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July 19, 2013

Corey Lee
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue NW Suite 317
Washington, DC 20004

Dear Mr. Lee,

I write in response to your comments at the ANC 6B meeting on July 9, 2013, in regard to the emergency legislation proposed by the District of Columbia Council, which would extend the time for the District to transfer ownership or control of the Hine Junior High School property to the developer Stanton-EastBanc, LLC. Specifically, you stated that the Land Disposition and Development Agreement (“LDDA”) providing for that transfer is final and available to the public. You further stated that I had misinformed those present by stating that this document has not been publicly disclosed. When I called your office on July 15, 2013, however, you were unable to say where members of the public may find a copy of the final LDDA. Instead, you suggested that I file a request for the document pursuant to the District of Columbia Freedom of Information Act (“FOIA”). It therefore appears that, contrary to your statements at the ANC 6B meeting, the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) has failed to make the final LDDA publicly available.

A diligent search of the Council’s online Legislative Information Management System (“LIMS”) reveals that only one version of the LDDA was publicly disclosed in connection with the legislation transferring ownership or control of the Hine School property to Stanton-EastBanc. That version is incorporated as an exhibit to the “Report on Proposed Resolution 18-963” submitted by former Council Member Kwame R. Brown. It is dated June 10, 2010, and is labeled “CURRENT VERSION,” “COUNCIL DRAFT” and “SUBJECT TO FURTHER REVIEW AND REVISIONS”. Obviously, this document is not the final LDDA, because its terms are subject to change. In addition, the emergency legislation ANC 6B was meeting to consider last week references an LDDA dated October 27, 2010. Thus, at least one subsequent version of the LDDA exists, which supersedes the June 10, 2010 draft, and this subsequent version was not made part of the public record available through LIMS.

At the ANC 6B meeting, you appeared to concede that the final LDDA has not been publicly disclosed, but you suggested that it need not be, because the draft version is substantially the same. At least some ANC 6B Commissioners agreed. As you should know, however, the Office of the General Counsel to the Mayor (“OGC”) expressly rejected that view when DMPED asserted it in another recent case. In that case, DMPED failed to respond to repeated requests that it disclose the final LDDA conveying the West End Public Library and Fire Station properties to EastBanc-W.D.C. Partners. Only after a formal FOIA request for the document was filed did DMPED finally respond, but remarkably, it denied the request.

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OGC reversed DMPED on appeal, and ordered your office to produce the final West End LDDA. OGC specifically concluded the following:

First, there is a final Land Disposition Agreement. Second, DMPED has not asserted that the Land Disposition Agreement is subject to exemption from disclosure and there does not appear to be any basis for such an assertion. Third, Appellant is seeking the final Land Disposition Agreement and has communicated the same to DMPED. Accordingly, DMPED shall provide to Appellant the final Land Disposition Agreement.

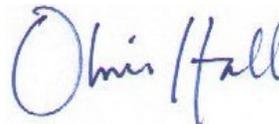
See FOIA Appeal 2013-54, 4 (May 20, 2013). In reaching this conclusion, OGC flatly rejected DMPED's assertion that it need not provide the final LDDA because the draft version available through LIMS was a "substantially complete version." *See id.* at 5. The draft LDDA, OGC correctly observed, "is not the final agreement." *See id.*

In sum, your contention at last week's ANC 6B meeting, that the final LDDA for the Hine School property is publicly available, appears to be incorrect. Your alternative contention, that the final LDDA need not be publicly disclosed, because a draft version is available through LIMS, is also incorrect. Therefore, in order to clarify or correct the public record, please respond to this letter by confirming: 1) the date of the most recent version of the LDDA; 2) whether that version is the final LDDA; and 3) whether the final LDDA has been publicly disclosed, and if so, the date and method of any such disclosure.

Please be advised that a FOIA request is being filed with your office herewith, in an effort to obtain the final LDDA, as well as any documents transferring ownership or control of the Hine School property to Stanton-EastBanc pursuant to the legislation discussed at last week's ANC 6B meeting. In view of OGC's unequivocal ruling in the West End case, I trust your office will comply with this FOIA request without delay. Finally, given that documents transferring ownership or control of public property to a private party are of interest to the general public, will DMPED make them available through its website, as a matter of policy to promote transparency, before any such transaction is executed, whether or not a FOIA request is filed?

Thank you for your attention to this matter. I look forward to your prompt response.

Sincerely,



Oliver B. Hall

cc: Vincent C. Gray
Victor L. Hoskins
ANC 6B Commissioners