

# Government of the District of Columbia

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IN REPLY REFER TO:

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(AL-95-025)

February 6, 1995

Anne Mohnkern Renshaw  
Chairman  
Advisory Neighborhood Commission 3-G  
5601 Connecticut Avenue, N.W.  
Washington, D.C. 20015

Re: Request for assistance to recover \$600 grant  
for traffic study

Dear Chairman Renshaw:

This is in response to your September 9, 1994 letter to then Acting Corporation Counsel Vanessa Ruiz in which you request the assistance of this Office in recovering a \$600 grant made by Advisory Neighborhood Commission (ANC) 3-G to Anne Page Chiapella.

## Background

You state in your letter that in September 1988, ANC 3-G authorized a grant of \$600 and paid it to Ms. Chiapella, in her capacity as the head of the Nebraska Avenue citizens' Association. The purpose of the grant was to fund a study of traffic conditions along that part of Nebraska Avenue that lies between Connecticut and Nevada Avenues, and to make recommendations to the D.C. Department of Public Works to deal with dangerous traffic conditions along that stretch of Nebraska Avenue. On or about March 15, 1991, ANC 3-G received a letter from Ms. Chiapella that included an alternative proposal prepared by traffic consultant Roger D. Mingo to use the \$600 grant for a study of the traffic conditions at the intersection of Connecticut and Nebraska Avenues. By the spring of 1994, the study had not been completed. On March 21, 1994, you wrote Ms. Chiapella asking for a return of the grant money since no traffic study had yet been produced. Ms. Chiapella responded by letter dated March 28, 1994, that several years ago neighborhood volunteers had submitted traffic data to Mr. Mingo, the transportation consultant who had been selected by Ms. Chiapella to prepare the study, and that she (i.e., Ms. Chiapella) would push Mr. Mingo to complete the study. Over the next several months, when no study was forthcoming, further attempts were made to have Ms. Chiapella return the money, to no avail.

One of these attempts was a July 26, 1994 letter from you to Ms. Chiapella, in which you stated in pertinent part:

The grant's objective was to make recommendations to the Department of Public Works and the Metropolitan Police "to improve existing dangerous traffic conditions". The ANC, which requested a copy of the traffic study, fully expected that the award would be spent without delay due to the critical nature of the report.

Six years later, you have been unable to report to ANC 3G that the 1988 traffic study has been completed. Rather, the funds granted to your group have remained unused. . . . The data on which the traffic study was to be based has aged to such an extent that its utility must be seriously questioned.

During this six year period, the only effort you appear to have made to use the grant money for its authorized purpose occurred on July 11, 1994, following three successive efforts by the ANC prior to that date, to have you return the original grant of \$600.00, plus accumulated interest.

Your failure over this extended period to use the grant award for the specific purpose of a 1988 traffic study of the Nebraska Avenue Corridor between Connecticut Avenue and Nevada Avenue, N.W., places you in violation of the terms and conditions attached to the grant and creates the appearance that the money has been improperly converted from its authorized use.

(Emphasis in original.)

In an August 23, 1994 letter to you, Ms. Chiapella responded in pertinent part as follows:

As I mentioned in my July report, we have a preliminary report in hand from Roger Mingo, the traffic engineer on the study. Because the data was collected in 1991, we were concerned about an interpretation based on older data. We collected some new data to address this issue before the report is finalized.

with regards to the delay in preparing this report, the following history addresses that issue: After the grant for \$600 was awarded in 1988, it was very difficult to recruit a traffic specialist to work with us on the study, largely due to the limited amount of funds. We brought Mr. Roger Mingo on to work with us and submitted a brief proposal of the study to the ANC in 1991. It was approved by the ANC 3G with the expression of concern

that it had taken so long to find the traffic consultant. The issue of the difficulty of doing the project with limited funding was discussed at this time.

Traffic data was collected in 1991 using a form designed and prepared specifically for the study by Mr. Mingo (in an iterative interaction with the neighborhood because the traffic pattern and light cycles at the intersection are complicated). Several hours of Mr. Mingo's time and many hours of neighborhood time was expended in the data collection effort.

At that time, we had hoped for a quick turn around for the analysis and report. Unfortunately, Mr. Mingo was involved with regular paid company projects; most of the work on this project was volunteered. \* \* \* There were other delays. For example, essential data such as that on traffic light timing was not forthcoming from the city; such information had to be collected separately; there were problems in setting up the computer program used to analyze the data.

since Mr. Mingo's part of the study was largely donated, it was necessary to work with his time schedule. He was willing to pass the data on to another consultant; however, such voluntary effort was not easy to find elsewhere. And, since half the work on the study had been accomplished, we were anxious to finish the project. At the present time, a 20 page draft, received last month, is in revision for the final report.

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All kinds of voluntary effort have been expended on this study by both the neighborhood and Mr. Mingo's firm. I myself have contributed 30-40 hours to the project. This is leading to an exceptional yield from this small grant. We are therefore able to produce a study of this hazardous traffic intersection which would have normally cost several thousand dollars.

The study was completed in early September 1994, and copies were sent to ANC 3-G and to the D.C. Department of Public Works. Ms. Chiapella distributed the \$600 grant money to Mr. Mingo pursuant to a JULY 11, 1994 invoice submitted to Ms. Chiapella by Mr. Mingo.

Analysis

It appears that the grounds for a legal claim that ANC 3-G is entitled to a return of the grant money in question would be: (1) that the study was not completed in a timely manner, and (2) that

the study is without any value because the data upon which it is based is not current data.'

As to the first ground, there is no indication that when the grant was initially made that there was a specific deadline agreed upon as between ANC 3-G and the grantee regarding the completion of the study. While there appears to be no dispute that everyone involved contemplated that the study would be completed long before September 1994, it appears that it was not until March of 1994 that ANC 3-G presented Ms. Chiapella with a demand that she either produce the study forthwith or return the grant money. By this time, a substantial amount of data-gathering work had been done (in 1991) by Mr. Mingo and neighborhood volunteers. As noted above, Ms. Chiapella's August 23, 1994 letter set forth the reasons for the delay in the completion of the study subsequent to the collection of this data. While it is understandable that the reasons stated by Ms. Chiapella for the delay in the completion of the study may not have been considered acceptable by ANC 3-G, nevertheless the reasons given are not irrational. Moreover, the study was finished and delivered to ANC 3-G approximately 5 1/2 months after the March 1994 demand letter was sent to Ms. Chiapella. The delay between the March demand and the September delivery does not appear to be excessive.

A second ground for recovery of the grant suggested by you is that the data upon which the study is based is so old as to render the study useless. While it appears that most of the data was collected in 1991 (see Appendix A), nevertheless the study states at page 1 that "spotchecks of these [1991] counts [were performed] in early August 1994, finding a high degree of consistency.,<sup>2</sup> Thus,

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<sup>1</sup> As noted above, the original (1988) purpose of the grant was for a study of the traffic conditions along the entire length of Nebraska Avenue between Connecticut Avenue and Nevada Avenue. However, as also indicated above, in March 1991, ANC 3-G was presented by Ms. Chiapella with a revised proposal, namely that the study focus solely on traffic conditions at the intersection of Connecticut and Nebraska Avenues. Ms. Chiapella's August 23, 1994 letter to you states on page 1 that this revised proposal was approved by ANC 3-G. Thus, for the purposes of this letter, I assume that ANC 3-G approved the proposal submitted by Ms. Chiapella to ANC 3-G in March of 1991 that the study focus on traffic conditions at the intersection of Connecticut and Nebraska Avenues, rather than on the stretch of Nebraska Avenue between Connecticut and Nevada Avenues.

<sup>2</sup> See also the second paragraph of Ms. Chiapella's August 23, 1994 letter, which states in pertinent part: "Because the data was collected in 1991, we were concerned about an interpretation based on older data. We collected some new data to address this issue before the report is finalized."

there is a basis for the argument that the vehicular and pedestrian figures provided in Appendix A of the study constitute a valid basis for the study's conclusions and recommendations. Further, the study makes recommendations that, if implemented, could enhance the safety of pedestrians and motorists who use this intersection. Thus, although the study took a long time to complete, nevertheless its conclusions and recommendations address conditions that continue to exist. Therefore, the study and recommendations could be useful to ANC 3-G as support for a request addressed to the D.C. Department of Public Works that traffic design changes be made at Connecticut and Nebraska Avenues to enhance the safety of both motorists and pedestrians.

#### Conclusion

In sum, this analysis suggests that if a lawsuit were filed by this Office on behalf of the commissioners of ANC 3-G against Ms. Chiapella or Mr. Mingo, or both, seeking the recovery of the \$600 grant in question, and all the facts were presented to the court, there is little likelihood that the court would order a return of the \$600 grant to ANC 3-G. Accordingly, this Office declines your request that it institute a legal action on behalf of ANC 3-G to recover the \$600 grant in question.

Sincerely,



Garland Pinkston, Jr.  
Acting corporation Counsel