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VIA IZIS

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

**Re: Z.C. Case No. 19-10
Consolidated PUD @ Square 1499
Applicant's Response to CRD Shadow Study**

Dear Members of the Commission:

On behalf of Valor Development, LLC (the "Applicant"), we hereby submit the following response to the shadow study submitted by Citizens for Responsible Development ("CRD") on October 31, 2019, as part of its response to the Applicant's post-hearing submission (Ex. 244, pp. 22-27) (the "CRD Study"). For the reasons set forth below, the CRD Study inaccurately depicts the actual solar impact of the proposed project because it does not accurately show the "Affected Environment" surrounding the project site; and therefore, offers little value to assessing the project's potential impacts on direct sunlight. Furthermore, contrary to CRD's claim, the times of day/year evaluated in the Applicant's shadow study are consistent with common knowledge regarding shadows that are cast very close sunrise and sunset, and consistent with past projects reviewed by the Commission.

The Affected Environment

The CRD Study was prepared by Curt Westergard from Digital Design + Imaging Service, CRD's expert in visual impact studies. At the public hearing, Mr. Westergard testified that the Applicant deliberately tried to make the project appear smaller by inaccurately rendering the height, location, and maturity of surrounding vegetation. *See, e.g.* Oct. 10, 2019 Transcript, pp. 34-38. In support of this testimony, the visual impact study submitted by CRD (Ex. 217) contained statements such as:

- "When simulating the visual impacts of a proposed development, it is imperative to match the scale of a building to the scale of the environment" (emphasis added);

- “The surrounding community expects the developer to portray accurate depictions of the proposed building and landscaping;” and
- “Valor’s unrealistic depiction of the height, location, and maturity of the vegetation surrounding the proposed site distorts the true mass and scale of the proposed building.”

Despite these comments, when questioned by the Commission whether the proposed buildings were accurately depicted in the Applicant’s design renderings and photo-simulations, Mr. Westergard admitted that they were accurately depicted. *See, e.g.* Oct. 10, 2019 Transcript, pp. 52 & 62.

In its response to the Applicant’s post-hearing submission, CRD further stressed the importance of accurately depicting the surrounding context when evaluating a project’s impacts by referencing “industry standards;” and specifically, guidelines described in the National Park Service’s *Guide To Evaluating Visual Impact Assessments for Renewable Energy Projects* (the “Guide”). *See* Ex. 244, p. 28. As shown on Exhibit A, p. 1, CRD has submitted a section of the Guide that states “[t]he two most important parts of a [visual impact assessment] are the Affected Environment and the Environmental Consequences” (emphasis added). Further, the Guide describes the Affected Environment as “the existing conditions against which the potential effects of a project will be assessed.”

Based on what is stated in the Guide, it is clear the majority of the CRD Study inaccurately depicts the Affect Environment since it eliminates every existing building around the proposed project. *See Exhibit A, pp. 2-3*. While CRD claims that its shadow study “shows the full extent of the solar impact of the proposed building on the surrounding neighborhood,” this would only be true if the project was located in the middle of an empty field where nothing in the surrounding context was already in shadow from existing development. Because of this significant deficiency, CRD’s images provide no value toward establishing, as stated in the Guide, the “existing conditions against which the potential effects of the Project can be assessed.” Further, on the same images where CRD omits all existing surrounding buildings, it suggests that the Applicant has omitted data from its own shadow study that was submitted with the initial application (Exhibit 2C, pp. A46-47) (the “Applicant’s Study”). This is a completely inaccurate statement. The Applicant’s Study accurately depicts the Affected Environment, including shadows casts by existing buildings in and around the project site during times of day that are neither too close to sunrise or sunset, and are consistent with other projects reviewed by the Commission.

CRD’s images are misleading since the area surrounding the project site is already largely shaded by existing buildings during the times of day/year evaluated by CRD. This can clearly be observed in the images shown on Exhibit A, pp. 4-5, which were prepared using the same exact tool used by CRD at the same exact times of day/year. As clearly shown, the Affected Environment surrounding the project site is already almost entirely in shadow, particularly during the December morning and evening time periods (Exhibit A, p. 5).

Indeed, the CRD Study confirms the Applicant’s previous conclusion that the Project has only minor to moderate impacts on direct sunlight. Specifically, the CRD Study includes one set of existing and proposed images that happen to show shadows from existing buildings (CRD

Study, p. 3). Without conducting any additional analysis, one can compare existing and future shadow lines simply by overlaying CRD's existing and proposed images. As shown in Exhibit A, pp. 6-7, during the summer morning and evening hours evaluated by CRD, existing buildings in and around the project site already cast substantial shadow (note: red lines delineate extent of existing shadows). By comparing the extent of solar impact caused by existing buildings with the extent of solar impact of the proposed project it is clear the project will create very little new shadow area, and the new shadow area that is created will fall primarily on public rights-of-way (orange shaded areas indicate new shadow areas). Note, CRD did not include the same existing and proposed analysis for the winter morning and evening hours, presumably because the surrounding area is already almost entirely in shadow due to time of day and existing buildings. However, it is abundantly clear from Exhibit A, p. 5 that the project will have, at most, minor impacts on direct sunlight during the winter morning and evening hours evaluated by CRD since the surrounding area is already almost entirely in shadow at these times.

Times Evaluated in Applicant's Shadow Study

The CRD Study states that “[p]er industry standards...accurate solar studies should clearly depict the shadow cast by a proposed building at typical times of day. In residential areas, this implies the shadow pattern from sunrise to sunset” (emphasis added). Nowhere does CRD cite exactly what these “industry standards” say with respect to what times of day should be analyzed in a shadow study. Rather, CRD merely surmises that these supposed industry standards “imply” that in residential areas shadow studies should span all the way from sunrise to sunset.

The Zoning Commission does not have prescribed standards for shadow studies, and the Applicant is unaware of any other District agency having such standards. However, an expert is not needed to understand that shadows cast right after sunrise and right before sunset are extremely long and not useful in evaluating impacts on direct sunlight. Indeed, a simple web search for “standards for shadow studies” clearly reveals that shadow studies conducted too close to sunrise and sunset yield little value to assessing the potential solar impacts of a project, and that jurisdictions with standards typically recommend shadow studies be performed 1 – 2 hours after sunrise and 1 – 2 hours before sunset. The reason for this is clearly stated in the 2014 City Environmental Quality Review (“CEQR”) Technical Manual for New York City, which states “[t]he shadow assessment considers those shadows occurring between 1.5 hours after sunrise and 1.5 hours before sunset. Shadows occurring earlier and later are long, move fast, and generally blend with shadows from existing structures.”¹ (emphasis added).

As discussed above, CRD's shadow study is a clear demonstration of why studies conducted too close to sunrise and sunset offer little value. As shown in Exhibit A, p. 8, the additional summer and winter hours analyzed by CRD are all within an hour or less of sunrise and sunset. In fact, based upon sunrise and sunset data obtained from the same website relied upon by CRD, CRD's winter analysis is conducted only 36 minutes after sunrise and 20 minutes before sunset. In contrast, the times of day analyzed in the Applicant's Study are consistent with the preceding discussion. In addition, the times of day analyzed in the Applicant's Study are consistent with the times of day that are typically analyzed in studies submitted to the

¹ https://www1.nyc.gov/assets/oec/technical-manual/08_Shadows_2014.pdf

Commission. As is clearly demonstrated in Exhibit A, p. 8, the times of day analyzed in the Applicant's Study are either the same, or more expansive than several other recently approved or pending projects that have been submitted to the Commission.

Conclusion

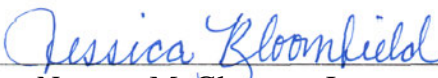
In its November 7, 2019, letter to the Commission, CRD incorrectly states that the Applicant deemed its own shadow study insufficient. The Applicant made no such statement and stands fully behind the methodology, accuracy, and results of its shadow study, which has been in the case record since the initial application. Consistent with the "industry standards" advocated by CRD, the Applicant's Study accurately depicts the surrounding context (i.e. the Affect Environment), including shadows casts by existing buildings. Further, the Applicant's Study depicts the potential impacts of the proposed project during times that provide useful information, and are consistent with past projects reviewed by the Commission.

As shown in Exhibit A, the new areas of shadow created by the proposed project will be limited given: (i) the shadows already cast by existing buildings, (ii) the substantial separation provided by surrounding streets (Yuma and 48th Streets both being 90 feet wide), and (iii) the reduced height and substantial setbacks of the proposed buildings compared to what is permitted as a matter-of-right (Building 1 is below matter-of-right height and the distance between Building 1 and the houses across Yuma and 48th Streets will range between 96 – 137 feet). Finally, per the standard of review applicable to PUDs, to the limited extent there are new impacts to direct sunlight, these impacts are acceptable given the substantial benefits provided by the project, particularly in the areas of housing, affordable housing, environmental sustainability, and uses of special value to the community.

Thank you for your continued attention to this matter.

Respectfully Submitted,

HOLLAND & KNIGHT LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2019, copies of this motion were sent via email to the following:

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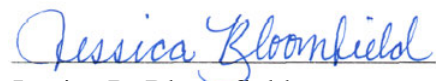
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