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March 15, 2017

Anthony J. Hood, Chairman
Zoning Commission
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

Re; CASE NO. 13-14 (Vision McMillan Partners, LLC and Office of the Deputy Mayor for Planning and Economic Development - Remand from the Court of Appeals)

Dear Chairman Hood and Members of the Zoning Commission:

Friends of McMillan Park (“FOMP”), a party in opposition to the above-referenced application, hereby moves defer the hearing scheduled for March 23, 2017, for an additional 30 days, to allow FOMP necessary time to review the untimely “prehearing submission” filed by Vision McMillan Partners and the Deputy Mayor for Planning and Economic Development (“Applicants”) on March 13, 2017, and prepare for the hearing. In the alternative, FOMP moves to strike the Applicants’ March 13, 2017 filing.

Discussion

On February 1, 2017, this Commission issued a notice scheduling a “limited scope hearing” hearing in the above-referenced case for March 23, 2017, the purpose of which is to address the decision issued by the D.C. Court of Appeals on December 8, 2016, which decision vacated the Commission’s prior order and remanded the matter “for further proceedings.” *Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016). The remand order limited the scope of the hearing to four identified issues, and directed the parties to file, no later than March 13, 2017, any “written statement identifying the asserted deficienc(ies) and offering revised language for the existing or any proposed additional issue identified.”

On March 13, 2017, VMP filed a “prehearing submission” with multiple attachments consisting of a total of nearly 300 pages of documents. Notably, VMP’s pre-hearing submission does not identify any deficiencies in the scope of the remand order,. Nor does the remand order specifically provide for any schedule for the submission of “briefs” or other “documentary evidence,” which may be included in a procedural order issued by the Commission on remand. 11 DCMR § Subtitle Z, §§ 901.1, 901.2. The D.C. Department of Transportation (“DDOT”) submitted its report on March 14, 2017.

The Applicants’ submission is quite clearly a “prehearing submission,” and it is identified as such on IZIS. *See* ZC Exh. 895. The submission articulates no “deficiencies” in the scope of

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the issues identified the remand order, and offers no “revised language for the existing or any proposed additional issue identified.” Instead, this submission is plainly, as the document references, a “response” to these issues. This submission therefore plainly goes beyond the scope of the written submission contemplated by the remand order.

In the absence of a procedural order by the Commission specifying a schedule for filing briefs or other prehearing submissions, the Commission’s ordinary rules governing contested case proceedings should be followed. Under these rules, prehearing submissions be made prior to the *scheduling* of a public hearing.” 11 DCMR Subtitle Z, § 401.1 (emphasis added). Modification of this initial submission may not occur “less than twenty [20] days prior to the public hearing.” *Id.* § 401.5. Agency reports must be submitted no later than ten days before the hearing. *Id.* § 405.4.

The Applicants’ prehearing submission was submitted approximately ten, not 20, days prior to the hearing scheduled for March 23, 2017, and served on counsel for FOMP near the close of business that day. The Applicants provide no rationale for this untimely submission, and they do not ask the Commission to waive its procedural rules to permit this untimely submission. Nor is there any justification for a waiver of this rule. The Commission issued its remand order more than two months ago, presumably with the knowledge of the Applicants. Many of the reports included in this submission indicate that they were prepared well before March 13, 2017. Clearly, this submission could and should have been filed at least ten days earlier, thereby avoiding prejudicing FOMP.

Ten days (less in the case of DDOT’s report) is insufficient to allow FOMP to review the voluminous submission and reports and prepare for the hearing on March 23, 2017. FOMP therefore will be unduly prejudiced unless the hearing is deferred to allow FOMP sufficient time to review these filings and prepare for the remand hearing

Conclusion

Accordingly, FOMP requests that the hearing scheduled for March 23, 2017 be deferred for 30 days in order to allow FOMP an adequate opportunity to review the filings and prepare for the hearing, and for a new hearing date to be duly noticed. In the alternative, FOMP moves to strike the Applicants’ March 13, 2017 filings in their entirety as untimely.

Sincerely,

A handwritten signature in black ink, appearing to read "A. C. Ferster", written in a cursive style.

Andrea C. Ferster

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Defer Hearing was served on March 15, 2017, by **email** to:

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