

Park Neighbors

Motion for Reconsideration and Stay of Remanded Commission Order No. 16-11

Zoning Commission's response to the Remanded Order 16-11 should be held in reconsideration due to Case 2021 CA 001651 B, currently active before the Superior Court of the District of Columbia. That case questions the validity of Development Projects being considered under the Comprehensive Plan Amendments, Future Land Use and Generalized Policy Map changes that would impact the neighborhoods of any of the 18 District Residents registered as Plaintiffs in that case. This case has survived a motion to dismiss and is now moving to discovery stages of the litigation.

The "Remand Order" published in the DC Register on May 6, 2022 relies heavily on the Amended Comprehensive Plan (10A DCMR) currently under question in the District of Columbia Superior Court. First, the Zoning Commission cannot arbitrarily choose what regulations on which to rely. The basis for the Remand Order rests on old zoning regulations in place when the application was filed. Then the Zoning Commission conveniently uses the new Comp Plan policies and maps in approving and publishing the Remand Order. For example, the Remand Order (order) says the new racial equity policies should not apply during this remand review. At the same time, the order says the new Comp Plan and generalized policy map changes clearly allow higher density in a Neighborhood Conservation Area. This is a capricious, selective application of regulations. The law is meant to be consistent. Yet here the Zoning commission is choosing zoning regulations and Comp Plan policies a la carte. This unfairly benefits the Applicant, harms those in opposition, and results in an arbitrary approval of the project again.

As mentioned earlier, the Zoning Commission's reliance on the new 10A DCMR regulations (signed into law by Mayor Bowser in August of 2021), is undermined by an active lawsuit that has survived a motion to dismiss. That lawsuit is now moving to the discovery stages of the litigation. See DC Superior Court Case No. 2021 CA 001651 B (Order attached). This litigation actively calls into question any project that relies on the newly changed Comp Plan policies, such as the Bruce Monroe order. These Comp Plan policies changes and maps have been called into question as unlawful by plaintiffs across the city, including by Marc Poe, a member of the party herein, because the Office of Planning never conducted the impact studies and evaluations required by DC law [DC Code § 1-306.04 (b), (c), (d) & Comp Plan IM-3.2, especially IM-3.2.2]

It is also incontrovertible that the impacts of this PUD application remain either under evaluated or completely un-evaluated by the relevant District agencies. Indeed, the lack of impact study of this PUD application was contested by Georgia Avenue Neighbors, Park neighbors, and others on the record. This has yet to be acknowledged by the High Court and the Commission.

Refuting a last-minute email is nearly impossible. The submission itself limits a party's engagement in the legal process as well as preventing non-parties from engaging at all because the record closes before they can respond. Regardless, the overall contest of the lack of planning regarding this PUD application by relevant District agencies is clearly on the record and remains a live contest even now, considering the central claims in the pending Superior Court litigation mentioned above (DC Superior Court Case No. 2021 CA 001651 B).

For the foregoing reasons, Park Neighbors asks for reconsideration and a stay of the Remand Order, ZC Order 16-11(1).

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>DAVID P. BELT, <i>et al.</i>,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>THE DISTRICT OF COLUMBIA, <i>et al.</i>,</p> <p style="text-align:center">Defendants.</p>	<p>Case No. 2021 CA 001651 B</p> <p>Judge Maurice Ross</p> <p>Next Event: Status Hearing, April 24, 2022, 11:00 a.m.</p>
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JOINT NOTICE ON PROPOSED ORDERS

Plaintiffs and the District of Columbia (the District) submit this Joint Notice in response to the Court's instruction that the Parties submit Proposed Orders following the Court's denial of the District's Motion to Dismiss on February 14, 2022. The Parties respond as follows, and attach Proposed Orders to reflect their respective positions regarding a schedule for further proceedings and the scope of discovery.

Plaintiffs maintain that Defendant's Motion to Dismiss should be denied in its entirety for the reasons argued in the February 14, 2022, hearing, and in Plaintiffs' Opposition (Response) to Defendant's Motion to Dismiss First Amended Complaint.

Since no Answer has been filed yet by the District, at this posture, Plaintiffs are not able to detail the discovery they request, including the specific number of depositions or document requests. Plaintiffs propose that the Court order the District to file its Answer to First Amended Complaint no later than 14 days after entry of a written order memorializing the denial of its Motion to Dismiss.

Assuming that the District will file an Answer, Plaintiffs will limit discovery requests and depositions to matters directly relating to the causes of action and related issues alleged in the First

Amended Complaint, including standing. This includes the following topics: (i) Development projects being considered under the Comprehensive Plan Amendments within one (1) mile of each Plaintiff's residence, demonstrating injury and standing; (ii) Map changes to the Future Land Use Maps and Generalized Policy Maps within one (1) mile of each Plaintiff's residence; (iii) Amendments to Comprehensive Plan Policies, Frameworks and Elements affecting District planning that will impact Plaintiffs' immediate neighborhoods (within one (1) mile of each Plaintiff's residence); (iv) any progress report(s) prepared (or data/analysis on which such a report would be based) or released, under D.C. Code § 1-306.04(b); (v) any environmental or impact assessment(s), including but not limited to reports or analysis, the underlying data assessed, or the methods used, under D.C. Code § 1-306.04(d); (vi) any mechanism for public review of all proposed Amendments, as required under D.C. Code § 1-306.04(e); 10A DCMR § 2515.3; and (vii) ANC concerns on the record regarding impact planning/mitigation, environmental assessments or progress reports, and all responses to such concerns.

Plaintiffs propose to serve all discovery requests, including interrogatories, requests for admission, document requests and deposition requests within 21 days of being served with an Answer. Plaintiffs object to limiting the number of depositions, interrogatories and document requests at this stage, but anticipate requesting five (5) depositions, in addition to any expert witness the District may identify, and 50 document requests and interrogatories. The District should be entitled to depose any expert witnesses that Plaintiffs may identify. The Parties should have 45 days to respond to requests.

The District maintains that dismissal of the Amended Complaint as a matter of law is warranted for the reasons outlined in the District's motion to dismiss. Nevertheless, in light of the

Court's instruction at the conclusion of the motions hearing on February 14, 2022, the District proposes entry of a Track II schedule.

The District additionally proposes that the scope of discovery should be strictly limited as follows. The Court should set the number of depositions to three total for plaintiffs, of which one may be a deposition under Super. Ct. Civ. R. 30(b)(6), except that plaintiffs may additionally depose any expert witness the District may identify. The District should be entitled to depose each named plaintiff, as well as any expert witnesses that plaintiffs may identify. Super. Ct. Civ. R. 30(b)(6) deposition topics, document requests, interrogatories, and requests for admission should be limited in scope to matters directly reflecting the allegations in the Amended Complaint challenging the Office of Planning's process for proposing the amendments to the Comprehensive Plan which were submitted to the Council in April of 2020. On this basis, the District objects to plaintiffs' first proposed discovery topic, as development projects being considered under the Plan are undertaken by developers, not the Office of Planning. The District reserves the right to assert objections to specific discovery requests under the Superior Court Rules of Civil Procedure as may be warranted under the circumstances. Plaintiffs' total number of interrogatories and document requests, combined, should be limited to 20. The Parties should have 45 days to respond to requests for documents. Nothing in the aforementioned limitations should prejudice the Parties' ability to reach discovery-related stipulations, or for either or both Parties to move to alter the deadlines for discovery.

Finally, the District proposes that the Court order a deadline of 14 days after entry of a written order memorializing the February 14, 2022 hearing for the District to file an Answer to the Amended Complaint.

Dated: March 11, 2022.

/s/ Heather Benno
Heather Benno [1010821]
Attorney for Plaintiffs
IMMIGRANT JUSTICE SOLUTIONS
1629 K St. NW, #300
Washington, DC 20006
(240) 435-7191

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

CHAD COPELAND
Deputy Attorney General
Civil Litigation Division

/s/ Fernando Amarillas
FERNANDO AMARILLAS [974858]
Assistant Deputy Attorney General

/s/ Brendan Heath
BRENDAN HEATH [1619960]
CONRAD RISHER [1044678]
Assistant Attorneys General
Equity Section
400 Sixth Street, N.W., Suite 10100
Washington, D.C. 20001
Phone: (202) 442-9880
Fax: (202) 741-0579
brendan.heath@dc.gov

Counsel for Defendants

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DAVID P. BELT, *et al.*,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Case No. 2021 CA 001651 B

Judge Maurice Ross

PLAINTIFFS' PROPOSED ORDER

Upon consideration of the Motion to Dismiss Plaintiffs' First Amended Complaint filed by the District of Columbia, John Falcicchio, and Andrew Trueblood (Motion), plaintiffs' opposition, and the entire record, it is this ____ day of _____, 2022,

ORDERED that the Motion is **DENIED**; and it is further

ORDERED that Defendant file an Answer within 14 days of this Order; and it is further

ORDERED that the parties serve all discovery requests no later than 21 days after being served with an Answer, and that responses be served within 45 days.

SO ORDERED.

THE HONORABLE MAURICE ROSS
Judge, Superior Court of the District of Columbia

Copies by CaseFileXpress to:

Heather Benno
Counsel for Plaintiffs

Conrad Z. Risher
Brendan Heath

Counsel for Defendant

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DAVID P. BELT, *et al.*,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Case No. 2021 CA 001651 B

Judge Maurice Ross

DEFENDANT’S PROPOSED ORDER

Upon consideration of the Parties’ Joint Notice following the February 14, 2022 hearing on defendants’ motion to dismiss, it is this _____ day of _____, 2022,

ORDERED that this case is placed on a Track II schedule; and it is further

ORDERED that plaintiffs may conduct no more than three total depositions, of which one deposition may be conducted under Super. Ct. Civ. R. 30(b)(6), defendants may depose each plaintiff, and both Parties may depose any expert witness called by the other party; and it is further

ORDERED that discovery shall be limited in scope to matters directly reflecting the allegations in the Amended Complaint challenging the Office of Planning’s process for proposing the amendments to the Comprehensive Plan which were submitted to the D.C. Council in April of 2020; and it is further

ORDERED that plaintiffs may serve no more than 20 total interrogatories and requests for production, combined; and it is further

ORDERED that the Parties may respond to requests for production within 45 days; and it is further

ORDERED that defendant shall file an Answer within 14 days of the entry of this Order.

SO ORDERED.

THE HONORABLE MAURICE ROSS
Judge, Superior Court of the District of Columbia

Copies by CaseFileXpress to:

Heather Benno
Counsel for Plaintiffs

Conrad Z. Risher
Brendan Heath

Counsel for Defendant