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CIVIL ACTION DIVISION**

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CIVIL ACTION

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PRO SE PLAINTIFFS,

v.

District of Columbia,
c/o The Honorable Muriel E. Bowser
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

John Falcicchio
Deputy Mayor for Planning and
Economic Development
1350 Pennsylvania Ave., N.W. Suite 317
Washington, D.C. 20004

Andrew Trueblood
Director, D.C. Office of Planning/Mayor's
Agent for Historic Preservation
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Washington, D.C. 20024

Nyasha Smith
Secretary to the DC Council
On behalf of Councilmembers Phil Mendelson,
Anita Bonds, Robert White, Elissa Silverman,
Christina Henderson, Brianne Nadeau,
Mary Cheh, Janeese Lewis-George,
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DEFENDANTS.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

- This is an action for declaratory and injunctive relief pursuant to Superior Court Civil Rules 12-I and 65, for the purposes of determining whether actions of the Defendants violate DC Statutes and Regulations that govern changes to the DC Comprehensive Plan (“DC Comp Plan” or “Comp Plan” or “Plan”) and the Plan’s incorporated maps, such as the Future Land Use Map (“FLUM”).
- Defendants, District of Columbia Mayor, Muriel Bowser and Deputy Mayor for Planning and Economic Development (“DMPED”), John Falciccio, along with their DC Office of Planning (“OP”), under Director Andrew Trueblood, has published and forwarded to the District of Columbia City Council (“DC Council” or “Council”) substantial changes to the Comp Plan – almost 1500-pages of redline edits to nearly all existing Plan policies and affecting about 200 million square feet of land/air rights throughout the city.
- Defendants, DC City Councilmembers are now considering to make the proposed amendments to the Plan permanent law. However, neither the Mayor’s planning agencies nor the DC City Council have ensured the legally required planning reports and impact studies were completed as required by law pursuant to DC Code § 1–306.04, 10A DCMR 2515, *inter-alia*.
- Plaintiffs personal and property interests and enjoyment and use of existing community services they rely on are under threat due a lack of legally required planning expected with any changes to the Plan and FLUM. These proposed changes will permanently alter Plaintiffs’ communities, including the specific and directly adjacent properties where Plaintiffs reside and/or work.

LAW

- Under DC Code § 1–306.04, the law makes clear what is obvious from a basic urban planning perspective: "The Mayor shall submit to the Council a report, accompanied by a proposed resolution, on the progress made by the government of the District of Columbia in implementing the District elements of the Comprehensive Plan. The Council shall schedule a public hearing on the progress report and, following each review period, submit to the Mayor the findings of the Council and a copy of the public testimony on the progress report." DC Code § 1–306.04 (b).
- And, as it regards statutes that govern how the Plan can be changed: "Proposed amendments to the Comprehensive Plan ... shall be accompanied by an environmental assessment of the proposed amendments." DC Code § 1–306.04 (d).

- Flowing from these statutes are DC Municipal Regulations from the Comp Plan itself that outlines the amendments process and requirements therein:

The Comprehensive Plan amendment process provides an opportunity for individuals, groups, city agencies, or the federal government to propose a change to the Comprehensive Plan to address changes in conditions and to reflect ongoing work or new information. Proposed amendments can include changes to the text or maps of the Comprehensive Plan. 10A DCMR 2515.1.

And, according to 10A DCMR 2515.3: The following supporting information will be required when an amendment is proposed:

c. A description of how the issue is currently addressed in the Comprehensive Plan. If it is not addressed, the public need for it must be described.

e. The anticipated impacts of the change, including the impacts on the geographic area affected and the issues presented. This should include an assessment of net benefits to the city resulting from the change.

f. Demonstration that the proposed change would be in conformance with the goals, policies and actions of the Comprehensive Plan. The applicant would be requested to include any data, research or reasoning that supports the proposed amendment.

g. Demonstration of public support for the proposed amendment (as illustrated, for example, by discussion of the proposal at a public meeting, such as an ANC meeting).

DCMR 10A-2517.1: The following text outlines the steps in the Council review and adoption process for Comprehensive Plan amendments.

c. Following approval by the Committee of the Whole, Council considers and votes on an amendment package in at least two legislative meetings (first and second readings) no less than two weeks apart. *Any new or significantly modified amendment that is generated during any of these readings would be required to be accompanied by planning analysis and recommendation prior to the Council taking final action on the amendment. (emphasis added)*

- As demonstrated in the facts below, the basic planning protocols expected to accompany changes to the Plan – especially substantial changes as those proposed – deserve far more scrutiny by law and by basic common sense as evidenced in the American Institute of Certified Planners Code of Ethics. <https://www.planning.org/ethics/ethicscode/>
- Moreover, Advisory Neighborhood Commissions (“ANC’s”) around the city wrote timely resolutions raising concerns about the above laws and asking the Mayor and Planning Director, Mr. Trueblood, to adhere to the laws and provide the progress reports and planning studies required to accompany these DC Comp Plan amendments.

The ANC resolutions, and specifically the points about the laws above, were not responded to with any specificity in writing per the DC Advisory Neighborhood Commission Law:

§ 1-309.10 (d)(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight

requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

(C) The government entity shall promptly send to the Commission and the respective ward Councilmember a copy of its written decision.

FACTS

The DC Comprehensive Plan and Amendments Thereto

- The Comprehensive Plan is DC's central guiding document that District agencies, residents, employers, developers, and other stakeholders use to ensure that Washington, DC evolves in line with the collective vision for "Planning an Inclusive City." It's a 20-year framework, passed in 2006, and acts as the guiding document for the future planning and development of Washington, DC.
- The Plan addresses topics of land use, economic development, housing, environmental protection, historic preservation, transportation, and more. In large part, the Plan helps the legislature put some guardrails on the independent DC Zoning Commission and the Mayor's Office of Planning when they evaluate planning changes, provide zoning relief, and consider approval of development projects. Real estate developers use the Plan to guide their project proposals. And, the community uses the Plan to hold District government agencies accountable.
- On October 15, 2019, the DC Office of Planning, under the auspices of DC Mayor Muriel Bowser, published 1500-pages of amendments to the District of Columbia's Comprehensive Plan. The public was asked to digest these significant changes to the Plan in short order over the holiday season. The Office of Planning and Mayor received many letters from local Advisory Neighborhood Commissioners (ANC's) demanding more time for public review and comment. The Mayor was compelled to extend the deadline from mid-December 2019 and accepted feedback from ANCs through Friday, February 14, 2020. The general public had to submit comments by January 10, 2020.
- During the public review period noted above, residents submitted their thoughts as they could and ANC's across the city submitted formal resolutions about the Plan amendments. The ANC resolutions were answered by the Office of Planning, in part, with OP completely disregarding ANC concerns about the Plan amendment process particularly about the missing progress reports and missing planning impact studies.

- Two months after closing public review, in April of 2020, Mayor Bowser and the Office of Planning transmitted their proposed amendments to the Comprehensive Plan to the District of Columbia City Council for their consideration and approval. Almost every regulation and policy in the Plan was redline-edited by the Office of Planning, and its Director, Andrew Trueblood would later divulge that their proposed changes to the planning maps in the Comprehensive Plan would "unlock" an additional 200 million square feet of land and air rights to likely be developed around the city that otherwise is not now available under the current maps.
- Seven months later, in mid-November 2020, despite the morass of a global pandemic, the DC City Council held a two-day marathon public hearing about the amendments to the Plan. The hearings were chaired by Councilmember Phil Mendelson and lasted more than 15-hours. The hearings consisted of live testimony from about 150 witnesses most of whom opposed the substantial changes and significant upzoning found in the amendments to the Comprehensive Plan and its associated planning maps.
- Between the Council hearings in November 2020 and mid-April 2021, the public heard nothing as to how their testimony had any impact on the changes to the Plan. There were no committee reports published, no updates in any newsletters, no news as to DC's central planning document and how the public input and ANC resolutions had an effect on the amendments.
- On Thursday, April 13, 2021, Council Chair, Phil Mendelson releases his staff markup of the Plan amendments, that is his changes to the DC Office of Planning's 1500-pages of changes to the DC Comprehensive Plan. On Monday, April 17, 2021, Mendelson releases a second-version of the staff markup along with the committee report outlining the November 2020 public hearings about OP's changes to the Plan. On Thursday April 20, 2021, Mendelson moved quickly to have his staff-edits to Plan voted out of the Committee of the Whole, moving it forward for an official vote by the entire City Council on May 4, 2021. On May 4, 2021, the City Council voted unanimously for DC City Council Bill 24-1, Mendelson's version of the Plan.
- The Council moved quickly to vote despite Mendelson's committee report being deficient in its portrayal of the concerns raised at the November 2020 public hearings on the Comprehensive Plan. Particularly missing from Mendelson's committee report is any public testimony regarding the lack of progress reports and planning studies required by the law that are supposed to accompany proposed changes to the Plan regulations and maps. Moreover, the Council barely flinched when the Council Office on Racial Equity (CORE) published their evaluation of the proposed amendments to the Comprehensive Plan.
- The City Council never demands a far more relevant environmental assessment to be included on the record to accompany the Comp Plan changes. The assessment submitted by the Mayor makes no mention of any actual Comp Plan policies or the effects by the changes to these policies. Moreover, the Mayor's assessment makes nary a mention let alone provide any analysis of the substantial upzoning proposed in the changes to the

planning maps, such as the “unlocking” of approximately 200 million square feet of land and air rights as found in changes to the FLUM.

DC Council on Racial Equity (CORE) Evaluation of the Proposed Changes to the DC Comp Plan

- A new agency in the city, CORE’s mission is, “to eliminate racial disparities and achieve racial equity in the District of Columbia” . . . and . . . “to explore how policies, practices, and procedures under consideration in the District impacts communities of color and if so, partner to identify solutions to mitigate those negative impacts in order to advance more equitable outcomes..” CORE website, Mission and Purpose <https://www.dcraciaequity.org/mission-vision-and-values>
- The CORE report (“CORE Rpt”) was recently published on April 19, 2021, and it evaluates the amendments to the DC Comprehensive Plan. Among other concerns and issues, it unequivocally states:
 - The Comprehensive Plan, as introduced, fails to address racism, an ongoing public health crisis in the District. As introduced, it appears that racial equity was neither a guiding principle in the preparation of the Comprehensive Plan, nor was it an explicit goal for the Plan’s policies, actions, implementation guidance, or evaluation. These process failures laid the groundwork for deficiencies in policy: proposals are ahistorical, solutions are not proportionate to racial inequities, and directives are concerningly weak or vague. CORE Rpt at p.2.
 - [I]f the District’s goal is to end racial inequities, CORE believes the District should set guidance to prevent and eliminate displacement, rather than minimize it. CORE Rpt at p.15.
 - As introduced, the Comprehensive Plan does not build on the goals laid out in the Framework Element (213.6) to build capacity of the most marginalized communities to “fully and substantively participate in decision-making processes.” CORE Rpt at p.18.
 - As written, how rezoning requests may adversely or positively impact communities of color would be unknown and subject to chance. CORE Rpt at p.22.
 - Despite the Plan’s commitment to eliminating racial inequities, the document before us still perpetuates the status quo. Although the Plan primarily sets guidance, land use decisions impact every aspect of residents’ social and economic wellbeing. These decisions influence housing prices, housing choice, rent burden, education, a resident’s access to transit, proximity to necessities, amenities, commute time, and healthcare options. CORE Rpt at p.24.
 - On the legally required progress reports: One way community input is weaved into the Implementation Element is through a required periodic review of progress reports. Although these progress reports are required at least once every four years, CORE has only found two since 2000: one published in 2010 and the other in 2012. Further, the

Mayor is required to “submit to the Council a report, accompanied by a proposed resolution, on the progress made by the government of the District of Columbia in implementing the District elements of the Comprehensive Plan.” OP maintains a website showing the progress of provisions, but this still does not meet the requirements spelled out by law. The Council has also not held or scheduled public hearings on those progress reports. Additionally, Council has not submitted its findings nor a copy of public testimony to the Mayor, both of which are required by law following each review period. CORE Rpt at p.19.

- On the Mayor’s submitted Environmental Assessment: The [Comp Plan] Environmental Assessment is Incomplete and Non-Exhaustive: Based on the law, the Mayor is required to submit an environmental assessment of the proposed Comp Plan amendments. However, the five page assessment does not provide any thorough assessment, evaluation, analysis of data, project-based assessment, or critical analysis. CORE Rpt at p.26.

ANC Resolutions Are not Answered by the DC Office of Planning

- Advisory Neighborhood Commissions (“ANC”) across the city formally asked city planners about laws and regulations governing changes to the Comp Plan. ANC1C, 4D, 8C, among others. See DC Office of Planning webpage, “ANC Resolutions and Responses”, <https://plandc.dc.gov/page/anc-resolutions-and-responses>
- ANC’s submitted written resolutions expecting great weight responses with specificity from the planning agencies as to the question of the laws governing changes to the Comp Plan. Not one ANC received a response specific to their concerns about the Comp Plan laws in writing from OP, DMPED, the Mayor, nor subsequently, from the DC City Council.

JURISDICTION AND VENUE

- This court has jurisdiction over this civil action pursuant to D.C. Code § 11-921.

COUNTS

COUNT I: ANC GREAT WEIGHT UNLAWFULLY DISREGARDED BY DEFENDANTS THUS HARMING THE INTERESTS OF ANC AREA MEMBERS WHO ARE PLAINTIFFS

- ANC Area Members are harmed by Defendants ignoring their ANC representatives and formal resolutions about the planning studies that are supposed to accompany changes to the Comp Plan as required by law.

- The specific points within formal resolutions from ANC Commissions advising and asking Defendants to respond to concerns about the laws that govern amendments to the DC Comprehensive Plan were disregarded contrary to the ANC law.
- The very statutory scheme of the ANC Act is designed to assure effective presentation of neighborhood views through the ANC instrumentality. Thus, any injury to the rights of residents to advise their government is clearly within the zone of interests which the ANC Act seeks to protect. Accordingly, the criteria for standing to seek judicial review of alleged violations of ANC rights are met by area residents.

COUNT II: THE LAWS AND REGULATIONS GOVERNING AMENDMENTS TO THE DC COMPREHENSIVE PLAN AND PLANNING MAPS WERE DISREGARDED UNLAWFULLY TO THE IMMINENT DETRIMENT OF PLAINTIFFS

- The Defendant’s proposed changes to the Comprehensive Plan are not anything minute. Almost every policy and every page of the existing Comprehensive Plan has been redlined by the Defendants. And, the planning maps are substantially amended to “unlock” nearly 200 million square feet of land and air rights across the city and nearby Plaintiffs homes, work places, and in their communities.
- Laws exist to ensure changes to the DC Comprehensive Plan are done in an orderly way that seeks to relieve the harm perpetuated against DC residents, particularly low income, working families, Black and Brown, the elderly, kids, and those vulnerable to displacement, health impacts, and financial upheaval. See DC Code § 1–306.04 (b), DC Code § 1–306.04 (d), and DCMR 10A- 2515.1, and DCMR 2515.3, and, DCMR 10A- 2517.1.
- The above laws were not followed despite Defendants being given ample notice by emails, at hearings, and at public meetings by the Plaintiffs. By not following the laws, the city planners and all Defendants concretely and especially harm the Plaintiff’s personal and property interests, quality of life, and well being.

PRAYER FOR RELIEF

We ask the Court grant a Declaratory Judgment in favor of the Plaintiffs and enjoin Bill 24-1 from being passed into law and implemented until:

- Exhaustive and transparent impact studies are completed, published, and made available for review, comment, and consideration by the public, officials, and the DC City Council as required to ensure the proposed substantial changes to the Comp Plan and planning maps do not harm Plaintiffs and their communities;

- Defendants are ordered to respond to ANC’s great weight resolutions seeking the above remedy for exhaustive and transparent study of the proposed substantial changes to the DC Comprehensive Plan and planning maps.

DEMAND FOR JURY TRIAL

Plaintiffs ask the Court grant a jury trial for this complaint.

SIGNED BY THE FOLLOWING *PRO SE* PLAINTIFFS & SUBMITTED TO THE COURT ON THIS, THE 18TH DAY OF MAY, 2021, ALONG WITH COURT FILING FEES:

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