

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 rebuttal this evening will focus on the testimony provided by Laura Richards regarding the structure and interpretation of the Comprehensive Plan, and the relationship of the Comp Plan to the Zoning Regulations.
2. My testimony goes primarily to Remand Issue No. 1 which asks...“[c]ould the other policies in the Order be advanced even if development on the PUD Site were limited to medium- and moderate density use...and if not...which of the competing policies should be given greater weight and why?”
3. In the beginning of her testimony, Ms. Richards states that the [Comp Plan] policies establishing moderate- and medium-densities for the McMillan site should be given governing weight, and states that her conclusion “is compelled by a reading of the Land Use Element, the Future Land Use Map, section MC-2.6.5 of the Mid-City Area Element, and the Comp Plan’s interpretive rules. Ms. Richards concludes that when read together, these

provisions instruct the reader to give prevailing weight to the moderate- and medium-density policies.

4. My testimony this evening will show that the conclusions drawn by Ms. Richards are based upon incorrect interpretations of the Comp Plan, and will reiterate the point I made in my prior testimony that the Project is consistent with the Mid-City Area Element policy favoring moderate- to medium-density where development takes place at McMillan.
5. In her testimony, Ms. Richards correctly describes the structure of the Comp Plan as consisting of Citywide Elements that address topics that are citywide in scope, and Area Elements that focus on issues that are unique to a particular part of the District (ex. Mid-City Area Element)...and which may contain specific "Policy Focus Areas," a defined area within a specific Area Element that is deemed worthy of a level of policy direction and guidance above that provided by the more general policies of Citywide and Area Elements.
6. However, while Ms. Richards is correct in the way she describes how the Comp Plan is put together...based upon my 16 years of experience in planning, zoning, and land use which includes extensive work with developing, interpreting, and applying both the federal and District Elements of the Comp Plan, I believe her testimony regarding how the Comp Plan

guides resolution of competing policies is incorrect based upon the text of the Implementation Element; the Framework Element...including the Guidelines for Using the Future Land Use Map...and most importantly the legislative history supporting the Comp Plan which clearly establishes the Council's legislative intent with respect to the handling of competing policies...and the relationship of the Comp Plan to agency plans and regulations.

7. In her testimony, Ms. Richards states that the Land Use Element identifies McMillan as one of 10 large sites that the District anticipates will be locations for significant amounts of future housing and employment opportunities, and suggests that because the Land Use Element states that [t]he Area Elements should be consulted for a profile of each of these large sites...and that the particular mix of uses on any given site should be generally indicated on the Future Land Use Map, or "FLUM," and more fully described in the Area Element...that the policies of the Area Elements should prevail over those in the Land Use Element where there are competing policies.
8. Ms. Richards further states that the "preeminence" of the Mid-City Area Element over the city-wide elements is even more pronounced with respect

to McMillan because the site is included as a policy focus area within the Mid-City Area Element.

9. On both accounts...I believe this is a misreading of the Comp Plan.

10. First, the Comp Plan text describing the scope of the policies contained in the Citywide Elements, District Elements, and those applicable to Policy Focus Areas like McMillan merely establishes the hierarchy that exists within the Comp Plan...and why there is a need for this tiering.

- a. The Citywide Elements each address a topic that is citywide in scope;
- b. The District Elements focus on issues that are unique to particular parts of the District; and...
- c. A “Policy Focus Area” is area that requires a level of direction and guidance above that provided by the prior sections of an Area Element and in the citywide elements.

11. It is worth noting...that while the policies of the Area Elements are focused on a particular area of the District, including the policies pertaining to specified “Policy Focus Areas”...these policies are still described in the Comp Plan as being “general in nature and do not prescribe specific uses or design details. [t]hey are intended to provide a sense of local priorities and to recognize the different dynamics at work in each part of the city”

12. Furthermore, nowhere in the Comp Plan does it state that the policies of the Area Elements, including those applicable to a Policy Focus Area, are to be given great weight in instances where there are competing policies.

13. In fact, the Comp Plan says the exact opposite...

14. As I stated during my testimony, for guidance on how to address competing policies 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."

15. The Land Use Element contains similar language stating... "[m]ore than any other part of the [Comp Plan], this Element lays out the policies through which the city will accommodate growth and change... Because the Land Use Element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced."

16. Thus, while Ms. Richards stated in her testimony that the Comp Plan gives greater weight to the Land Use Element where there are conflicts or overlaps between the Land Use Element and other citywide elements...as you can see from the plain language of the Comp Plan...the Land Use Element is afforded greater weight over all other District Elements as competing policies are balanced.

17. As all of this relates to this specific Project...as I previously testified, I do not believe the policies cited in the Order compete with the one Mid-City policy favoring moderate- to medium-density development at McMillan.

18. In fact, based upon the express language of that Mid-City policy which states in relevant part “[w]here development takes place it should consist of moderate- to medium-density housing, retail, and other compatible uses,”... I believe the Project is consistent with this policy and thus there is no need for a balancing with the Land Use Element.

19. However, to the extent that the Commission believes this policy does compete with the policies cited in the Order, 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 “FLUM,” which is adopted as part of the Land Use Element.

20. With respect to the flexibility provided by the FLUM...and how it relates to the Zoning Regulations...

21. As the Commission is well aware, the FLUM is accompanied by a set of guidelines that discuss its flexible nature. For example, these guidelines state:

- a. “[t]he FLUM is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements..., the [FLUM] does not follow parcel boundaries and its categories do not specify allowable uses or dimensional requirements.”
- b. [t]he densities within any given area on the [FLUM] reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area. Similarly, the land use category definitions describe the general character of development in each area...” and;
- c. “the granting of density bonuses (for example, through [a PUD]) may result in heights that exceed the typical ranges cited...”

(10-A DCMR § 226)

22. The flexibility described in the FLUM guidelines is consistent with how the FLUM has historically been described in legislative history.

23. Specifically, the 1984 Land Use Element Amendment Act of 1984, which resulted in the adoption of the first Land Use Element, states “[t]he Land Use Element does not identify or fix every use, height, density on every block in the District. The text and maps construct a guiding framework within which public and private land use and zoning decisions are to be made.” (1984 Land Use Element Amendment Act of 1984, Section 1101(k))

24. The Committee of the Whole Report accompanying the 1984 Land Use Element further clarifies the relationship of the FLUM to the Zoning Regulations by stating “[t]he generalized land use maps should not be confused with the District’s zoning maps.... The categories and classifications of the generalized land use maps are not directly comparable to zoning districts. The generalized land use maps identify desired objectives but do not suggest the techniques for achieving these objectives. The Zoning Commission, which has established a reputation for conducting thorough and fair proceedings, has the statutory responsibility to adopt the District’s zoning maps.”

25. This language clearly establishes that the FLUM, and the Comp Plan for that matter, establishes the desired objectives... while the techniques used to achieve these objectives is left to the agencies... or the Commission in this instance.

26. The Zoning Regulations constitute the Commission's technique for achieving Comp Plan objectives.
27. Per the Zoning Act and Home Rule Charter, the Zoning Regulations, including the PUD regulations, cannot be inconsistent with the Comp Plan.
28. The PUD regulations have a stated goal to "permit flexibility of development and other incentives, such as increased building height and density; provided, that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR §2400.2 (1958))
29. The PUD regulations further provide that:
- a. A PUD must be found to be not inconsistent with the Comp Plan (11 DCMR § 2400.4 (1958)); and
 - b. In carrying out the purposes of the PUD regulations, the Commission may "...set standards and conditions for height and bulk lesser or greater than the standards established...in [the PUD regulations] or elsewhere in [the Zoning Regulations]." (11 DCMR § 2400.5 (1958)).
30. Thus, the need for zoning to be not inconsistent with the Comp Plan...and the flexibility afforded with respect to the interpretation of the FLUM, are also reflected in the PUD regulations.

31. What is also reflected in the PUD regulations is the flexibility provided in the FLUM guidelines concerning the distribution of density. Specifically, the PUD regulations allows for the aggregation of density by stating “[t]he [FAR] of all buildings shall not exceed the aggregate of the [FARs] as permitted in the several zone districts included within the project area...”

(11 DCMR § 2405.2 (1958))

32. As stated in my testimony, this way of calculating density for PUDs is consistent with the Zoning Regulations, the Land Use Element, how the Commission has computed density for countless PUDs, and has been upheld by the Court even in this case.

33. To achieve the objectives established for McMillan by the Comp Plan, the technique being employed by the Commission is the PUD process. As part of the PUD process, the Commission must judge, balance, and reconcile the relative value of the benefits and amenities offered, the degree of development incentives requested, and any potential adverse effects.

34. This is the standard by which the Commission must decide this Project, in addition to determining that the Project is not inconsistent with the Comp Plan.

35. As I testified previously, the Project will have numerous favorable impacts...and any adverse impacts will be mitigated or be acceptable given the high quality of the benefits and amenities provided.
36. Further, compared to the size and complexity of this Project...the degree of development incentives being requested is fairly minimal...again noting that this is not a high-density project, but rather falls squarely within moderate-density ranges regardless of whether you calculate the density across the entire site, or only using the land area of the parcels “where development takes place.”
37. In fact, the only truly notable flexibility being requested is the additional height that is needed to accommodate the health care facility on Parcel 1, which is permitted under the FLUM guidelines and PUD regulations.
38. Based on the foregoing testimony...I reiterate my expert opinion that when you judge, balance, and reconcile all of the things the Commission must consider when deciding this PUD...
- a. The wide range of favorable impacts and the mitigation that will be implemented to address any adverse impacts;
 - b. The substantial number of Comp Plan policies that will be advanced by providing the height flexibility on Parcel 1; and

- c. The strength of the substantial quantity and quality of public benefits and amenities offered in each of the categories identified in the PUD regulations;

39. The Project satisfies all applicable standards under the PUD regulations and is overwhelmingly not inconsistent with the Comprehensive Plan.