

**Z.C. Case No. 13-14 (McMillan Sand Filtration Site)**

Testimony of

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1. Good evening Mr. Chairman and members of the Commission, my testimony this evening will specifically walk through each of the five issues by relying upon the information provided thus far...as well as taking a more detailed look at the issues that pertain to the interpretation and application of the Comprehensive Plan.

**RE: ISSUE 1**

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2. The Applicant would be unable to advance the Comp Plan policies cited in the Order if development were limited to moderate and medium-density.
3. In addition to considering the policies cited in the Order, I conducted an exhaustive review of the Project's overall consistency with the Comp Plan, which is included in our written submission.

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4. This was done for two reasons:

- First, rather than focusing on only a few policies, the proper application of the Comp Plan entails balancing consistency across all elements and policies. Thus, it is important to show the extensive number of policies that will be advanced by the Project, which goes far beyond those specifically cited in the Order.
  - Second, it is important to identify the extent to which there are competing policies when the Project is assessed for overall consistency with the Comp Plan.
5. In the end, this review identified over 100 Comp Plan policies that are advanced by the Project, and not one instance of a competing policy that, as required under the PUD evaluation standards, would prevent the Commission from concluding that on balance the Project as a whole is not inconsistent with the Comp Plan, including the one Mid-City policy favoring moderate- to medium-density that the opposition party claims weighs against approval of the Project

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6. Regarding density, we maintain that the Project, as designed, is moderate- to medium-density on the basis that when calculated as an aggregate across the entire Site, even after excluding private rights-of-way, is consistent with the

density permitted as a matter-of-right in moderate-density commercial zones.

7. This way of calculating density for PUDs is consistent with the Zoning Regulations, the Land Use Element of the Comp Plan, how the Commission has computed density for countless PUDs, and has been upheld by the Court even in this case.

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8. Notwithstanding...the Applicant submits that the Project density would still be consistent with the Comp Plan even if calculated in accordance with the language of the Mid-City policy that states “Where development takes place, it should consist of moderate- to medium-density housing, retail, and other compatible uses.”
9. As you know...development will take place on Parcels 1 – 5. Thus, using only the land area of these parcels...and excluding private rights-of-way results in an overall density of 4.4 FAR, of which 2.4 FAR will be nonresidential. These densities are consistent with a moderate-density C-3-A PUD.
10. Thus, the question regarding development on Parcel 1 is only a question of height, and whether the additional height required to accommodate the health care facility is consistent with the Comp Plan.

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11. As Mr. Bell described, the master plan has gone through several alternatives in response to extensive input from the community, several District and federal agencies, and as a result of the LDA process and limitations on public investment.

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12. As Mr. Weers discussed, several significant reductions have been made to Parcel 1...also in response to community and agency input.

**SLIDE**

13. In the end, to provide the approximately 12 acres of new parks and open space, including the large contiguous park at the south end of the Site, development is clustered at the north end of the Site...and there is a need for flexibility as to height on Parcel 1.

14. As shown on the slide...this clustering of development and additional height is consistent with the flexibility provided in the Comp Plan and PUD Regulations, and is critical to the Applicant's ability to advance not only the "other policies cited in the Order" but also numerous other Comp Plan policies as is shown in our analysis.

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15. The higher height on Parcel 1 is only necessary to accommodate the special floor-to-floor requirements of the health care facility...not to gain additional density...and not to gain additional stories.
16. In fact, if Parcel 1 was proposed for typical office use, the proposed eight-story building could fall within the height permitted in a moderate-density commercial PUD, and yet would maintain the same density.
17. However, as Mr. Weers stated, there is currently no market for typical office at McMillan. Thus, reprogramming Parcel 1 for typical office to reduce height is not feasible. Nor is removing two floors.

**SLIDE**

18. In other words, if development on Parcel 1...and on every other parcel...were limited to moderate and medium density...and height...advancement of the policies cited in the Order and many other Comp Plan policies would be negatively affected...specifically:
- Open space would be reduced...negatively affecting advancement of policies, including Mid-City policies specific to McMillan, regarding the expansion of open space in underserved areas;
  - Residential would be reduced...negatively affecting advancement of housing policies related to expanding market-rate, affordable, senior, and family-sized housing;

- Health care would be reduced...negatively affecting advancement of economic development policies aimed at growing the District's core industries;
- Retail would be reduced, potentially losing the grocery store... negatively affecting advancement of other economic development policies related to expanding the retail sector, creating additional shopping opportunities, and developing grocery stores in underserved areas; and finally
- Impacts on historic features, views, and on the surrounding neighborhood would increase as a result of distributing greater density and height across the Site...thereby negatively affecting advancement of land use...urban design...and historic preservation policies relating to the scale of development on large sites, protection of existing historic assets, and compatibility with adjacent development.

**SLIDE**

19.Regarding the weighing of competing policies, given the size and enormous potential of the Site, it is no surprise that numerous Comp Plan policies apply to the Project, and that there may be policies that promote competing interests.

20. For guidance on which competing policies should be given greater weight, the Commission need only look to the Implementation Element which addresses the manner in which policies are interpreted and applied. Specifically, the policy relating to the “Interpretation of the District Elements” states... “[r]ecognize the overlapping nature of the Comp Plan elements as they are interpreted and applied. An element may be tempered by one or more of the other elements... [s]ince the Land Use Element integrates the policies of all other District elements, it should be given greater weight than the other elements.”
21. The Land Use Element reflects similar language, as do prior Comp Plan statutes and their extensive legislative history.
22. So, to the extent that the policies cited in the Order compete with the one Mid-City policy favoring moderate- to medium density, which I do not believe is the case, this does not automatically weigh against approval of the Project. Rather, it simply means these policies should be balanced together with the many other policies that apply to the Project, with greater weight given to the guidance and policies of the Land Use Element and the flexibility provided by the Future Land Use Map, or “FLUM”.

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23. The flexibility to allow the additional height needed on Parcel 1 is permitted by the Land Use Element and the FLUM. Much like the text of the Comp Plan, the FLUM provides general guidance that is not binding on the Commission. The legislative history has consistently described the FLUM as being a “soft-edged” map that is intended to provide policy guidance while affording needed flexibility, and that its categories and classifications are not directly comparable to zone districts.

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24. As demonstrated by the excerpts shown on the slide...the current guidelines for using the FLUM provide similar flexibility, which the Court acknowledged in its Order by specifically identifying the two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible:

- A larger development that as a whole is consistent with the FLUM may contain individual buildings with greater height or density, and
- The PUD process may permit greater height or density

25. Thus, when balancing that one Mid-City policy with the numerous Comp Plan policies that will be advanced across multiple District Elements as a result of the additional height needed on Parcel 1, the Commission can place greater weight on the Land Use Element and the flexibility afforded by the



FLUM to support a finding that the Project as a whole is not inconsistent with the Comp Plan.

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**RE: ISSUE 2**

26. Based upon the clear guidance provided by the Comp Plan and its legislative history, the Comp Plan policies cited by FOMP fail to weigh against approval of the Project.

27. Where there may be an inconsistency between the Project and the policies cited by FOMP, as previously stated, this does not automatically weigh against approval, but rather requires the Commission to balance those policies with the many other policies advanced by the Project to come to a determination as to whether the Project as a whole is not inconsistent with the Comp Plan.

28. Thus...even if a proposal conflicts with one of more individual policies, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comp Plan as a whole.

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29. FOMP claims that the Mid-City policies that are specific to McMillan, and other Comp Plan policies that discourage the placement of large buildings near low-density residential neighborhoods, and encourage the geographic

dispersion of health care facilities weigh against approval of the Project. These claims misinterpret the Comp Plan and the manner in which it is intended to be used.

30. First, as already discussed, I believe the Project is consistent with the Mid-City policy that recommends moderate- to medium-density where development takes place on the Site.

31. However, should the Commission interpret this policy as applying to each individual parcel, the numerous additional policies that would be advanced by the Commission providing the flexibility for the additional height needed on Parcel 1, which is appropriate under the FLUM guidelines and PUD Regulations, would far outweigh the non-mandatory language of this one Mid-City policy.

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32. Regarding protection of historic assets and viewsheds, the Project will preserve all 24 existing above ground historic structures along the service courts, and preserve all of Cell 14 and a substantial portion of Cell 28.

33. Views across the southern end of the Site, and toward the south and southwest will be maintained, as will key visual connections between the North and South Service Courts, select landmarks along the reestablished Olmsted Walk, and from the Armed Forces Retirement Home.

34.Regarding the placement of large buildings near low-density residential neighborhoods, it is worth noting that the neighborhoods surrounding the Site are not low-density, but rather are moderate-density consisting of rowhouses and low-rise apartment buildings.

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35.Nonetheless, I believe the master plan is effective at integrating the Site into the city fabric and relating the proposed development to the surrounding context while protecting adjacent neighborhoods.

36.As shown on the slide, consistent with the Comp Plan the Project will reintegrate this large...self-contained Site back into the city...in part by establishing new east-west connections that closely replicate the street pattern proposed for the Site prior to construction of the filtration plant...with slight adjustments made to balance preserve of existing historic assets and to accommodate building program.

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37.New north-south connections are introduced to create an appropriate block pattern, maintain a visual relationship between the service courts, and to provide options for circulation.

38.The proposed buildings are compatible with adjacent uses, and have been designed and placed in a manner that avoids and/or mitigates adverse

impacts. Impacts to the rowhouses to the south are minimized by the location of the large, contiguous park and recreation center at the southern end of the site. To further protect adjacent neighborhoods, the taller health care facility is located at the north end of the Site, across from the more intensive development of the Hospital Center.

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39. Finally, along North Capitol Street...the health care facility is set back approximately 260 feet from the rowhouses to the east...buffered by Cell 14 and the Olmsted Walk... and the remaining buildings along North Capitol step down in height and are compatible with the surroundings.

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**RE: ISSUE 3**

40. Again, the Project is not high-density, and the design of the building on Parcel 1 is the only feasible alternative that allows retention of a substantial part of the Site as open space and make the Site usable for recreational purposes, while at the same time balancing the many interests in leveraging this Site to advance other Comp Plan objectives for housing, economic development, and community facilities, all within the constraints of the Site and the surrounding context.

41. In order to retain a substantial portion of the Site as open space the Applicant clustered development at the north end of the Site. In addition, in response to the community's preference for more open space on Parcel 1, and as a result of the higher floor to ceiling heights, the health care facility requires some additional height that is above the typical moderate-density range.

42. As already discussed, to require Parcel 1 to meet moderate-density requirements as to density and height, would require either reprogramming the entire health care facility for typical office use or removal of two floors, neither of which is feasible as it would jeopardize the entire Project, significantly affect the extent to which the Project advances Comp Plan policies, and increase impacts on the surroundings.

**RE: ISSUE 4 & 5**

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43. I will address these issues together as both have to do with impacts...whether those impacts will be adverse or favorable...and how the Commission should judge, balance, and reconcile the impacts with Project benefits and development incentives.

44. As is no surprise to the Commission, any large development has the potential to have impacts, both beneficial and adverse, that will range in

intensity and duration. Thus...in addition to Comp Plan consistency...the PUD evaluation standards require the Commission to determine if Project impacts “will be favorable, capable of being mitigated, or acceptable given the quality of public benefits.”

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45.Regarding environmental impacts...any environmental impacts caused by the Project will be favorable or capable of being mitigated.

46.In addition to the substantial storm water improvements already made as part of DC Water’s Long-term Control project on the Site, the Project itself will include a new storm water management system that will meet or exceed the District’s current storm water regulations through several low-impact development strategies. This will significantly reduce the volume of untreated runoff entering the Combined Sewer System, thus reducing load on the District’s infrastructure and the potential for untreated overflows into the Anacostia Watershed.

47.The Project will also significantly add to the District’s tree canopy...which is known to provide new habitat, improve air quality, and help reduce urban heat island effects.

**SLIDE**

48. In addition, the overall design of the master plan...and each individual building...will minimize impacts on the environment through the utilization of LID and green building methods. At minimum, the overall development will be certified LEED-ND Gold, and each individual building will be certified LEED-Silver.

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49. The Project will also satisfy the District's Green Area Ratio requirements.

Currently the site is absent any meaningful tree canopy and landscaping, and what does exist is unhealthy. You see on the slide before you some of the major LID strategies that will provide significant environmental benefits.

50. The lack of substantial adverse environmental impacts and the potential for environmental benefits is supported by the Applicant's recent completion of the District's environmental impact screening process which involved an extensive review of the potential environmental impacts that took place over the course of 13 months, and resulted in a determination that a full EIS is not required for the Project.

51. Regarding noise...the Land Use and Environmental Protection Elements of the Comp Plan contain specific policies relating to avoiding, minimizing, and mitigating noise impacts through land use compatibility, proper regulation of certain commercial and industrial uses, and reducing exposure

to excessive noise through enforcement of the District's noise control regulations which are administered by DCRA.

52.Regarding land use compatibility...the Comp Plan talks about managing commercial development through...among other things...traffic and noise control, parking and loading management, larger setbacks, landscaping, height steps downs, and other architectural and site planning measures...all of which have been incorporated into this Project and will mitigate impacts on noise.

53. In addition, the Comp Plan talks about ensuring that zoning protects the quality of life in nearby residential neighborhoods by limiting the location of "high-impact" commercial uses such as fast food establishments, sexually-oriented businesses, and late-night alcoholic beverage establishments... which are not the types of uses the Applicant is looking to establish as part of this Project

54.So in terms of land use compatibility...none of the uses proposed in this Project inherently cause adverse noise-related impacts...and in fact...almost all of the proposed uses are found throughout the area immediately surrounding the Site.



55. The Environmental Protection Element contains policies that address the potential impacts of noise on the environment and on the general health and well-being of District residents.

56. Again...referring to noise and land use compatibility...this Element states “[a]void locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools...” No such uses are being proposed as part of this Project.

57. Finally, as it relates to construction-related noise, and post-construction noise generated by the residents, employees, and visitors to the Site...the Comp Plan encourages continued enforcement of the existing regulations governing day and nighttime levels of commercial, industrial, and residential land uses, motor vehicle operation, solid waste collection and hauling equipment, and the operation of construction equipment and other noise-generating activities.

58. As previously stated, these are regulations that are administered, and can only be administered by DCRA during and after construction of the Project.

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59. Regarding destabilization of land values and displacement of neighboring residents... Mr. Bogorad already thoroughly addressed this specific issue...so just to summarize his findings...

60. The Project will not significantly add to the increase in land values that is already occurring in the area without the Project...and instead will help mitigate the effects of destabilization by reducing the imbalance between housing supply and demand.
61. The Project is not expected to cause significant displacement...and will contribute to mitigating this issue by adding a substantial amount of new market-rate and affordable housing.
62. The jobs created...and job training provided by the Project will be a potential source of new or increased income that will help existing residents stay in their homes.

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63. Finally, there are many tools the District has to help address these issues. Some fall into the Commission's purview, such as IZ, allowing accessory dwelling units, administering housing linkage, housing trust fund contributions for nonresidential penthouse habitable space, and increased affordable housing and other housing and employment benefits gained through the PUD process.
64. Many other programs fall outside the Commission's purview that are available to District residents, and can be modified by District agencies as

necessary to effectively address these issues. Some of these programs are listed before you on the slide.

65. I mention these programs simply because it is important to point out that addressing these issues requires a multipronged solution involving multiple agencies and programs.

**SLIDE**

66. The PUD regulations require the Commission to judge, balance, and reconcile the relative value of the benefits and amenities offered, the degree of development incentives requested, and any potential adverse effects.

67. Overall...the Project will have numerous favorable impacts on the environment, housing, health care services, and the operation of city services and facilities...and any adverse impacts will be mitigated or be acceptable given the high quality of the benefits and amenities provided by the building program (housing, grocery store, community center, parks and open space), additional jobs created, increased tax revenue, historic preservation, and the significant contributions made as part of the \$5 million community benefits agreement.

68. Further, compared to the size and complexity of this Project...the degree of development incentives being requested is minimal...with the only real

notable incentive being the flexibility needed for the additional height that is needed to accommodate the health care facility on Parcel 1.

69. Thus, when you step back...judge, balance, and reconcile all of the things the Commission must consider when deciding this PUD...

- The wide range of favorable impacts and the mitigation that will be implemented to address any adverse impacts;
- The favorable tradeoff between the substantial number of Comp Plan policies that will be advanced by providing the height incentive on Parcel 1 to accommodate the health care facility...which is mitigated through effective site planning and design;
- The fact that the Project as a whole is overwhelmingly not inconsistent with the Comp Plan; and...
- The strength of the substantial quantity and quality of public benefits and amenities offered in each of the categories identified in the PUD regulations;

70. It is clear that the Applicant has met its burden of proof, that all applicable standards under the PUD regulations have been met...and that the Project should be approved. **SLIDE**