

BEFORE THE ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

14-02

Petitioners - BFTAA  
Applicant - A&R Development

To: The Zoning Commission  
From: Aristotle Theresa

BFTAA moves for a time extension to substantively respond to Applicant's motion to withdraw their PUD application. Alternatively, BFTAA offers the following legal reasons to consider in opposition to Applicant's motion to extinguish their PUD application in the event our motion for time is not granted and our opposition is limited to this motion for time.

On April 26<sup>th</sup>, 2018 the District of Columbia Court of Appeals remanded the Zoning Commissions order for being filled with error and for not considering items clearly within its statutory purview. The Court of Appeals ruled that the relocation plan did not adequately address one for one replacement, that gentrification to the surrounding area must be considered, and that the social networks of Barry Farm residents must be considered, as well as the current amenities of Barry Farm residents, in order for the PUD application in order to be consistent with the Comprehensive Plan. Particularly, FSS 2.3.1 called for the avoidance of dislocation and hardship at the Barry Farm site.

Shortly after, the District of Columbia housing authority issued a letter to Barry Farm residents ensuring the project would go forward as planned despite the loss at the Court of Appeals.<sup>1</sup>

On May 31 Applicant filed a motion with Zoning Commission requesting to extinguish the PUD order. BFTAA counsel did not receive the motion until June 8, 2018 via US mail.

BFTAA requests additional time to respond to the motion to extinguish before it is brought before the Commission for a vote. The motion to extinguish is nothing but a thinly veiled attempt to avoid the mandate of the Comprehensive Plan and the DC Court of Appeals to protect the Barry Farm community. Given the letter sent to residents on affirming the project would go forward with the development despite the court ruling, it is clear Applicant's seek to develop the site as planned. Now we are to learn it is only after emptying the site first so as to not have to follow the recent court opinion or the comprehensive plan. If the Application is extinguished, applicants will empty the site and return to the Zoning Commission as soon as they are finished, seeking a new PUD without the responsibility of adequately protecting Barry Farm residents.

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<sup>1</sup> Counsel was unable to attain a copy of the letter so quickly, but it exists, is a matter of public record, and can be produced with more time.

Seeing as how the Application has been pending since 2014, Applicant would not be prejudiced by an additional 2 weeks for BFTAA to have time to respond to Applicant's underhanded and sneaky attempts to work-around the Comprehensive Plan and District of Columbia common law. On the other hand, BFTAA would be irreparably harmed if the Zoning Commission were to abuse its discretion and not grant BFTAA's motion for time.

Once the site is emptied, Applicants will be free to act contrary to the Small Area Plan mandates. Therefore, by granting Applicant's motion to extinguish, the Zoning Commission would be complicit with Applicant acting in a manner inconsistent with the Comprehensive Plan. It also would go against Zoning Regulations which states, "In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare" 11 DCMR 101.1. Here, granting the motion to extinguish is tantamount to the Zoning Commission giving the go-ahead to destroy the Barry Farm community. The Zoning Commission has discretion in extinguishing PUD orders and it would be an abuse of discretion to grant such a motion under the circumstances. BFTAA also alleges our 5<sup>th</sup> amendment due process rights would be violated if a full hearing is not granted on this matter as fundamental rights would be implicated by granting the motion without a hearing and an opportunity for residents to be heard.

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s/Aristotle Theresa  
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