

# Holland & Knight

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March 16, 2017

*VIA EMAIL*

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 200S  
Washington, D.C. 20001

Re: Z.C. Case No. 13-14 – McMillan Sand Filtration Site  
Applicant’s Response to Friends of McMillan Park’s Motion for Deferral of  
Public Hearing and Alternate Motion to Strike Applicant’s Filing

Dear Commissioners:

On behalf of the Applicant, Vision McMillan Partners, LLC and the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), we hereby submit this letter in opposition to Friends of McMillan Park’s (“FOMP”) March 15, 2017, motion to defer the March 23, 2017, limited scope public hearing on the above referenced case or in the alternative to strike Applicant’s March 13, 2017, filing (“Motion”). According to FOMP’s Motion, the Applicant’s filing is untimely and goes beyond the scope of the Notice of Limited Scope Public Hearing (the “Notice”), which was issued by the Commission on February 1, 2017. As clearly demonstrated below, both of FOMP’s stated claims are erroneous, and the Commission should deny FOMP’s Motion and proceed with the limited scope public hearing as scheduled.

The Commission’s Notice (Exhibit 889, a copy of which is attached), sets forth the specific issues that are to be the focus of the March 23, 2017, limited scope public hearing on this case (the “Issues”). In addition to listing the Issues, the Notice also afforded the parties to the case, being the Applicant and FOMP (the “Parties”), an opportunity to submit a written statement to the Commission identifying any deficiencies in the Issues and an opportunity to file a written statement responding to the Issues. As clearly stated in the Notice, written statements identifying deficiencies in the Issues or providing responses to the Issues were to be submitted to the Commission by 3:00 pm on March 13, 2016.

“In addition, any party by that same date and time may file a written statement responding to the remand issues stated above. No response to another party’s filing will be accepted.” (Notice at Pg. 4)

This is precisely what the Applicant did in its timely filed Applicant's Response to Issues Identified in Notice of Limited Scope Public Hearing ("Applicant's Filing").

With respect to the Applicant's Filing, Applicant submitted a written statement responding directly to the issues identified in the Notice as is clearly permitted under the Notice. Thus, contrary to FOMP's claim, Applicant's Filing falls squarely within the scope of the written submission contemplated by the Notice, and was timely filed according to the schedule established by the Commission.

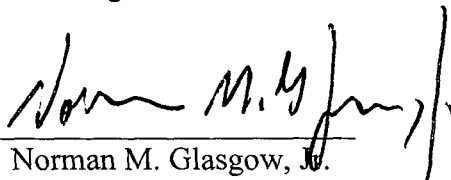
In no way is FOMP prejudiced by the Commission maintaining the limited scope public hearing date, as scheduled. As stated in the Notice, the Parties are not to respond to each other's written responses to the Notice. Therefore, FOMP cannot claim that it needs more time to review and respond to the Applicant's Filing. The Applicant timely filed its response to the Notice on the deadline established by the Commission, and provided FOMP with a copy of the Filing on the same day. The Notice fairly provides both the Applicant and FOMP ten (10) days to review each other's filings in advance of the limited scope public hearing.

Based on the foregoing, the Applicant respectfully requests that the Commission deny FOMP's Motion.

We appreciate your attention to this matter.

Respectfully submitted,

Holland & Knight LLP

By:   
Norman M. Glasgow, Jr.

- cc. Jennifer Steingasser, D.C. Office of Planning (via email)
- Maxine Brown-Roberts, D.C. Office of Planning (via email)
- Anna Chamberlin, District Department of Transportation (via email)
- Jonathan Rogers, District Department of Transportation (via email)
- Kimberly Johnson, DC Office of the Attorney General (via email)
- Matthew Lane, DC Office of the Attorney General (via email)
- Advisory Neighborhood Commission 1B (via email)
- Advisory Neighborhood Commission 5A (via email)
- Advisory Neighborhood Commission 5E (via email)
- Andrea Ferster, Esq, Friends of McMillan Park (via email)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Applicant's Response to Friends of McMillan Park's Motion for Deferral of Public Hearing and Alternate Motion to Strike Applicant's Filing was sent on March 16, 2017, electronically to the parties/persons below:

Bradley Thomas, Chair  
Advisory Neighborhood Commission 5E  
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Washington, D.C. 20001  
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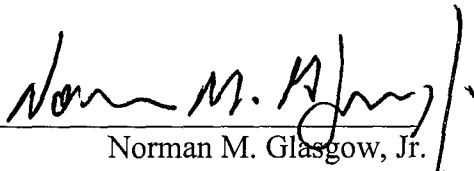
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Counsel for Friends of McMillan Park

By:   
Norman M. Glasgow, Jr.  
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## **A. Consistency with the Comprehensive Plan**

Subsection 2403.4 of the Zoning Regulations of 1958 (Title 11 DCMR)<sup>1</sup> requires the Commission to “find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”

The Comprehensive Plan’s Future Land Use Map designates future uses at the McMillan site as “moderate density commercial,” “medium density residential,” and “parks, recreation, and open space.” The Commission agreed to permit to high-density development on the northern portion of the site concluding that, when the entire site is taken into account, the PUD’s overall density is consistent with that permitted in moderate-density commercial zones. The Court agreed with that interpretation. However, the Mid-City Area Element provides that development on the McMillan site “should consist of moderate- to medium-density housing, retail, and other compatible uses.” (10-A DCMR § 2016.9 (2016).) In response, the Commission found that permitting the high-density development was “a critical and essential part of fulfilling the parks, recreation, and open space designation of the Future Land Use Map, while at the same time achieving other elements of the Comprehensive Plan and the city’s strategic economic plan.” The Court concluded that further explanation was needed.

### **Issue No. 1**

- A. Could the other policies cited in the Order be advanced even if development on the site were limited to medium- and moderate-density use?
- B. If not, which of the competing policies should be given greater weight and why?

The Court also found that Commission failed to adequately address a number of provisions in the Comprehensive Plan that FOMP claimed weighed against approval of the PUD, including provisions discouraging the placement of large buildings near low-density residential neighborhoods (10-A DCMR §§ 305.11, 309.10, 309.15 (2016)), and a provision encouraging geographic dispersion of health-care facilities (10-A DCMR § 1105.1 (2016)).

### **Issue No. 2.**

Do these or other Comprehensive Plan policies cited by FOMP in the record of this case weigh against approval of the PUD?

## **B. Other Objections to the Commission's Order**

After determining to vacate the Order based upon its Comprehensive Plan discussion, the Court briefly addressed “several additional issues that could affect proceedings on remand.” (149 A.3d at 1035.) Those additional issues are as follows:

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<sup>1</sup> Because this application was originally setdown for hearing prior to the repeal of the 1958 Zoning Regulations, it will be decided under the PUD standards existing prior to the September 6, 2016 repeal, but heard in accordance with the contested case provisions of Title 11-Z, Chapter 4 of the 2016 Zoning Regulations.

## **1. Preservation of Open Space**

Policy MC-2.6. of the Mid City Element provides in part:

Require that reuse plans for the McMillan Reservoir Sand Filtration site dedicate a substantial contiguous portion of the site for recreation and open space

The Court expressed its doubt that this policy was mandatory and therefore concluded that the “Commission might be able to permissibly conclude that the need to preserve open space justified the inclusion of some high-density development on the site.” (149 A.3d at 1036.)

### **Issue No. 3**

Is the high-density development proposed for the site the only feasible way to retain a substantial part of the property as open space and make the site usable for recreational purposes?

## **2. Adverse Impacts**

The 1958 PUD Regulations provide:

2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.

2403.8 In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

The Court concluded that the Commission “failed to adequately address a variety of asserted adverse impacts of the PUD, including environmental problems, destabilization of land values and displacement of neighboring residents, and increased demand for essential public services.” (149 A.3d at 1036.)

### **Issue No. 4**

A. Will the PUD result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record of this case.?

- B. If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and these potential adverse effects.

**Issue No. 5**

- A. Will the PUD have a favorable impact on the operation of city services and facilities?
- B. If not, is the impact capable of being mitigated, or acceptable given the quality of public benefits in the project?

As to the issue of city services, the Commission notes the discussion in the Opinion concerning the failure of certain District agencies to respond to referrals made by the Office of Planning. At the time it voted to hold this hearing, the Commission requested that the Office of Planning again refer the application to the non-responding agencies. If less than all of the agencies fail to respond, the Commission will hear from the parties as to the significance, if any, of such non-response on the Commission's disposition of this issue.

If any party believes that the issues stated above do not accurately or fully reflect the issues remanded, that party must, no later than 3:00 p.m. on March 13, 2016, file with the Office of Zoning, and serve upon the other parties, a written statement identifying the asserted deficiency(ies) and offering revised language for the existing or any proposed additional issue identified. If no such submission is timely made by a party, that party is deemed to have agreed that the scope of this hearing fully encompasses the issues on remand.

**In addition, any party by that same date and time may file a written statement responding to the remand issues stated above. No response to another party's filing will be accepted.**

Other than these two submissions, and the Office of Planning and other agency reports discussed above, no submissions may be entered into the record by any party or person. During the hearing, the Commission will accept written statements offered by witnesses and exhibits offered by the parties.

The record in this remand proceeding includes the entire record of Zoning Commission Case No. 13-14. The Parties and public witnesses are to avoid repetitious testimony.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 4.

**How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. Prior to speaking, each witness is requested to identify, by number, the remand



issue or issues being addressed, which should also be indicated on any written testimony. The applicable time limits for oral testimony are described below.

**Time limits.**

For each segment of the hearing conducted on the dates listed above, the following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- |                  |                |
|------------------|----------------|
| 1. Applicant     | 60 minutes.    |
| 2. FOMP          | 60 minutes     |
| 3. Organizations | 5 minutes each |
| 4. Individuals   | 3 minutes each |

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

**ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

**Do you need assistance to participate?** If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) five days in advance of the meeting. These services will be provided free of charge.

**¿Necesita ayuda para participar?** Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

**Avez-vous besoin d'assistance pour pouvoir participer?** Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

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**ለሚሳተፍ ዕርዳታ ያስፈልግዎታል?** የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።