SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

VAUGHN BENNETT, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	**2012 CA 006027 B**
v.	)	**Judge Judith N. Macaluso**
	)	**Calendar 9**
UNION STATION	)	
REDEVELOPMENT CORP., *et al.*,	)	
	)	
Defendants.	)	

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

As described below, the record establishes that the bus parking lot at the site of the Crummell School is being constructed despite noncompliance with District of Columbia laws (a) requiring consultation with the affected Advisory Neighborhood Commission ("ANC") and (b) enabling environmental screening of projects. Accordingly, Plaintiffs' request for a preliminary injunction is granted until these deficiencies are cured.

1. Procedural History

On July 26, 2012, Plaintiffs Vaughn Bennett, Andria Swanson, and Jeanette Carter filed a "Complaint for Declaratory and Injunctive Relief and Damages" ("Complaint") against Defendants Union Station Redevelopment Corporation ("USRC") and Vincent C. Gray in his official capacity as Mayor.[1] The Complaint challenges the legality of using the Crummell School grounds as a diesel bus parking lot. Simultaneously with the Complaint, Plaintiffs filed the instant "Motion for

[1] After the evidentiary record closed with respect to the Motion, Plaintiffs filed a motion for leave to file an amended complaint. The court has not yet acted on that motion. The instant Motion is evaluated with reference to the original Complaint.

a Preliminary Injunction." Plaintiffs subsequently filed a "Supplemental Memorandum of Points and Authorities in Support of . . . Plaintiff[s'] Motion for Preliminary Injunction on August 3. Through their Motion, Plaintiffs seek an order halting use of the Crummell School grounds as a diesel bus parking lot while their Complaint is pending.

On October 16, 2012, Mayor Gray ("the District of Columbia" or "the District") filed "Defendant Mayor Vincent C. Gray's Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction." Also on October 16, USRC filed "Defendant Union Station Redevelopment Corporation's Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction."

The court held an evidentiary hearing on the Motion on November 13, 19, and 29, 2012, and also visited the Crummell School and neighborhood sites with parties present. Testifying at the hearing were Plaintiffs Vaughn Lee Bennett, Vice Chair of ANC 5B; Andrea Swanson, neighborhood resident and President of the Ivy City Civic Association ("ICCA"); and Jeanette Carter, neighborhood resident and Assistant Treasurer of the ICCA. Plaintiffs also presented testimony from Carol Mitten, former Director of the D.C. Office of Property Management; Peta Gay Lewis, a neighborhood resident; Sheba Anice Alexander, a neighborhood resident; Dr. Vernon Morris, an expert on airborne pollutants; Denise Johnson, a neighborhood resident; George Rothman, President of Manna, Inc., which develops housing in Ivy City; and Remetta Freeman, a former resident who was instrumental in placing Crummell School on the National Register of Historic Places. Plaintiffs called as an adverse witness Victor Hoskins, Deputy Mayor for Planning and Economic

Development. The District of Columbia presented testimony from Dr. Rama Seshu Tangirala, Branch Chief, Air Monitoring and Assessment Branch, D.C. Department of the Environment ("DOE"); Sharon Brown, an employee of the D.C. Department of Consumer and Regulatory Affairs ("DCRA") who coordinates with Ward 5 ANC Commissioners; Michael Durso, who at pertinent times worked at the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") as project manager for the bus parking lot effort; and Rodney George, a DMPED project manager. USRC called Nzinga Baker, a USRC Vice President.

Following these proceedings, the parties submitted additional briefing. Plaintiffs filed "Plaintiffs' Post Hearing Brief" on December 3, 2012; the District filed "Defendant Mayor Vincent Gray's Post-Hearing Brief in Continued Opposition to Plaintiffs' Motion for a Preliminary Injunction" on December 5; and USRC filed "Defendant Union Station Redevelopment Corporation's Post-Hearing Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction" on December 5.

2. Motion for Preliminary Injunction

The court considers four factors in ruling on a motion for preliminary injunction. The movant must show that (1) there is a substantial likelihood movant will prevail on the merits; (2) movant is in danger of irreparable harm during the pendency of the action if relief is not granted; (3) more harm will result to movant from denial than to respondent from the grant of the preliminary injunction; and (4) the public interest will not be disserved by issuance of the preliminary injunction. *Feaster v. Vance*, 832 A.2d 1277, 1287-88 (D.C. 2003).

The "merits" of the Complaint applicable to the court's consideration of the Motion are procedural in nature: whether Plaintiffs are substantially likely to prove that the bus parking lot project fails to comply with the law and should therefore be halted until compliance occurs. The court does not in this order consider the merits of the District's placement decision or conclusion that the environment will not be significantly impacted by the diesel bus parking lot. Furthermore, the findings of fact and conclusions of law expressed in this order, based as they are on an early and incomplete record, are without prejudice to later findings and conclusions that may be made in consideration of dispositive motions or at trial.

3. Uncontested Facts

The following uncontested facts are established by the record for purposes of ruling on the Motion.

Recently, parking for inter-city bus service has been centralized at Union Station. As a result, parking spaces there which were previously available for tour buses were sharply reduced. Union Station merchants benefit from tour bus parking, through food voucher programs and otherwise, and the reduction in parking spaces threatens to reduce their incomes significantly. USRC, in cooperation with DMPED and the D.C. Department of Transportation ("DDOT"), determined to find a nearby site for tour bus parking. It was contemplated that tour buses would drop passengers off at Union Station, lay over at the parking site, and hours later leave that site to meet the passengers for pick up.

To enhance the attractiveness to tour bus drivers of the layover site, USRC, DMPED, and DDOT sought parking locations near Union Station, ideally within ten

minutes of that location. Safety and feasibility considerations included the availability of a parcel large enough to accommodate dozens of tour buses plus ancillary facilities such as a waiting room; configuration of the parcel that permitted safe ingress, egress, and turning; proximity to major routes, as distinguished from a location that would require driving through neighborhood streets; ownership of the parcel; and current zoning status.

Several potential locations were considered. Among these were a linear lot owned by the District on New York Avenue, NE, which was too narrow to permit safe parking and turning within the lot; a D.C. Department of Public Works ("DPW") facility at the 1400 block of Okie Street, NE, which was tied up with DPW vehicles and lacked enough extra capacity for dozens of tour buses; and another DPW site on W Street, NE, which was ruled out for the same reason.

The federally owned parking lots at RFK Stadium were also considered. These lots are managed by Events DC, within the Sports and Entertainment Commission, which is a quasi-governmental entity under the Washington Convention Center Authority. The latter is an independent agency, like DC Water, that is not under the Mayor's control. DMPED rejected the RFK site because long-term availability was considered uncertain.

The site of the former Greyhound bus depot, from which the inter-city buses were relocated to Union Station, was ruled out because "the neighborhood doesn't want us," in the words of Michael Durso, who worked for DMPED and was project

manager during times at issue.[2] He testified that rejection of this site "was also about active ANC Commissioners who didn't want buses there period."

The grounds of the Crummell School became the foremost candidate for the bus parking lot. In fact, DMPED considered Crummell School the only viable site within the ten-minute radius. The property was owned by the District; the lot was zoned for parking; it could be entered and exited exclusively with right-hand turns; and it was large enough for the intended use. As noted, the grounds were currently used as a parking lot, although in an "unregulated" (to use Mr. Durso's word) fashion. Crummell School is near a Metro lot, and many Metro drivers parked their cars there and walked to their buses. In addition, a large night club is across the street, and patrons used the lot in the evening when there were events at the club. There was also casual use by those with business in the community, as well as by residents.

In November 2011, USRC began getting permits to construct the contemplated lot on the Crummell School site. As part of this process, on November 11, 2011, USRC's civil engineer submitted an Environmental Intake Form to the DCRA, in which he averred that the project was a "site upgrade for bus parking"; would involve "negligible or no expansion of use"; and would not cost more than $1.51 million, including site preparation and construction. (Pls. Ex. 6). Although the statement was submitted under penalty of perjury, the avowal with respect to the project cost was incorrect. As of that date, the "hard construction costs," in the words of USRC Vice President Nzinga Baker, were $1.6 million. Had that number

[2] Quotations are from the court's notes and may be paraphrased, rather than word-for-word transcriptions of testimony.

been entered, USRC would have been required to indicate whether the project would "produce emission of . . . air pollutants . . . from any source." (Pls. Ex. 6). And had that emissions box been checked, USRC would have been required to attach an Environmental Impact Screening Form ("EISF"). After misstating the project cost, USRC obtained acceptance of its Environmental Intake Form without the need to attach an EISF or prepare an Environmental Impact Statement ("EIS").

On November 28, 2011, DCRA sent an email to each of Ward 5's ANC Commissioners, with a 97-page attachment that listed all of the thousands of building permit applications received from November 14-27, 2011. Included on page 63 of this list was notice of an application to upgrade the Crummell School lot for use as a bus parking lot.

With the Crummell School lot identified as the best site for the bus parking lot, DMPED invited the ICCA to a meeting about the project. Mr. Durso testified that the civic association was invited, instead of the ANC, because the ICCA was "more vocal" and expressed more interest. The meeting occurred at DMPED on December 8, 2011. Eleven Ivy City residents attended, including Plaintiff and ICCA President Andria Swanson. Jacqueline Manning, who was chair of ANC 5B, also attended. She was the only Commissioner present. Mr. Durso testified that at the meeting he presented information about the tour bus parking problem and "how we got to this point." He "wanted to make sure people knew what was going on [because] inaccurate information may have spread." He and a representative of DDOT took note of the group's concerns and suggestions, including those about use of

neighborhood streets, displacement of current parkers, traffic signals, excessive idling, and air quality.

With DDOT in the lead, the issues raised at the December 8, 2011 meeting were taken to involved agencies for additional input. Mr. Durso testified that excessive idling would be addressed by enforcement of the District's regulations limiting idling to three minutes. With respect to air quality concerns, he stated that DOE "provided us with the status of that issue [and] nothing triggered additional evaluation."

On January 25, 2012, Mayor Gray issued Executive Order 2012-14, which authorized DMPED to enter into a license agreement for use of the Crummell School parking lot. On March 15, prior to execution of any such agreement, the ICCA invited Mr. Durso to meet with them about the lot. At the meeting, he updated them with respect to the concerns they had expressed on December 8, 2011.

On May 17, 2012, the District entered into a License Agreement ("License") with USRC for construction and operation of a parking lot for diesel buses on the Crummell School grounds. At the time the License was signed, the project cost was $2.09 million. No amended Environmental Impact Form for approval of a project this size was submitted to DCRA; nor was an EISF or EIS prepared.

The License is for a term of five years, with USRC having a right to renew for an additional five years. (License ¶ 3 (a) – (b)). USRC is authorized to use the lot for short-term parking of empty (except for driver) tour and inter-city buses. (*Id.* ¶ 4 (a)). The anticipated daily usage is not known, but the lot is sized for a maximum of 65 buses at one time. Parking is limited to 7 a.m. to 7 p.m. daily, although USRC may

extend these hours after providing the District with advance notice. (*Id.* ¶ 4 (b)). In practice, USRC does not plan to extend use beyond 7 p.m. unless there are unusual circumstances, such as the Presidential Inauguration. USRC is required to adhere to a traffic plan approved by the District. (*Id.* ¶ 8 (e)). The current plan restricts entry and exit to a curb cut on Kendall Street via New York Avenue, NE.

USRC obtained the final construction permit in June 2012, and construction of the lot began.

In July 2012, Plaintiff Andria Swanson, the ICCA's President, invited Mr. Durso to attend a July 16 ICCA meeting. Mr. Durso went, intending to clear up misconceptions such as those he saw were included in neighborhood blogs. For example, a rumor was being spread that the lot would be used as a terminal for Bolt Bus, an inter-state carrier. In fact, unbeknownst to Mr. Durso, before the July 16 ICCA meeting, ANC 5B passed the "Bolt Bus Company Resolution," in which the ANC objected that DMPED did not notify the ANC before entering into a license to use the Crummell School parking lot as a "lay over for the Bolt Bus Company," nor accord "great weight" to the ANC's views prior to this decision (USRC Ex. 2 ¶¶ 1, 4). The Resolution additionally noted that the School is designated as a historic preservation site. (*Id.* ¶ 3). The Resolution formally expressed the ANC's opposition to the Bolt Bus plan. (*Id.* ¶ 6).

At the July 16, 2012 ICCA meeting, as Mr. Durso explained the project the residents became upset. In their view, he had presented the plan as a proposal, but the fact that the License had already been signed showed otherwise. Moreover, the so-called interim use was for five to ten years, which was a long time to the

residents, who wanted to use the school grounds for community development purposes.

At the end of July 2012, Mr. Durso learned of the text of the ANC's Bolt Bus Resolution. Also at the end of the month, Vaughn Bennett, the Vice Chair of ANC 5B, as well as Andria Swanson and Jeanette Carter, community residents who are officers in the ICCA, filed the instant lawsuit.

On August 9, 2012, Mr. Durso wrote to Jacqueline Manning, the Chair of ANC 5B, and asked to attend the next meeting "to receive additional comments" about the bus parking plan. (D.C. Ex. 7). Mr. Durso testified that the purpose of his presentation was "to make sure the community was fully aware of accurate facts surrounding the site. One of the major issues with this project has always been inaccurate information." Ms. Manning invited him to meet with the ANC on September 13. On September 7, DMPED published notice of the District's attendance at the meeting in the District Register "to receive additional comments from Commission and the public" on "interim use" of the site for "charter bus parking." (D.C. Ex. 8).

The September 13, 2012 meeting was both well attended and chaotic. Mr. Durso arrived with representatives from DDOT and USRC and a plan to present power point slides explaining the facts about the project. He made little progress, however, as he was interrupted with angry questions, shouts, and epithets. The meeting ended without Mr. Durso communicating most of what he had intended to say and without resolving the frustrations of community residents. There is no

indication in the record that the District recorded complaints expressed at the meeting and reported back to the ANC with respect to each issue.

On October 4, 2012, Deputy Mayor Hoskins wrote a letter to Ms. Manning in which he included DMPED's response to ANC 5B's "Bolt Bus Company Resolution." (D.C. Ex. 12). Through inadvertence, this letter was not actually sent until November 17.

4. Failure to Consult with Advisory Neighborhood Commission[3]

(a) Statutory provisions

ANCs were created as "'grass roots' organizations capable of identifying and communicating local opinions" to the City Council and administrative agencies. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1375 (D.C. 1977) (citing petitioner's argument). Toward this end, the statute creating ANCs endowed them with specific powers and imposed specific duties on the City Council, Mayor, and executive agencies. Pertinent statutory provisions include the following:

> (a) Each Advisory Neighborhood Commission ("Commission") may advise . . . the Mayor and each executive agency . . . with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area. . . .
>
> (b) Thirty days written notice, excluding Saturdays, Sundays and legal holidays of such District government actions or proposed actions, including . . . (2) the intent to change the use of property owned or leased by or on behalf of the government, shall be given by first-class

[3] Decisional law unambiguously establishes that individual Advisory Neighborhood Commissioners have standing to assert violations of procedures to which the ANC is entitled, as do members of the community served by the ANC. *Kopff*, 318 A.2d at 1376-77.

mail to . . . each affected Commission [and] the Commissioner representing a single-member district affected by such actions . . . .

(c)(1). . . . In addition to those notices required in subsection (a) of this section, each agency . . . shall, . . . before the formulation of any final policy decision or guideline with respect to . . . licenses . . . affecting said Commission area, . . . provide to each affected Commission notice of the proposed action as required by subsection (b) of this section.

. . . .

(d)(1) Each Commission so notified pursuant to subsections (b) and (c) of this section of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given . . . which is open to the public . . . . The recommendations of the Commission, if any, shall be in writing and articulate the basis for its decision.

. . . .

(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 acknowledgment 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 . . . a copy of its written decision.

D.C. Code § 1-309.10 (a) – (d).

(b) Likelihood of success on the merits

As the uncontested facts described above establish, the Mayor's Office entered into a license with USRC that changed the use of property owned by the District from an unregulated lot used regularly for casual parking to a diesel bus

parking lot for as many as 65 tour buses at a time to be used on a daily basis for up to ten years. This change in use was accomplished without the required statutory notice to ANC 5B "before the formulation of any final policy decision."[4] In fact, ANC 5B was deliberately omitted from the consultation process in favor of the ICCA.

The record provides no excuse for this exclusion and establishes that it was not harmless. To reason that the ANC need not be consulted because it was less vocal and therefore less interested than the ICCA is simply not permitted under District law. Moreover, the assumption that the ANC is not "vocal" carries the seeds of a self-fulfilling prophesy. Not included in the evaluative stages of the project, ANC 5B remained misinformed and confused about the project months after it was finalized – to the point of believing that the License was for USRC to use the lot as a Bolt Bus terminal. Not included, the ANC also never deliberated about the proposal as a body, never called a public meeting for discussion of issues during the deliberative stage, never formulated a written statement of recommendations, never enjoyed consideration that gave great weight to such recommendations, and never obtained specific findings and conclusions with respect to each issue and concern

[4] The court summarily rejects the argument raised by the District and USRC in their respective post hearing briefs that ANC 5B was properly notified of the Crummell lot project by DCRA's November 28, 2011 email attaching the agency's biweekly list of recent applications for construction permits. The so-called notice consisted of a couple of lines of tiny type describing one among thousands of projects listed in a 97-page document. ANC notice requirements would become a nullity if such a presentation were interpreted as satisfying statutory requirements. In addition, the list was not sent by the agency making the relevant decision about a location for a tour bus parking lot and was not sent to the affected ANC by first-class mail. D.C. Code § 1-309.10 (b), (c)(1). The latter two requirements are technical in nature, but serve to distinguish the statutory notices from less impactful materials.

raised. Having regarded ANC 5B as "less vocal," the District's violation of statutory requirements created a self-fulfilling prophesy that the ANC would remain so.[5]

Although violations of the notice provisions described above will be disregarded if they lack consequence (*Kopff*, 381 A.2d at 1382), the record establishes that serious consequences attended the violations in this case. Mr. Durso was frank to state that the site of the former Greyhound bus depot, which had for years been used to park diesel buses, was eliminated from consideration in large part because "active ANC Commissioners . . . didn't want buses there period." Through lack of notice, ANC 5B was deprived of the opportunity to register strong and specific objections that may have proved as influential as the clout wielded by ANC Commissioners in other parts of the city.

Plaintiffs have carried their burden of proving that they are likely to succeed on the merits of a claim that the License was issued in violation of District of Columbia law and that this failure was consequential.

(c) Irreparable harm to movants

The legislature has put in place a comprehensive procedure for obtaining the input of a community's elected representatives before the District makes important decisions affecting that community. To ignore that statutory design is to disfranchise the residents of the community. Once the tour buses are parked at Crummell

[5] It is not significant that, when the District notified the ICCA of plans for the lot, a member of the ANC found out about them and attended the December 8, 2011 meeting. Knowledge gained by one Commissioner as an incidental consequence of notice to the ICCA is not a substitute for consultation on an issue by the ANC as a whole. This case is therefore in strong contrast to the situation in *Kopff*, supra, in which two individuals notified affected ANCs of an issue, the ANCs adopted resolutions expressing their positions on the matter, and representatives of the ANCs attended pre-decisional administrative hearings prepared to present the ANC's views and recommendations. 381 A.2d at 1382.

School, the residents' right to be have the issue presented to their elected representatives before the decision is finalized cannot be restored. Plaintiffs have carried their burden of establishing that, if the parking lot project is carried to fruition despite the District's intentional disregard of the ANC's rights, the harm thus created is irreparable.[6]

(d) Harm to respondents

The record establishes that the tourist season begins in earnest in March and that significant damage to Union Station's merchants will not occur from the absence of a layover parking lot until then. There is no reason apparent from the record why it is not feasible between now (the second week of December) and the latter part of March for the District to comply with the statute's requirement of 30 days' notice; allow suitable time for ANC 5B to notify residents of a public meeting, hold the meeting, and issue recommendations; consider those recommendations, according them great weight; and respond specifically to each recommendation. The balance of harms favors Plaintiffs.

(e) Public interest

The public has a strong interest in enforcement of the requirement that the District consult with ANCs before making licensing decisions that significantly affect the character of a community. When this process is ignored, decisions are by definition unfair and developed on an incomplete record.

[6] Characterization of the decision as "intentional" is advised. Mr. Durso's testimony establishes that failure to notify the ANC was not inadvertent; rather, the ANC was omitted in preference to the more vocal ICCA.

(f) Conclusion

Consideration of the record and the factors determining issuance of a preliminary injunction weigh in favor of Plaintiffs. The court will enjoin use of the Crummell School grounds as a bus parking lot pending completion of the statutory requirements discussed above. The injunction will not forbid construction activities (which are virtually complete) or maintenance. The prejudice Plaintiffs assert does not flow from improvement of the lot, which was formerly in disrepair, but from use of the grounds for diesel bus parking.

5. Failure to Comply with Environmental Requirements[7]

(a) Statutory provisions

With respect to the preparation of an EIS, D.C. Code § 8-109.03, provides in pertinent part:

> Whenever the Mayor . . . proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented, the Mayor . . . shall prepare or cause to be prepared, and transmit, in accordance with subsection (b) of this section, a detailed EIS at least 60 days prior to implementation of the proposed major action . . . .

Id. § 8-109.03 (a). A number of actions are exempted from the EIS requirement under the District of Columbia Municipal Regulations, including:

> Any action that costs less than 1 million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index, unless that action meets the criteria of §§ 7201.3 and 7201.4 of these rules;
>
> . . . .

[7] As stated above in Section 4, decisional law unambiguously establishes that individual Advisory Neighborhood Commissioners have standing to assert violations of procedures to which the ANC is entitled, as do members of the community served by the ANC. *Kopff*, 318 A.2d at 1376-77. This same precedent applies here because if accurate environmental screening responses are not provided to the ANC, the Commissioners do not have the information they need to evaluate a proposed action.

> Class 1. Operation, repair, maintenance, or minor alteration of existing public structures, facilities, mechanical equipment, or topographical features, including replacement of roofs, HVAC, electrical, plumbing, elevator, sprinkler or other systems, plus interior work to common areas and individual units, involving negligible or no expansion of use beyond that previously existing[.]

20 D.C.M.R. §§ 7202.1 (a); 7202.2 (a).

(b) Likelihood of success on the merits

It is uncontested that the Mayor did not "prepare or cause to be prepared" an EIS. Under the License, USRC assumed responsibility for compliance with environmental statutes and regulations. The record shows that USRC circumvented procedures designed to evaluate whether the Mayor's License for creation and operation of a diesel bus parking lot required preparation of an EIS. This circumvention was accomplished on November 11, 2011, at the initial screening stage, when USRC's civil engineer submitted an inaccurate Environmental Intake Form. In that form, he avowed that the contract did not cost more than $1.5 million even though "hard construction costs" totaled $1.6 million. (Pls. Ex. 6). As a result, the project never met the "major action" threshold for evaluation with regard to environmental impact. The process was further circumvented through USRC's failure to provide a corrected Environmental Intake Form even as costs ballooned to over $2 million.

USRC's Environmental Intake Form is also problematic in other ways. It innocuously describes the project as "site upgrade for bus parking." (Pls. Ex. 6). For purposes of assessing environmental impact, the project is far more than that: it is the operation of a diesel bus parking lot designed to receive 65 buses at any one

time and which will operate daily during the tour season for five to ten years. The form addresses such piecemeal descriptions:

> If you . . . expand the work covered by this Environmental Intake Form within 3 years, you may be required to file an EISF for the whole project.

It is undeniable that the "whole project" involves operation of a parking lot for diesel buses. Accordingly, accurate description of the whole project would require that the box on "emission of . . . air pollutants" be checked. That, in turn, would require submittal of an EISF, which was not done.

An additional problem with the Environmental Intake Form's accuracy is USRC's avowal that the project involves "negligible or no expansion of use beyond the property's current use." As the court noted above, in Section 4.b, the License changed the property's use from an unregulated lot primarily used by individuals driving gasoline powered cars when they commuted to their job as a Metro bus driver or attended nightclub events, to a diesel bus parking lot for daily use by up to 65 buses at a time during the tourist season for as long as ten years. It is a mischaracterization to say that this alteration involves negligible expansion of use beyond that previously existing.

Plaintiffs have therefore carried their burden of establishing that they are likely to succeed on their argument that the District's environmental statutes and regulations were not complied with.[8]

[8] The court rejects Defendants' argument that DCRA made an advised decision that further screening was unnecessary, to which deference is owed. Deference is inappropriate because the decision was based upon misleading documents, and the court does not know what DCRA's decision would have been if the agency had been accurately informed about the diesel bus parking project.

(c) Irreparable harm to movants

The record establishes beyond contradiction that Plaintiffs have a legally protected right to an environmental screening before the bus parking lot is placed in operation. If this right is disregarded, it is lost.[9] Plaintiffs have therefore established that they will be irreparably harmed if USRC is not enjoined from operating the lot until required environmental procedures are complied with.

(d) Harm to respondents

The record is devoid of evidence that harm will befall respondents or merchants at Union Station if USRC is required to submit an accurate Environmental Intake Form and EISF. For example, the record does not support a conclusion that following these procedures will lead (or not lead) to a requirement that USRC prepare an EIS. If an EIS is required and cannot be completed in time for the tourist season, resultant harm to merchants flows from USRC's own mis-statements and evasion of environmental screening procedures in November 2011. Such harm cannot be the basis for ignoring the requirements of law. The balance of harms therefore favors Plaintiffs.

(e) Public interest

The public's interest lies in compliance with the District's environmental laws and regulations so that District residents are protected from avoidable harm. Similarly, the public's interest lies in making sure that applicants who evade

[9] Mr. Durso testified that DOE was consulted about air quality concerns, provided DMPED with the status of that issue, and "nothing triggered additional evaluation." Fundamentally, this consultation is not a substitute for USRC's compliance with statutory and regulatory requirements. In any event, the testimony is unconvincing as a basis for concluding that the project is unlikely to have a significant impact on the environment. The record does not establish what information was presented to DOE, what its specific evaluation was, and what the basis for the evaluation was.

environmental screening procedures by filing incorrect information -- and failing to correct it -- are not rewarded for this misconduct.

(f) Conclusion

Consideration of the record and the factors determining issuance of a preliminary injunction weigh in favor of Plaintiffs. The court will enjoin use of the Crummell School grounds as a bus parking lot pending completion of the required environmental screening process.[10]

6. Security

By reference to Super. Ct. Civ. R. 65 (c), the District asks that an order for preliminary injunction also require the Plaintiffs to post a bond. Rule 65 (c) provides:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The record in this case establishes that (1) DMPED deliberately disregarded statutory notification responsibilities with respect to the affected ANC; (2) USRC evaded environmental screening by mischaracterizing the project on the Environmental Intake Form; and (3) the instant order merely requires Defendants to comply with the law. As a result, the court determines that the amount of security in

[10] At the evidentiary hearing, Plaintiffs sought to enlarge their Motion for preliminary injunctive relief on the grounds of USRC's purported failure to follow required procedures with respect to sites with historic designation. Defendants objected that the Motion did not include this argument and that they were therefore unprepared to meet it. The court agrees that Defendants were not informed that this issue would be before the court. Therefore, the court will not consider Plaintiffs' argument on this ground. Second, Plaintiffs alleged in their post hearing brief that the District violated the Sunshine Amendment in the Self Government Act. For the same reasons, the court will not consider this argument by Plaintiffs. As a practical matter, however, Defendants are on notice that these are further issues to be explored, for they may be subjects of a future motion for injunctive relief.

"such sum as the Court deems proper" is no sum at all. *See L'Enfant Plaza Props., Inc. v. Fitness Sys, Inc.*, 354 A.2d 233, 237 (D.C. 1976) ("While the security requirement is phrased in mandatory terms, the exact amount of security is left to the trial court's discretion.").

ACCORDINGLY, it is this 10th day of December 2012.

ORDERED, that the "Motion for a Preliminary Injunction," filed by Plaintiffs Vaughn Bennett, Andria Swanson, and Jeanette Carter on July 26, 2012, is GRANTED. It is further

ORDERED, that Defendants Union Station Redevelopment Corporation and Mayor Vincent C. Gray are ENJOINED from operating a diesel bus parking facility on the grounds of the Crummell School until (a) procedures established by D.C. Code § 1-309.10 are complied with and (b) USRC submits an accurate Environmental Intake Form and Environmental Impact Screening Form to the District of Columbia Department of Consumer and Regulatory Affairs, and complies with any requirements that result from evaluation of those submittals. It is further

ORDERED, that this injunction shall not restrain Defendants from completing construction or, or maintaining, the lot and appurtenant facilities. It is further

ORDERED, that this injunction shall not be lifted except by further order of the court.

Judge Judith N. Macaluso

(Signed in Chambers)

Copies to:

Johnny Barnes
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