of promised amenities (Power Point Slide 5).

In its March 24, 2014 *Resolution on the McMillan CBA*, which was forwarded to Zoning Commission (see the McMillan IZIS file --Exhibit 31), the BCA proposed such structures and procedures. Briefly, a few of the key features proposed are as follows:

Administrative Structures (Power Point Slide 6)

- Establishment of a McMillan CBA Board that would:
 1. Serve to institutionalize a partnership among DC government (Sr. Staff & elected officials)/affected communities (civic associations & ANCs)/developer/property management by including voting members from all these interests as well as advisory lawyers & accountants representing City, community, and developer/property manager interests) .
 2. Be responsible for overseeing the implementation of the CBA and disbursement of all related funds; establishment of an annual CBA budget; as necessary, contracting for needed services (e.g., administration of scholarship funds).

Financial Structures and Procedures (Power Point Slide 7)

- Establishment of a McMillan CBA Escrow
 1. Single point of deposit of all funding in support of the CBA
 2. Fund held by a DC Government Agency
 3. Ensures sustainability of CBA amenities
 4. Administered by McMillan CBA Board
- Establishment of specific benchmarks for Developer payments and amenities delivery.

Accountability Structure and Procedures (Power Point Slide 8)

- Requires the contracting of a Compliance Monitor who will:

1. Monitor all aspects of CBA compliance and delivery of amenities.
2. Provide the CBA Board an annual plan of proposed monitoring activities and procedures.
3. Report its findings and recommendations to the Board at least two times per year.

For additional information related to proposed CBA administrative, financial, and accountability structures: **See the BCA Resolution of 3/24/14 in the McMillan IZIS file – EXHIBIT 31.**

BCA believes the Resolution's conceptual framework for CBA administrative, financial, and accountability provisions provides the District an unparalleled opportunity to engage a fresh innovative cutting-edge approach to CBAs – especially for those CBAs related to large developments without ready access to a Metro station and abutting fundamentally residential communities. This approach would seek to ensure substantive developer/neighborhood partnership, delivery of all promised amenities, sustainability of amenities, and stronger residential neighborhoods as indicated by measurable improvements in their physical and social qualities and the quality of life of residents (Power Point Slide 9).

At a previous McMillan hearing, the Zoning Commission Chair, observed during a discussion of the development's proposed loading docks, "This time let's get it right!" I urge that same sentiment be extended to the CBA.

Residents surrounding the development have invested heavily in their neighborhood's historical and emergent character, quality, and viability. Indeed, house sales prices in excess of \$1 million are now not uncommon in Bloomingdale. Consequently, we believe that it is imperative that the CBA include structures and amenities that ensure the McMillan development will view itself as part of its surrounding neighborhoods with associated neighborhood obligations and responsibilities – and not as a separate enclave whose interests and concerns are absent any alignment with those of the neighborhoods (as seems to be the case in the neighborhoods' current concern about traffic on First Street, NW SOUTH of Channing Street to New York Avenue, NW). Otherwise we fear, in the

face of the development's financial value/wealth and government/political ties, the neighborhoods' historical and emergent character will not be maintained.

Please – encourage the District, the Developer, and the affected communities to work in partnership to ensure that this time, we get the CBA right!

Thank you for your attention and consideration.