



June 26, 2018

Dear Mayor Stewart and City Council,

On behalf of the Co-op Board of Representatives, I am writing to express our serious concern regarding two decisions by a majority of the Council that are conveyed by the Mayor's June 20 letter to us. Those decisions are:

- (a) to vote on NDC's Site Plan July 25, even if the mediation between the Co-op and NDC is not completed; and
- (b) to postpone the Work Session we requested on the subject of whether the proposed development reasonably accommodates the Co-op's operational needs, until some unspecified future time when the Site Plan is under review by County and State agencies and the City no longer has any authority to insist on modifications.

We believe these decisions would significantly undermine the mediation to which the City, the Co-op and NDC have committed. They would also conflict with your 2016 Development Agreement with NDC, that requires you to make an informed decision about reasonable accommodations for Co-op operations before approving the Site Plan.

The Mediation. Your willingness to vote in advance of the completion of mediation can only mean you consider the upcoming mediation to be unnecessary to inform your decision regarding the acceptability of NDC's Combined Site Plan. The Co-op agreed to participate in the mediation as a promising way to resolve serious concerns regarding our as-yet-unmet operational needs. The City's agreement to fund and participate in this process led us to believe that the City viewed mediation as an integral step in its decision-making process. At the very least, as the Mayor's letter suggests, the results of the mediation will provide important information on the degree to which the Co-op's operational needs are addressed by the

development. Accordingly, we viewed the City's commitment to observe the mediation proceedings as a critical element of the Council's ability to make an informed decision. To this end the Co-op already has invested considerable time and resources in preparing for the mediation process. NDC and the Co-op have chosen a mutually acceptable mediator and will set meeting dates very soon. If the City in fact intends to act before it has the benefit of the information that will be developed during the mediation process, we question whether mediation can serve a meaningful purpose.

The Development Agreement. We are concerned that the June 20 letter postpones the Work

Session we requested regarding the Co-op's operational needs until some uncertain time in the future -- after the vote on the Site Plan, after completion of the mediation, and while NDC's Site Plan is undergoing County and State review. At that point, according to the letter, the Council can "take a formal vote on whether reasonable accommodations have been met." But this promise is illusory, because it is inconsistent with the City's Development Agreement with NDC.

The only paragraph in the Agreement that gives the City veto-power over the development's design is paragraph 6, in which "[t]he Developer and the City agree to cooperate to create a 'Site Plan/Preliminary Plan.'" Paragraph 6(b) also allows the City to terminate the project -- without cost to the City -- if the City and NDC cannot reach agreement on the "Draft Site Plan and Preliminary Plan." We do *not* point this out to suggest that the City terminate the project, but only to raise our significant concern that once the City allows NDC to submit a plan to Park and Planning's jurisdiction that the City's ability to direct the scope of the project is highly circumscribed. After that point, we see no other time at which the Development Agreement allows the City unilateral authority to make demands on NDC or cancel the Agreement.¹

As the June 20 letter recognizes, the City can "request" changes of NDC after the City has approved the Combined Site Plan, but NDC will not have any obligation to grant those changes. And while it may be true that "the project may be terminated" at any time in the future if NDC does not agree to changes requested by the City, such a termination decision could be costly to the City. Once approved, it is reasonable to expect NDC to demand compensation for expenses it incurs in reliance on the City's voting to move forward with the Combined Site Plan. These expenses would include all the design work and analysis that will be required to present NDC's Site Plan to the County Planning Board, the zoning board, and other county and state agencies.

Mayor Stewart and Members of the City Council, once you vote to approve the Combined Site Plan, future decisions regarding the design of NDC's Junction development plan cannot be made without penalty or cost. We ask that you wait for the results of mediation, which at a minimum can clarify the extent of what we need and what NDC can offer. This information is critical to the Co-op, NDC and the City for purposes of moving forward. If you vote before mediation takes place, you cannot be in the best position to make a well-informed decision, which would not only put the Co-op at grave risk, but could undermine the public's trust in the City government's decision-making process.

Therefore, we ask that you to reconsider the decisions conveyed in your June 20 letter. We strongly urge you to establish a schedule that allows the mediation process to be completed, and its outcomes taken into consideration during a Work Session prior to any vote on whether or not to approve a Combined Site Plan.

Sincerely,
Rachel Hardwick
President, Board of Representatives

¹ We had been advised that the City Attorney would point us to the provision(s) in the Development Agreement that reserve this control to the City after a plan has been filed with Park and Planning, but to date we have not received the information.