

(Draft)

ANC 3/4G Resolution

Voiding the ANC 3/4G-Maret School Memorandum of Understanding;

Disbanding the Maret Sports Field Project Task Force

February 27, 2023

Background & Rationale:

1. On November 1, 2021, Maret School (Maret) filed an Application with the District of Columbia Board of Zoning Adjustment (BZA) for a Special Exception to construct athletic facilities on property leased from the Episcopal Center for Children.
2. On March 15, 2022, ANC 3/4G and Maret entered a Memorandum of Understanding (MOU) supporting Maret's Application and containing conditions regarding the design, construction, and operation of the athletics facilities (Athletics Facilities Project in the BZA Application), including a provision for a task force to monitor the construction phase.
3. On November 28, 2022, ANC 3/4G established the Maret Sports Field Project Task Force to monitor the construction phase of the athletics facilities.
4. On January 17, 2023, ANC 3/4G, seeking clarifications on its authorities, asked the District of Columbia Office of the Attorney General (OAG), *inter alia*: Can the ANC enter into an agreement with a developer over conditions for the design, construction, and operation of a project within the ANC? If the ANC did not have the authority to enter into such an agreement, is the agreement void *ab initio* or only voidable?
5. On February 17, 2023, the OAG responded to say, "In our view, the Home Rule Act and the ANC (Advisory Neighborhood Commission) Act do not authorize an ANC to enter an agreement with a developer over conditions for the design, construction, and operation of a project within the ANC, outside the context of an administratively enforced settlement agreement." In explaining its position, the OAG noted, "As a 'creature of statute,' an ANC 'has only those powers given to it by statute.'"
6. The OAG did not determine whether the MOU was void *ab initio* or voidable. However, the OAG reduced the possibility that the MOU constituted a settlement agreement to virtually nil, noting a "sole example" of such an agreement in District administrative proceedings. As to the MOU being, alternatively, a community benefit agreement, the OAG wrote, "Nothing in either act (Home Rule or ANC) ... explicitly or even implicitly authorizes ANCs to enter community benefit agreements with entities in their neighborhood, which means they lack the authority to do so."

Resolved:

1. ANC 3/4G executed the MOU with Maret without statutory authority to enter such an agreement. The MOU was therefore void *ab initio*.
2. The Maret Sports Field Project Task Force is the product of the void MOU. It is thus disbanded.
3. ANC 3/4G shall inform the BZA of the OAG's opinion and this Resolution.