

MCMILLAN PARK COURT: WHAT DOES THE JUDGMENT DO?

Washington, DC, December 8, 2016 – The highest court in the city, the District of Columbia Court of Appeals, wholly vacated and remanded decisions by the DC Zoning Commission and Historic Preservationists regarding the highly controversial McMillan Park privatization and demolition proposal. www.savemcmillan.org/legal

In the Judgment of Case No. 15-AA-0493, *inter-alia*, the McMillan court shines the light on the role of the DC Zoning Commission. Right now the five (5) Commissioners largely limit their development review to parking, traffic impacts and determining the color of the brick and plastic. However, the McMillan court affirms the PUD regulations which require evaluation of potential adverse impacts on the surrounding community, including those of displacement pressures and negative environmental effects.

- Page 16 of the Judgment – The McMillan court illustrates that the Zoning Commission, "must consider environmental impacts, both in deciding whether a PUD is consistent with the Comprehensive Plan and in deciding whether a PUD would have adverse effects."
- Page 18 of the Judgment – The McMillan court delineates that, "The Comprehensive Plan specifically addresses the topics of property values and displacement . . . therefore must appropriately address those topics when deciding whether a PUD is consistent with the Comprehensive Plan and whether a PUD would have adverse effects."

Moreover, the McMillan court wants the Commission to fulfill a comprehensive public review that includes interagency planning that accounts for impacts to the city's existing infrastructure like pipes and utilities, as well as impacts to the city's capacity to provide community facilities and emergency services to the surrounding affected community.

- Page 20 of the Judgment – "It appears that a number of relevant District agencies were invited to provide written reports concerning the PUD but did not do so. It also appears that, with the exception of a discussion of traffic impacts, the Commission's order did not address whether the PUD would place an undue strain on public services."

Besides the Zoning Commission, in a significant rebuke the McMillan Court completely vacates the decisions by the Mayor's Agent on Historic Preservation (J. Peter Byrne of Georgetown University <https://www.law.georgetown.edu/faculty/byrne-j-peter.cfm>). As counsel for Petitioner, Friends of McMillan Park, Andrea Ferster points out that the December 8th judgment "gives teeth" to preservation law.

For example, the McMillan court explores the concept of historic design alternatives and pushes past the word play in the Mayor's Agent decisions attempting to hide the level of destruction of McMillan's historic structures, including the underground caverns.

- Page 29 of the Judgment – The McMillan court suggests the Mayor's Agent and Zoning Commission not solely redraft the Order but to, "conduct further hearings" and possibly, "reach a different result" or decision about the McMillan PUD.

The recent posture of the Zoning Commission to limit the scope of any upcoming scheduled hearings is wrong. So too has been the messaging from the Mayor and DMPED, who believe the recent court ruling is just a small roadblock to their ultimate suburban town center style redevelopment proposal. This posture is wrong. The McMillan court vacates the agency decisions by the Zoning Commission and the Mayor's Agent in their totality because they were decided not in accordance with the law.

The Mayor and Council must listen to the Court and to DC's Auditor, it's time for a creative design competition. There's time to reopen a portion of the park to the public for the public good. Now is the time for a "Fresh Start" on McMillan.