

April 18, 2017

VIA ONLINE FILING

Anthony J. Hood Chairman
Zoning Commission for the District of Columbia
441 Fourth Street, NW, Suite 200
Washington DC, 2001

Re: **Z.C. Case No. 14-18A- Motion to Strike submitted by Brookland Manor/Brentwood Village Residents Association (“the Association”)**

Dear Chairman Hood and Commissioners:

Enclosed please find a Motion to Strike Exhibit 179D2- a memorandum entitled, “Analysis of Potential Impact of the RIA Development on Gentrification, Destabilization of Property Values, Displacement, and Employment”. The memorandum was filed as part of the Applicants post hearing submissions.

Respectfully Submitted,



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

MOTION TO STRIKE EXHIBITS 179D1 & 179D2

The Brookland Manor/Brentwood Village Residents Association ("the Association") was granted party status in the proceedings for ZC Case No. 14-18A.

ZC Case No. 14-18A consists of a modification of a First-Stage PUD and review of a Second-Stage PUD application as it regards the redevelopment of Brookland Manor, affecting hundreds of families living and working in this Ward 5 community.

Pursuant to 11-DCMR Z-407, *inter-alia*, the Association submits this Motion to Strike Exhibit 179D1 & Exhibit 179D2, a memorandum entitled, "Analysis of Potential Impact of the RIA Development on Gentrification, Destabilization of Property Values, Displacement, and Employment" by Leonard Bogorad, Managing Director, RCLCO, dated April 7, 2017.

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." See Applicant's Post Hearing Submission dated April 10, 2017, Exhibit No. 179, page 12.

The Applicant expects the Commission to rely on the aforementioned report in making conclusions about the highly contested issue of the destabilizing effect of the PUD project on the area land values. See Applicant's "Draft Findings of Facts and Conclusions of Law" as Exhibit 181, page 18.

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 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 is 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 the Commission strike Exhibit 179D1 and 179D2 from the record and choose not to rely on it in any forthcoming decision. In the alternative, the Association requests that as a party we be provided an opportunity to question the Applicant directly about this report.

Respectfully submitted, with a Certificate of Service attached, on this the 18 day of April, 2017.

/s/n William Merrifield

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CERTIFICATE OF SERVICE

I, William Merrified, hereby certify that on the 18 day of April, 2017, a copy of the foregoing Motion to Strike Exhibits 179D1 & 179D2 was sent to the following parties to the agency proceedings:

Affected Advisory Neighborhood Commissions:

ANC 5C (via first-class mail)
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Signed,


/s/n **William Merrified**

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