

ADVISORY NEIGHBORHOOD COMMISSION 5E

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MEMORANDUM

DATE: July 22, 2015
TO: DC Zoning Commission, Anthony Hood – Chair
FROM: ANC 5E –Teri Janine Quinn, Chair
SUBJ: Request for Re-Consideration and Review of ANC Comment on Case #13-14 *Corrected Final Order* (McMillan Site)

ANC 5E is aware that the record has been closed on Case #13-14 (Vision McMillan Partners, LLC [Applicant] and the DC Deputy Mayor of Planning and Economic Development [Co-Applicant] -- PUD for McMillan Reservoir Sand Filtration Site), and its *Final Order* has been published. However, due to extraordinary circumstances associated with the timing of the publication of the *corrected Final Order* for this case on April 24, 2015, and the legal requirements for ANC decision-making, we respectfully request Re-Consideration, including your consideration of the attached Resolution, which seeks to perfect the *corrected Final Order* in a manner consistent with the prior documented concerns and proffers of ANC 5E.

By law, ANCs may be parties to all zoning cases. By law, ANCs can only make decisions (including ratification of Resolutions) at duly announced public meetings of the ANC. The corrected Order was published on April 24, 2015. ANC 5E's regularly scheduled monthly meeting occurred on April 21, 2015 – that is, PRIOR to the publication of the corrected Order. Consequently, ANC 5E was unable to take official action on the corrected Order until its May 19, 2015 and June 16, 2015 meetings, and its Special Public Meeting of June 24, 2015.

This request is submitted based on guidance received from the Office of Zoning to ANC 5E's prior request, dated 6/25/15 and submitted on 7/16/15, for a request for re-opening the record. We hope you will provide your most careful consideration to this current request for Re-Consideration and the attached Resolution and its suggestions for modification of the *Final Order*, as well as its implications and advisement for future negotiations between or among the District, the Applicant,

the Co-Applicant, the DC. Attorney General, the DC Zoning Administrator, and DCRA.

Sincerely,

Teri Janine Quinn

Chair, ANC 5E

REQUEST FOR WAIVER

In consideration of urgency, timeliness, and the Zoning Commission's calendar, ANC 5E respectfully requests a waiver to DC Code 3029.5 such that parties to case 13-14 will have SEVEN DAYS (not 10 days) to respond to ANC 5E's request for re-consideration.

Teri Janine Quinn,

Chair, ANC 5E

RESOLUTION

**Recommendations to Perfect the DC Zoning Commission's
Corrected Order No. 13-14 (1) (related to the PUD application
for McMillan Reservoir Sand Filtration Site)
In a Manner Consistent with the Prior Documented Proffers
of ANC 5E and Its Residents**

WHEREAS, ANC 5E, in which the McMillan Site is located, is an active Party to various hearings and considerations related to the McMillan PUD, and has provided written and oral testimony at hearings and actively negotiated with the Applicant -- Vision McMillian Partners (the 'Developer') -- on behalf of the residents of ANC 5E -- especially those in neighborhoods that will be directly affected by the proposed development;

WHEREAS, on April 17, 2015, the DC Zoning Commission issued its *Final Order* on the McMillan PUD;

WHEREAS, on April 24, 2015, the DC Zoning Commission issued a corrected *Final Order* to its conformity with (a) proffers made by the Applicant, (b) appropriate use of the term 'Partnership', (c) clarification that the Partnership is the recipient of certain funds, and (d) changes to the proffers made by the Applicant in response to a comment from the Office of the Attorney General (Footnote #1: Revised *Order*);

WHEREAS, the corrected *Final Order* includes language and public/community benefit provisions that ANC 5E has discussed with the Applicant and documented, including:

1. Establishment of the McMillan Public Space Partnership ("Partnership"). The Partnership will provide an operating framework to maintain and program the public space within the McMillan redevelopment. . . . As its primary function, the Partnership will maintain and program most, if not all, of the public assets on the PUD Site via an agreement with the District. (Corrected Order, FF 75); The Partnership will program and stage events within the PUD for the benefit of the public. (Corrected *Order*, FF 92);
2. The community center will include gallery space with exhibits on the history of the PUD Site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity

will be open to the public and will provide a user-friendly and convenient space for public gatherings and community events. (Corrected *Order*, FF 88);

3. \$1,000,000 [in benefits] as a workforce development fund to be coordinated by the Community Foundation of National Capital Region ("CFNCR"), of which \$300,000 for scholarships will be for community residents to pursue higher education, training, or job-related certification, encouraging "legacy" career paths (Corrected *Order*, FF 94a);
4. \$125,000 [in benefits] to the D.C. Education Fund to be used to improve Science, Technology, Engineering, and Math ("STEM") teacher professional development and instruction, as well as student learning and achievement, particularly at Dunbar High School, McKinley Technical High School, and Langley Educational Campus (Corrected *Order*, FF 94b);
5. \$500,000 [in benefits] to a contractor or otherwise for fabricating, installing, repairing and restoring tree box fence enclosures; planting trees and ground cover plants; and installing certain neighborhood signage in coordination with the Bates, Bloomingdale, Eckington, Edgewood, Hanover Area, and Stronghold Civic Associations (Corrected *Order*, FF 94f);
6. \$150,000 to the North Capitol Main Street, Inc., for the storefront improvement program to provide grants for major corridors in ANC 5E boundaries affected by the PUD. The funds shall only be used for storefronts located on North Capitol Street, N.E., and N.W., between Channing Street and New York Avenue; (Corrected *Order*, FF 94h).

WHEREAS, other benefits formally proposed by Applicant and/or ANC 5E and submitted to the Zoning Commission, but NOT included in *Final Order* include:

7. \$1,250,000 (later changed by Applicant to \$1,750,000) for private shuttles (Brookland Metro to Site); however ZC subsequently noted, "If any component of the public transit service enhancements is not possible by the Certificate of Occupancy for each parcel, the Applicant will fill any transit demand gaps through private shuttles. (IZIS Exh. 862).... The Commission finds that this level of commitment is sufficient, even though it does not rise to the level requisite for this to count as a public benefit of the PUD, pursuant to 11 DCMR § 2403.6. The Commission has not counted the project's traffic mitigation

measures as public benefits of the project.” (10/6/14 Holland & Knight, p .12, IZIS Exh. #832G1, 10; IZIS Exh. 832G2, p.3; IZIS Exh. 833, pp. 1,2, & 9);

8. \$500,000 for an ADA-Compliant Neighborhood Shuttle along First St., NW with stops at 1st & New York, the unit block of O (Lebanon Sr. complex), 3rd & Q, 1st & Florida, 1st and P, 1st & Rhode Island, and the McMillan Healthcare Building and Grocery Store (Applicant later withdrew this proffer and allocated associated funds to increase private metro shuttle funding to \$1.75 million; IZIS Exh. 833, p.9);

WHEREAS, ANC 5E and the Applicant each submitted to the Zoning Commission separate (and somewhat differing) community benefits proffers (IZIS Exh.813, 832, 860, 861);

WHEREAS, ANC 5E was provided no opportunity to discuss the *Order’s* final public/community benefit package, prior to its publication, with the Applicant, DMPED or the Attorney General, or to comment on the Attorney General’s subsequent related findings;

WHEREAS, law and regulation provide Parties to Zoning Commission cases, the right to comment on *Final Orders*;

THEREFORE, BE IT RESOLVED:

- ANC 5E takes this opportunity to provide comments on the *corrected Zoning Order* on the McMillan PUD that might serve to perfect that *Order* in a manner that is more consistent with prior documented proffers of ANC 5E and its residents;
- Although for several public/community benefits, the corrected *Order* requires that evidence of the initiation of the benefit be provided to the Zoning Administrator prior to the first settlement on the sale of a townhouse, (*Corrected Final Order*, p.56, 11b), ANC 5E views the linkage of a private sales event of a private individual to provision of a public benefit as somewhat untenable and probably non-enforceable , and suggests that in such cases, provision of evidence of benefit funding/effort be tied to a public DC Government controlled event such as the conduct of the final building inspection of the Site’s first fully constructed townhouse.
- In consideration that it is the responsibility of the Development’s McMillan Public Space Partnership to maintain and program the development’s public space and Community Center, we urge that it is

required that the Partnership's membership include at least five (5) public members designated respectively by ANC 5E, the McMillan Advisory Group, and three abutting civic associations.

- In consideration of ANC 5E's longstanding support for a Community Center that primarily serves ANC 5E residents (not the 3000+ persons to be employed at the Site of whom, based on residential status of nearby hospital employees, 55% - 65% will be non-District residents), it is recommended that language in 2. above be changed to read: "This amenity will be open to all residents of the District of Columbia...", and that language be added to the *Order* that requires the Center to provide activities and events appropriate for children, youth, adults and seniors residing in the District;
- In consideration of great community concern about traffic associated with the McMillan development, we request revision of D-a (p. 64) of the Decision section of the *Order* to include language related to the Applicant providing an opportunity for ANC 5E, the McMillan Advisory Group, and affected Civic Associations to review and comment on the *Final Transit Implementation Plan* prior to its submission to the Zoning Administrator;
- To ensure benefit delivery, we recommend revision of the language in C-8 (pp. 60-61) of the *Order's* Decision section to stipulate the Applicant and its contractors will initiate training, job fairs and apprentice opportunities with construction trade organizations prior to the award of the first construction permit;
- We further recommend clarification of C-11-f (p.63) of the *Order's* Decision section to indicate that the list of uses of neighborhood beautification funds are examples and not exhaustive (with non-listed uses requiring the approval of the DC Attorney General), and that affected neighborhoods will have the option of obtaining competitive bids for beautification projects from licensed contractors of their choice for review, approval and payment by the BID/Project Association.
- In consideration that the Applicant widely promoted its \$5 million+ public/community benefit package, which has now been reduced by \$1.75 million, ANC 5E takes this opportunity to urge that a significant portion of eliminated benefit funds be re-programmed for funding of benefits documented as highly valued and prioritized by ANC 5E, as indicated below:
 - Increase scholarship funds by \$500,000 to a total of \$800,000;

- Increase funding to DC Education Fund by \$225,000 to \$350,000 and stipulate the allocation of \$140,000 each to McKinley and Dunbar High Schools , and \$70,000 to the Langley Campus;
- Increase funding for neighborhood beautification by \$500,000 to a total of \$1,000,000 with a proportional allocation based on neighborhood population and proximity to the Development, and inclusion of language in the *Order* that :
 - a) the Bates neighborhood will receive total beautification benefits valued at \$125,000;
 - b) the Bloomingdale neighborhood will receive total beautification benefits valued at \$250,000;
 - c) the Eckington neighborhood will receive total beautification benefits valued at \$175,000;
 - d) the Edgewood neighborhood will receive total beautification benefits valued at \$150,000;
 - e) the Hanover neighborhood will receive total beautification benefits valued at \$125,000;
 - f) the Stronghold neighborhood will receive total beautification benefits valued at \$175,000 ;
- Total value of recommended community benefit funding increases: \$1,225,000; total value of revised special community/city benefit package: \$4,475,000.

This Resolution was approved at the June 24, 2015 Special Public Meeting of ANC 5E with a quorum present by a vote of:

 4 Ayes 3 Nays 0 Abstentions

Teri Janine Quinn, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Request for Reconsideration and Request for Waiver were sent on July 22, 2015 electronically, to the parties below:

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Advisory Neighborhood Commission 5E

Teri Janine Quinn, Chair