



Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3/4G

Chevy Chase, Barnaby Woods, Hawthorne
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January 17, 2023

Via Electronic Mail

The Honorable Brian Schwalb
Attorney General, District of Columbia
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ANC 3/4G (Chevy Chase, Hawthorne, and Barnaby Woods) requests your opinion on an Advisory Neighborhood Commission's ability to enter into an agreement with a developer on a construction project located within the jurisdiction of the ANC. Specifically, a newly elected commissioner and community group (Friends of the Field) have raised questions about a March 15, 2022 Memorandum of Understanding (MOU) between ANC 3/4G and Maret School specifying extensive conditions for a planned sports field located on property that Maret leased from the Episcopal Center for Children at 5901 Utah Avenue, NW. This MOU was modeled after a similar agreement about

design and construction conditions entered between ANC 3/4G and Ingleside at Rock Creek in December 2014 and successfully concluded in 2020.¹ The questions posed by the Commissioner and Friends of the Field are:

1. Can the ANC enter into an agreement with a developer over conditions for the design, construction, and operation of a project within the ANC?
2. If the ANC did not have the authority to enter into such an agreement, is the agreement void *ab initio* or only voidable?
3. If the MOU is valid, is it enforceable by the ANC, and if not, who can enforce such an agreement?
4. Does the Commission have the authority to delegate decision-making authority to the Task Force?

The ANC agreed to the Maret MOU after multiple public meetings and extensive discussions with residents and the parties to a Board of Zoning Adjustment (BZA) proceeding in Application No. 20643. The Commission negotiated the terms of the MOU with Maret, and they were initially included in a resolution adopted unanimously at the Commission's properly noticed February 28, 2022 public meeting. The BZA expressly requested that the Commission and Maret convert the agreed upon conditions into an MOU, with one Board member stating, "I think that [the MOU] could be something that could be enforced between the ANC and the Maret School."² After the ANC and Maret submitted the MOU, as directed, the BZA unanimously approved Maret's application at its April 6, 2022 meeting, noting the "appropriateness for the various conditions in the Memorandum of Understanding with the ANC."³ The BZA has not yet issued a written order.

The Commission is aware of the OAG's July 22, 2015 opinion letter concluding that there was no statutory authority for an ANC to enter an enforceable agreement with a local institution, such as a medical institution or a group home. Nevertheless, there is statutory authority in some circumstances for ANCs to enter enforceable agreements. For instance, the community — presumably including the ANC as the community's representative — may enter "community benefit agreements" with developers when

¹ ANC 3/4G's Report on the Ingleside Task Force, November 17, 2020.

² Maret School, BZA Application No. 20643, March 9, 2022 hearing transcript, page 127.

³ Maret School, BZA Application No. 20643, April 6, 2022 hearing transcript, page 19.

District land is involved.⁴ Similarly, ANC's regularly negotiate and execute "community benefit agreements" with developers seeking approval of a planned unit developments (PUD).⁵ ANC's may also enter enforceable agreements in other contexts than development, e.g., settlement agreements in Alcoholic Beverage Regulation Administration proceedings.

In the case of the ANC/Maret MOU, the parties have agreed on conditions related to the design, construction, and operation of the planned sports field. The BZA agreed with these conditions and instructed the ANC and Maret to enter into the MOU. The MOU includes provisions for self-executing fines up to a total of \$25,000 for violations of the conditions. The ANC has designated a five-person task force to monitor compliance with the MOU during the upcoming construction. The MOU protects the community's interest and helps to ensure that Maret lives up to its commitments. Like other community benefits agreements with developers, the Commission believes that this approach is proper and authorized. We would appreciate the OAG's and OANC's formal opinion to this effect.

Sincerely,



Lisa R. Gore
Chair, ANC 3/4G

Attachments (2)

⁴ See DC Code § 10-801(b-1)(5)(A)(ii) ("for all District land being disposed for purposes of development and requiring government assistance," "any community benefits agreement between the developer and the relevant community" "shall be transmitted to the Council").

⁵ See, e.g., "Community Benefits Agreement by and between Columbia's Quarter Holdings (CQH) and Advisory Neighborhood Commissions 8A and 8C," Zoning Commission Case No. 18-18, Exhibit No. 13,

cc: ANC 3/4G Office
Commissioner Peter Gosselin
Commissioner Bruce Sherman
Commissioner Michael Zeldin
Commissioner James Nash
Commissioner Peter Lynch
Commissioner Zachary Ferguson
Friends of the Field