



April 16, 2021

Joel F. Bonder, Esq.
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2121 Georgia Avenue NW
Washington DC 20010

RE: April 15, 2021 NDC Demand That Co-op Cease Use Of City Lot For Deliveries and Termination of Sublease

Dear Mr. Bonder:

This letter responds on behalf of the Takoma Park Silver Spring Food Cooperative, Inc., in response to your letter to Co-op President Diane Curran dated April 15, 2021 and delivered by electronic mail to her yesterday at 7:38 PM (“NDC Letter”). The NDC Letter, among other things:

1. Directs the Co-op to “CEASE AND DESIST LOADING AND UNLOADING ACTIVITIES” effective immediately and
2. Provides 30 days’ Notice of Termination of the Sublease.

As the primary basis for its demands, NDC relies on incorrect or unsubstantiated assertions by the City of Takoma Park in a “Site Conditions and Limitations Report,” (“City Report”), which has been posted on the City’s website since March 10, 2021. The City Report makes a set of allegations (“City Allegations”) that Co-op deliveries violate vehicle laws and/or operating standards that either do not exist or have not been identified; and further alleges safety concerns for which the City has refused to provide any evidence. The Co-op’s General Manager, Mike Houston, repeatedly asked City Manager Ludlow (verbally and in writing) to withdraw her patently incorrect claims and to substantiate other undocumented claims, but she has provided no substantive response. Based on the Co-op’s independent review and analysis of the City Allegations, we concluded that they are unfounded in law and in fact.

Please be advised that there is no contractual basis in the Sublease to demand immediate cessation of deliveries. Nor, as you know based on prior discussions in this regard, does NDC have the authority to terminate the Sublease until after construction of the lay-by is complete.

The SHA comments in its April 13 letter – which NDC gives as secondary basis for its demands - - are specific to the NDC Site Plan and utterly unrelated to the Co-op’s use of the City Lot. The lay-by is necessitated by NDC’s obligation under the Zoning Code to provide off-street loading to serve its own project needs as required by Montgomery County Zoning Code § 59.6.8.C. It was NDC’s choice to seek a waiver of the off-site loading requirement and instead install a lay-by within MD 410. The fact that the lay-by also will serve Co-op deliveries is immaterial to NDC’s obligation to design a site that meets Zoning Code standards. While the lay-by dimensions were the result of City Council deliberations and the exhaustive mediation process that NDC, the Co-op and City conducted, the decision to rely on a lay-by instead of on-site loading and delivery space one was one of NDC’s choosing.

During the course of the March 19, 2021 meeting between Mr. Adrian Washington, Diane Curran and Mike Houston, NDC raised its stated concerns relating to the City Allegations. NDC did not

then – or since - provide us with any “studies done several years ago” regarding vehicular movement on the City lot and so we cannot speak to the merits of what they may contain. Nor have we received any verification from SHA as to its purported concerns with Co-op use of the City Lot, indeed, nobody will even identify the SHA representatives who are said to have made those statements. In that meeting, NDC did not indicate that it expected any kind of affirmative response, and certainly did not suggest a deadline for any response. Finally, the Co-op did not view the meeting as one of contractual legal import, as you expressly told Mr. Houston in response to his inquiry that legal counsel would not be needed at the meeting.

As you requested by NDC during the mediation process, we provided NDC with exhaustive information about the nature of our deliveries. They have been posted on the Co-op’s website, provided to SHA, and are available to the public. Nobody has questioned the Co-op’s delivery operations until the City Allegations were posted (without notice to the Co-op) and which now form the basis for NDC’s demands. Again, the City Allegations are based on incorrect and unsubstantiated claims. As provided by the Sublease terms, Co-op our operations on the parking lot are fully insured, and NDC is further protected from liability through an indemnification clause. The Co-op is current in its rent.

The Co-op has fully complied with all aspects of the Sublease. Additionally, the Co-op has fully complied with the Cooperate Agreement that was signed at the conclusion of the mediation process, and which also remains in full force and effect. NDC’s demands, if carried out, will directly result in immediate and severe economic repercussions to the Co-op, and likely disruptions to delivery services. Accordingly, Co-op members, shoppers, and others in the community will face the loss of reliable local access to food and household supplies

NDC has no lawful basis whatsoever for the actions it seeks to take against us. Therefore, please rescind NDC’s letter by 5:00 PM April 22, 2021, or the Co-op will exercise its legal remedies as appropriate.

Sincerely,

Michele McDaniel Rosenfeld

Cc: Diane Curran, President, TPSS Co-op Board of Directors
Mike Houston, Manager, TPSS Co-op
Mayor Kate Stewart
All City Councilmembers