

# Holland & Knight

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

Norman M Glasgow, Jr.  
(202) 419-2460  
norman.glasgowjr@hklaw.com

May 1, 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 in Limine

Dear Commissioners:

On behalf of Vision McMillan Partners, LLC and the Deputy Mayor for Planning and Economic Development (“DEMPED”) (collectively, “Applicant”), this letter is sent in response to the Motion in Limine (“Motion”) filed this morning by Friends of McMillan Park, (“FOMP”) a party in opposition to the above-referenced PUD Application. For the reasons discussed below, FOMP’s Motion should be denied.

FOMP’s Motion rests on the sole assertion that under 11 DCMR Subtitle Z §408.9 the Applicant was required to provide a list of rebuttal witness and a written summary of their rebuttal testimony in advance of tonight’s hearing. Motion at page 3, *see* also e-mail exchange between Andrea Ferster and undersigned attached as Exhibit A to the Motion. 11 DCMR Subtitle Z §408.9 contains no such disclosure requirement, and Ms. Ferster failed to identify any pertinent authority in support of her initial request or in response to my request that she identify same. To wait until the morning of the continued hearing is nothing more than a delaying tactic.

More to the point, Applicant only intends to present rebuttal testimony this evening from witnesses – fact and expert – who have already testified in this limited remand proceeding. While FOMP asserts surprise and requests relief under 11 DCMR Subtitle Z §408.10, there is simply no surprise as FOMP has already heard from each witness expected to testify this evening, and, in the case of experts, already have the resumes in hand as per Applicant’s Prehearing Submission.<sup>1</sup>

---

<sup>1</sup> In turn, not only did FOMP fail to make any advance disclosure of its fact and expert witnesses, but it also tried to introduce written testimony from two witnesses – Claudia Barragan and Anne Sellin – who would not be available for cross-examination (11 DCMR Subtitle Z §§408.5, 6) or to testify under oath or affirmation examination (11

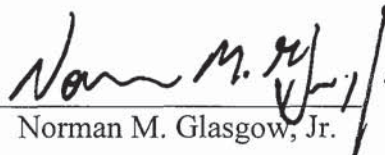
FOMP also challenges the submission of rebuttal testimony by DOEE, claiming that DOEE cannot testify on rebuttal since it was not part of Applicant's case. DOEE has testified in this case and its testimony this evening was discussed at the conclusion of the last public hearing. As the Commission is well aware, 11 DCMR Subtitle Z §§408.1, 4 and 5 gives the presiding officer great flexibility in how the proceedings are conducted, and allowing DOEE to testify this evening causes no undue prejudice to FOMP.

Lastly, FOMP seeks to introduce 3 additional documents in the record for this proceeding. Applicant does not object to the proposed introduction, except it reserves the right to supplement the record with a complete, and final, versions of each document so identified.

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)

---

DCMR Subtitle Z §408.13). While FOMP may believe it is bound by a different set of procedural rules, that is simply not the case.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Applicant's Response to Friends of McMillan Park's Motion in Limine Filing was sent on May 1, 2017, electronically to the parties/persons below:

Bradley Thomas, Chair  
Advisory Neighborhood Commission 5E  
107 P Street, NW  
Washington, D.C. 20001  
Email: 5E05@anc.dc.gov

Ronnie Edwards, Chair / SMD 5A05  
Advisory Neighborhood Commission 5A  
122 Michigan Avenue, NE #L24  
Washington, D.C. 20017  
Email: 5A05@anc.dc.gov

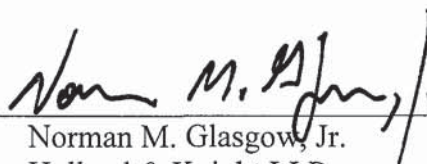
C. Dianne Barnes, Vice Chair / SMD 5E09  
Advisory Neighborhood Commission 5E  
41 Adams Street, N.W.  
Washington, D.C. 20001  
Email: 5E09@anc.dc.gov

Advisory Neighborhood Commission 1B  
2000 14<sup>th</sup> Street, NW  
Suite 100B  
Washington, D.C. 20009  
Email: 1b@anc.dc.gov

Nicole Cacozza / SMD 1B10  
Advisory Neighborhood Commission 1B  
644 Columbia Road NW  
Washington, DC 20001  
Email: 1b10@anc.dc.gov

Andrea Ferster, Esq.  
Law Offices of Andrea Ferster  
2121 Ward Court, N.W., 5<sup>th</sup> Floor  
Washington, D.C. 20037  
Email: aferster@railstotrains.org

Counsel for Friends of McMillan Park

By:   
Norman M. Glasgow, Jr.  
Holland & Knight LLP