April 18, 2017

VIA IZIS

Chairman Anthony Hood
District of Columbia Zoning Commission
441 4th Street NW, Suite 200
Washington, DC 2001?

RE: ZC Case No. 14A – Brookland Manor/Brentwood Village Residents Association (the "Association") Response to Post-Hearing Submissions of Mid-City Financial Corporation (the "Applicant")

Dear Chairman Hood and Members of the Commission:

This letter and the attached materials are the Association's response to the Applicant's post-hearing submissions. Also included is the Association's one pager which provides a breakdown of the potential displacement of current Brookland Manor residents if the Applicant's redevelopment plan is approved. This one pager is attached as Exhibit A. Attached as Exhibit B are details of senior citizen mistreatment that the Commission asked the Association to provide.

Affordable Housing Commitment

In their most recent post-hearing submission, the Applicant points out that their affordable housing commitment to the Zoning Commission at the first stage of the PUD application was as follows:

1. The Applicant will retain the project-based Section 8 Housing Assistance Payment contracts on the property, which provide deep rental assistance to 373 extremely low income families (incomes below 30% of AMI); and

2. All households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 will be provided the opportunity to remain at the property through and following the redevelopment process. (See ZC Case No. 14-18 Exhibit 104 at 6).

Irrespective of the above commitment, the Applicant goes on to state that only 167 seniors at Brookland Manor will be able to access the senior building at the time the building will be ready for occupancy. As explained below, this means that there will only be 340 deeply affordable units associated with the project-based contract available to the 431 **current** Brookland Manor residents.

Further, even if all 167 current residents who will be eligible for the senior building choose to live in that building upon the redevelopment's completion, 33 of the building's 200 units will house seniors that do not currently live at Brookland Manor. This means that 33 of those units would not serve as replacement units for current residents.

ZONING COMMISSION
District of Columbia
CASE NO.14-18A
EXHIBIT NO.183

There were 431 occupied units at Brookland Manor as of April 10, 2017. If current residents occupy units in the redevelopment in a way that maximizes the number of households that remain on the property (i.e. all 167 eligible seniors occupy a unit in the senior building and all other current households occupy the remaining 173), 340 units will serve as replacements. Thus, there is a 91 unit discrepancy between the number of units needed to bring back all current Brookland Manor households, and the number that would be made available through the renewal of the project-based contract.

However, in reality the unit discrepancy is undoubtedly larger than 91 households for several reasons:

a. The Applicant has previously acknowledged that many current Brookland Manor seniors live with extended families. Many of these seniors will choose to stay in their existing household configurations and will opt not to live in the senior building.

b. If seniors who currently live in intergenerational families choose to live in the senior building, it would mean that their remaining family members would have to be housed in another unit at Brookland Manor. The splitting of these households would increase the replacement units needed beyond the current 431 occupied units. If the Applicant does not commit to housing these remaining family members in another unit on the property, their commitment to house all residents in good standing at the commencement of the redevelopment will not be realized.

Further, the Applicant's post-hearing submissions do not provide any substantive update on the status of Section 8 voucher holders on site. In fact, in their post-hearing submissions, the Applicant states that their only current commitment to voucher holders is to retain the residents on site through the build out. Applicant's Post-Hearing Submission at 5.

The Applicant goes on to assert that the units occupied by voucher holders are in essence market rate units. Thus, according to the Applicant, if the units were counted as "affordable", the Applicant's affordable housing commitment would be far greater than the 22% (373 units) of the total number of units that was identified in the Zoning Commission Order No. 14-18. Id. at 5 (footnote 1). The Applicant's refusal to commit to housing voucher holders is irreconcilable with their first stage PUD commitment "that all households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 will be provided the opportunity to remain at the property **through and following the redevelopment process."**

Evictions/Displacement

Next, the Applicant states that since 2014 only one senior citizen has been evicted from the property. The Applicant also states that since 2014 there have only been two people evicted from Block 7. A much more useful metric to determine whether or not people are being displaced from the property would be to see how many evictions have been **filed** against both senior citizens and Block 7 residents over the same time period as opposed to how many have actually been carried out.

It is common for individuals in the District of Columbia to move on their own after an eviction has been filed against them. This is because many tenants are intimidated by the court process. In the alternative, many tenants go to court but sign move out agreements once they get there. Move out agreements are especially common for people who are not represented by an attorney and are forced to negotiate one on one with the landlord's attorney. Technically, these cases would not be counted as evictions because if the tenant moves out in the agreed upon time, a writ is never issued.

To illustrate this point, the Washington Post found that between January 2014 and March 2016, 373 eviction lawsuits were filed at Brookland Manor. The Association does not argue that some of those filings were undoubtedly based on legitimate underlying circumstances. However, during that same period, the Post also found that Brookland Manor sued residents at least 59 times for alleged debts of $100 or less. Nearly all of them were based on a single month's rent. Roughly half of the suits — 27 — were for $25 or less. During this same timeframe, lawsuits citing lease violations more than quadrupled.[1] These numbers raise disturbing questions regarding the motives behind the eviction filings.

The above numbers become more disturbing when one considers the testimony in opposition to the proposed PUD at the March 16, 2017 hearing. Both Brookland Manor residents and surrounding community members testified that the Applicant had hired a private security force to hand out notices of infractions and barring notices to tenants on the property. In some cases, these notices were then used as the basis for filing evictions against residents. The Applicant stated in their post-hearing submissions that they have since contracted with a different security company. However, the Applicant stated that it was still reviewing the notices of infraction to determine whether they would be used to determine if a resident was in "good standing" and thus eligible to stay at the redeveloped property.

Regrettably, the Applicant's post-hearing submissions do not provide the level of detail needed to answer the questions raised concerning their commitment to house all tenants who are in good standing at the commencement of the redevelopment.

At the first stage PUD hearing, the Applicant testified that it was in talks with the DC Housing Authority regarding raising the voucher caps in order to allow voucher holders to stay on the property. However, the Applicant's submissions make clear this has not been done. Instead, the Applicant has rolled back that commitment and has replaced it with a vague promise to work

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[1] http://www.washingtonpost.com/sf/local/2016/08/08/as-the-nations-capital-booms-poor-tenants-face-eviction-over-as-little-as-25/?utm_term=.bece25d9962d

with the Association and city officials to get the caps raised. This shows that the Applicant never took this commitment seriously. The voucher cap issue is vital when evaluating this PUD.The numbers show that without the caps raised, the Applicant cannot house everyone at the property relying solely on the project-based contract.

In conclusion, regarding the housing element of this case, the Applicant's post-hearing submissions do little to dispel concerns with respect to the notices of infraction, barring notices, and the actions of the private security force at the Brookland Manor property. Additionally disturbing is the Applicant's empowerment of this private security force with the authority to determine who is in good standing at the property, and thus who has a right to live in the redeveloped property. These factors, coupled with the questionable eviction practices outlined above and the lack of clarity around the number of replacement units, leave open questions regarding the tactics being used by the Applicant to achieve their stated goal of having the property down to 415 occupied units by early 2018.

RCLCO Report

Next, the Applicant raises up Mr. Bogorad and his expertise in real estate to "evaluate whether the RIA development (consisting of the redevelopment of Brookland Manor) will cause gentrification, destabilization of land values, and displacement of neighborhood residents in the surrounding neighborhoods, and to estimate how much employment will be supported by RIA."

The Applicant expects the Commission to rely on Ms. Bogorad's report in making conclusions about the highly contested issue of the destabilizing effect of the PUD project on the area land values.

The PUD regulations provide the Association with the procedural right to cross-examine and question the Applicant about the aforementioned report. See 11 DCMR Z-403.7(c) & (e) & 11 DCMR Z-408.6.

"In a contested case proceeding before the Commission, a party shall be afforded all the procedural rights provided in this chapter . . .." 11 DCMR Z-403.6.

Mr. Bogorad's testimony and written report were provided by the Applicant only after the public zoning hearings were held, thereby depriving the Association of the right to cross-examine and question this testimony and report, and threatening the due process owed by the Commission to the Association per the PUD regulations.

Due process is one of the oldest tenants in law. "Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power." *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894).

The DC Court of Appeals has held that the Zoning Commission, like a trial court, should permit cross examination to explore any matters which tend to contradict, modify, or explain testimony

given on direct examination. *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 1250 (D.C. 2000).

The Association, and its many supporting witnesses, clearly raised the issue of displacement and land value destabilization as a fundamental contested issue that warrants denial of the PUD application as inconsistent with the DC Comprehensive Plan. However, by addressing this issue with the expertise of Mr. Bogorad only after the public hearings, the Association was wrongly denied the right to question the Applicant about Mr. Bogorad's report, the same report the Applicant expects the Commission to rely on in concluding the PUD project will have no adverse land value impacts on those living and working at the PUD site and in the surrounding areas of Ward 5.

As such, the Association requests that the Commission strike Exhibits 179D1 and 179D2 from the record and choose not to rely on them in any forthcoming decision.

Conclusion

The materials included in this response to post-hearing submission addresses the comments and request for additional information that was made during the public hearings on Feb. 23, 2017 and March 16, 2017.

Respectfully,

William R. Merrifield.

CERTIFICATE OF SERVICE

I, William Merrified, hereby certify that on the 18 day of April, 2017, a copy of the foregoing was sent to the following parties to the agency proceedings:

Affected Advisory Neighborhood Commissions:

ANC 5C (via first-class mail)
PO Box 91902
Washington, DC 20090

ANC 5B (via first class mail)
1920 Irving Street NE
Washington, DC 20018

Counsel for the Applicant:

Paul Tummonds, Esq. (via electronic mail)
Ghoulston & Storrs
ptummonds@goulstonstorrs.com

David Lewis, Esq (via electronic mail)
Ghoulston & Storrs
david.lewis@goulstonstorrs.com

Signed,

William Merrifield
Counsel for the Brookland Manor Residents Association
c/o Washington Legal Clinic for the Homeless
1200 U Street NW, Third Floor
Washington, DC 20009

Exhibit A

Brookland Manor Replacement Unit Breakdown

Current	RIA/Mid-City Redevelopment
431 occupied units -167 eligible for senior units = 264 remaining current tenants	373 units in Section 8 project-based contract -200 senior units = 173 available to remaining current tenants

264-173 =

91 current households with no place to go

This is the most forgiving scenario to the proposed redevelopment. **The actual unit discrepancy will undoubtedly be larger than 91:**

- Some of the 167 seniors who live in intergenerational families will choose not to live in the senior building.
- If seniors who live in intergenerational families choose to live in the senior building, their households will be split, increasing the number of replacement units needed beyond the current 431 occupied units.
- Applicant's post-submission filings reveal no plan in place between Applicant and DCHA ensuring that rent caps are lifted so that housing remains accessible to voucher holders throughout the overall redevelopment process.

Exhibit B

Senior Citizen/Disabilities information

In its recent April 10, 2017 statement, Mid-City claims that "[s]ince January 1, 2014, only one eviction of a Brookland Manor resident who was a senior citizen (62 or older) has occurred, excluding evictions in the case of death of the resident." Evidence provided by other legal service provider agencies who have worked with senior members of the community and residents with disabilities shows that Mid-City and property management have undertaken harassing tactics against both sets of residents.

1) The senior citizen to whom Mid-City refers was sued for eviction after her son visited her. The tenant found out through the notice to cure she was issued that her son's visit was not permitted under the lease because there was a barring notice against him. Setting aside the fact that many barring notices are themselves a harassment tactic used by Mid-City and property management, in this case, shortly after receiving the notice to cure, this resident was nonetheless evicted and was essentially given no meaningful opportunity to cure. What's more, the resident had no legal representation throughout the process and once she was evicted, the resident went to visit her daughter who in turn received a notice to quit for having her mother visit her.

2) In another instance, a senior resident who had once previously experienced harassment at the hands of security was riding in his motorized wheelchair when security began following him. The very same security officers who had previously harassed this tenant caught up to him, snatched a cigarette out of his hand, pulled him out of his motorized wheelchair, and slammed him on the ground as well as handcuffed him. The officers also apparently saw the need to mace the resident right before handcuffing him and one guard remained on top of the tenant with a knee in the tenant's back. The officers verbally abused the tenant, insulting him. It was only after the Metropolitan Police Department arrived that the resident was returned to his motorized wheelchair. After being arrested, the resident was released on his own recognizance. This senior resident, his partner, and the rest of their household were ultimately evicted from the property.

3) Another tenant who has various disabilities and resides with her children and grandchild—some of whom also have disabilities—was informed by property management that there would be no place for her adult daughter and granddaughter to have their own unit in the redevelopment. In fact, property management went on to inform this tenant that there would be no four- or five-bedroom units in the redevelopment and that she would have to move off site or remove her daughter and granddaughter from her housing voucher. These statements cut against Mid-City's claim that everyone who is in good standing will have a right to return and "remain in the renewed community," which it claims "includes households that currently have more than six residents in their apartment unit and may need a 4-bedroom accommodation." In fact, Mid-City continues to publicly state it is working with families who live in the units which it plans to eliminate to ensure these residents have an opportunity to remain at Brookland Manor during all phases of the redevelopment ("all large households will be able to continue to live in one of

Brookland Manor's existing 80-year old buildings until at least 2023"), if not permanently in a different configuration. The anecdotes residents continue to convey suggest otherwise.

4) Lastly, an 85 year old Korean War veteran, who is severely disabled to the extent that he uses forearm crutches to get around, was having difficulty getting his documents together for his annual recertification. Client stated that he reached out to the property numerous times but they were unwilling to assist him in gathering the necessary items. On his last day to recertify, Attorney for client received in discovery a notation in his file that client called the office to tell them that he was having difficulty getting to the office to recertify. There is no indication that office called client back and instead management raised his rent to market rent. Client was able to retain an attorney who filed a reasonable accommodation request to retroactively recertify him due to his disability. Mid-City was originally unwilling to help resolve this case. Attorney for client ultimately resolved the case favorably at mediation and followed up last summer/fall to make sure it didn't happen again.