

# Holland & Knight

800 17th Street, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | www.hklaw.com

Philip T. Evans  
+1 202-457-7043  
philip.evans@hklaw.com

May 18, 2017

## **VIA IZIS**

Zoning Commission for the  
District of Columbia  
Office of Zoning  
441 4th Street, N.W., Suite 210-S  
Washington, D.C. 20001

**Re: Z.C. CASE NO. 15-18**  
**Applicant's Opposition to Nonparty Committee of 100 on the Federal City's "Request to Accept an Untimely Filing or to Reopen the Record"**

Dear Members of the Commission:

On behalf of the Applicant Initio LP (the "Applicant" or "Initio") we hereby oppose the "Request to Accept an Untimely Filing or to Reopen the Record" (the "Request") filed by the Committee of 100 on the Federal City (the "Committee") on May 11, 2017. As fully set forth below, the Request should be denied because it wholly fails to meet the clear requirements for seeking reconsideration of a Zoning Commission Order or reopening the record set forth in the Zoning Regulations.

Subtitle Z § 700.3 of the Zoning Regulations states the following:

A motion for reconsideration, rehearing, or re-argument of a final order in a contested case under Subtitle Z § 201.2 may be filed by a party within ten (10) days of the order having become final.

See Subtitle Z § 700.3 (emphasis added). As the Committee recognizes in its Request, "[t]he Commission applies the rule strictly." As the Committee also recognizes in its Request, it does not meet any of the requirements to file for reconsideration. The Committee was not a party to the underlying case and the Request was filed much more than 10 days after the Order became final. The Committee's Request, therefore, fails to meet the clear requirements of Subtitle Z § 700.3 and may be denied for these reasons.

May 18, 2017

Page 2

The Committee further provides no basis for the Zoning Commission to waive the provisions of Subtitle Z § 700.3. Pursuant to Subtitle Z § 101.9, the Zoning Commission “may, for good cause shown, waive any of the provisions of this subtitle if, in the judgement of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.” The Committee requests a waiver, despite admitting that they “have identified no instance in which the waiver rule...has been applied to allow a non-party to seek reconsideration.” Indeed, the Request alleges no facts warranting the Commission to deviate from precedent in this case. In fact, granting a waiver will prejudice the Applicant by reopening the record to allow a non-party to file documents after the application was thoroughly reviewed by the D.C. Office of Planning and has been reviewed and approved by the Commission.

In any event, even if the Committee was a party to the underlying case and had timely filed for reconsideration, or if the Committee was entitled to a waiver, neither of which apply here, the Request should be denied because it does not meet the minimum requirements of Subtitle Z § 700.7, which states that:

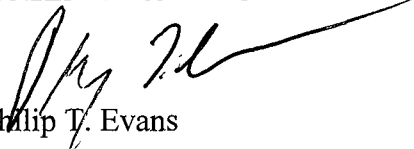
No request for rehearing shall be considered by the Commission unless *new evidence is submitted that could not reasonably have been presented at the original hearing.*

Subtitle Z § 700.7 (emphasis added). The Committee has not submitted any new evidence that could not have been presented at the public hearing. The Request, therefore, fails to meet the requirements of Subtitle Z § 700.7 and may be denied for this reason, as well.

In conclusion, the Committee was not a party to the underlying Zoning Commission case, has not shown good cause for waiving the party requirements, has not shown good cause for waiving the time requirements for filing such motions, and has not submitted any new evidence that would warrant the reopening of the record in this case. The Committee’s Request is plainly improper under the Commission’s rules and the Applicant respectfully requests that the Zoning Commission deny the Request.

Respectfully Submitted,

HOLLAND & KNIGHT LLP



Philip T. Evans

May 18, 2017

Page 3

cc: Ms. Jennifer Steingasser, D.C. Office of Planning (via email)  
Mr. Joel Lawson, D.C. Office of Planning (via email)  
ANC 2E (via e-mail: [office@anc2e.org](mailto:office@anc2e.org))  
Commissioner Tom Birch, ANC2e-06 (via email: [bircht@earthlink.net](mailto:bircht@earthlink.net))  
Laura M. Richards, counsel for Committee of 100 on the Federal City (via email:  
[Lmmrichards@gmail.com](mailto:Lmmrichards@gmail.com))