

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

THE NATIONAL POST OFFICE COLLABORATE,
CENTER FOR ART AND MINDFULNESS, INC.,
FORMERLY KNOWN AS THE LOWER FAIRFIELD
ART CENTER, INC., AND KAYSAY H. ABRHA, AN
INDIVIDUAL,

Plaintiffs

vs.

PATRICK R. DONAHOE, POSTMASTER GENERAL
OF THE UNITED STATES POSTAL SERVICE, AND
THE UNITED STATES POSTAL SERVICE,

Defendants

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Case No. _____

Judge _____

Plaintiffs The National Post Office Collaborate, the Center for Art and Mindfulness, Inc., and Kaysay H. Abrha, by and through their undersigned counsel, claim against Patrick R. Donahoe, Postmaster General of the United States Postal Service, and the United States Postal Service, as follows:

PARTIES, JURISDICTION AND VENUE

1. The Stamford Post Office is an historic post office located at 421 Atlantic Street, Stamford, CT 06904 (the “Stamford Post Office”).
2. Plaintiff National Post Office Collaborate is a national community organization with members and operations nationwide, and with a goal of preserving and retaining public ownership of historic community post offices, such as the Stamford Post Office.

3. Plaintiff Center for Art and Mindfulness, Inc. formerly known as the Lower Fairfield Art Center, Inc., is a nonprofit entity and was the high bidder in an auction in 2012 to purchase the Stamford Post Office with the intent of preserving the Stamford Post Office and its architecture and art for the benefit of the residents and taxpayers of Stamford, Connecticut.

4. Plaintiff Kaysay H. Abrha is an individual served by the Stamford Post Office, previous possessor of Post Office Box 1034 at the Stamford Post Office, and is a resident of Stamford, Connecticut.

5. The Defendant Patrick R. Donahoe is the Postmaster General and Chief Executive Officer of the United States Postal Service, an instrumentality of the U.S. Federal Government.

6. Defendant the United States Postal Service (“USPS” or “Postal Service”) is “an independent establishment of the executive branch of the Government of the United States,” with the power to “be sued in its official name.” 39 USC §§ 201 and 401(1).

7. This Honorable Court has jurisdiction pursuant to 39 USC § 403(c) (general duty of USPS to not show undue preference or unreasonable discrimination), 39 USC § 409, and 28 USC § 1331 (questions of federal law, including the National Environmental Policy Act, 42 USC §4321, et seq., and National Historic Preservation Act, 16 USC §470), § 1361 (mandamus), § 1367 (commerce), § 2201 (declaratory judgments).

8. Venue is proper in this Court under 28 U.S.C. §1391, as the federal property and circumstances at issue in this case are located in the County of Fairfax in the State of Connecticut.

9. The Plaintiffs have standing to bring this action as interested parties and members of the local community who will be adversely affected by the Defendants' actions. Plaintiffs also have standing via the doctrine of associational standing because they represent members of the local community who will be adversely affected by the Defendants' actions.

GENERAL ALLEGATIONS

10. In June 2012, the National Trust for Historic Preservation listed America's Historic Post Office Buildings on its annual list of America's 11 Most Endangered Places.

11. The Stamford Post Office is an historic post office listed on the National Register of Historic Places and subject to the National Environmental Policy Act ("NEPA") and the National Historic Preservation Act ("NHPA").

12. The Stamford Post Office is federal property, currently owned by the United States Postal Service.

13. The New Deal art in the Stamford Post Office was commissioned for its artistic quality under the Treasury Relief Art Project (1935-38). This art includes interior bronze work by Tiffany & Co. of New York.

14. The Stamford Post Office building is art itself, built in 1916 and widely recognized as a stunning example of American- Italianate style of architecture popular in the first decades of the 20th Century, one hundred years ago.

15. The art and architecture of the historic post offices was collectively transferred to the USPS when it was created in 1971 (prior to the Postal Reorganization Act of 1970, mail delivery was handled by the Post Office Department, a cabinet level department.)

16. The building and art have been held by the USPS in trust for the public, and subject to a public trust interest.

17. On Wednesday, September 18, 2013 the USPS notified local residents that the Stamford Post Office would be closed on two days' notice, on Friday, September 20, 2013. Calls to the USPS revealed that the historic building would be sold on Wednesday, September 25, 2013.

18. There is no other USPS location which has been identified to replace the Stamford Post Office, therefore this is a post office closing and not a post office relocation.

19. Kaysay H. Abrha received no advance warning about the closing of the Stamford Post Office. When Mr. Abrha went to retrieve his mail from his post office box on Friday, September 20, 2013 he learned for the first time the Stamford Post Office was closing.

20. This sudden and unexpected action follows long discussions concerning the closure of the Stamford Post Office. As early as 2010 the Stamford Post Office as listed by the USPS for sale.

21. Cushman & Wakefield was hired by the USPS to conduct an auction in 2012. Plaintiff Center for Art and Mindfulness, Inc. fka Lower Fairfield Art Center, Inc., ("Art Center") submitted a bid for \$5.5 million and was the high bidder.

22. Cappelli Enterprises also submitted a bid for \$3 million dollars. There were no other bidders.

23. Both the Art Center bid and the Cappelli Enterprises bid were contingent on obtaining financing. Eventually the USPS accepted the \$2 million lower Cappelli Enterprises

bid and it is believed that the buyer at the sale currently scheduled for September 25, 2013 is Cappelli Enterprises.

24. Upon information and belief, Cappelli Enterprises intends to demolish part or all of the Stamford Post Office and build high-rise luxury apartments.

25. This action constitutes a “major federal action” under section 102(2)(C), of the National Environmental Policy Act (“NEPA”).

26. This action is an “undertaking” that constitutes a “change of the character of the property’s use...that contribute[s] to its historic significance” under section 106 of National Historic Preservation Act (NHPA”).

27. On September 23, 2013, Jill Korte, a member of the Plaintiff National Post Office Collaborate, requested all USPS documentation relating to compliance with NEPA and NHPA requirements under the Freedom of Information Act. As of September 24, 2013, the USPS has provided no documents in response to this request.

28. As of September 24, 2013, the USPS had not initiated or completed a section 106 consultation process.

29. As of September 24, 2013, the USPS had not submitted an Environmental Assessment (“EA”) or an Environmental Impact Statement (“EIS”) to the Environmental Protection Agency.

30. The USPS is required by NEPA and the USPS’ own regulations to prepare an EA or an EIS.

31. The USPS is required by Section 106 of the NHPA and by its own regulations to follow the Section 106 process and initiate Section 106 consultation.

RELEVANT STATUTES AND REGULATIONS

National Historic Preservation Act

32. The National Historic Preservation Act requires that federal agencies take into account the effect of any undertaking licensed or approved by the federal government on any site or object that is included or is eligible for inclusion in the National Register. 16 U.S.C. § 470.

33. According to the definitional section of NHPA, "undertaking" is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency..." 16 U.S.C. § 470w(7).

National Environmental Protection Act

34. NEPA requires federal agencies, including the USPS, to take a hard look at the consequences of all proposed "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C.S. §4332(2)(C).

35. The Council on Environmental Quality ("CEQ") established regulations to implement NEPA, which are contained in 40 C.F.R. Parts 1500-1508.

36. Federal agencies are required to adopt procedures to implement the regulations in their programs. 40 CFR §1500.2.

37. The NEPA procedures of the USPS are located in 39 C.F.R. §775.

38. When considering proposed actions, the Postal Service has a stated policy to "[e]mphasize environmental issues and alternatives," and particularly where a decision affects

“the quality of the human environment,” to “[e]ncourage and facilitate public involvement” in those decisions. 39 CFR §775.2 (c) and (d).

39. The Postal Service’s regulations are clear that the potential environmental issues for a proposed action be properly considered with “[e]arly planning and coordination among postal functional groups,” and early planning entails cooperation during the “early concept stages of a program or project.” 39 CFR 775.7.

Categorical Exclusions

40. The NEPA regulations allow an agency to adopt criteria for classes of action “[w]hich normally do not require either an environmental impact statement or an environmental assessment,” known as Categorical Exclusions. 40 C.F.R. §1507.3(b)(2)(ii).

41. Categorical Exclusions are defined as a “group of actions that would have no significant individual or cumulative effect on the quality of the human environment and, for which in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required.” 40 C.F.R. § 1508.4.

42. The USPS regulations provide for Categorical Exclusions under several circumstances, including the closure (39 CFR 775.6 (b)(15)) and disposal (39 CFR 775.6 (e)(4)) of a USPS facility.

43. Under “extraordinary circumstances” where an excluded action is connected with “other proposed actions with potentially significant impacts,” then the proposed closure and disposal of a post office facility can no longer be categorically excluded. 39 CFR 775.6 (a).

Environmental Assessments

44. The NEPA regulations allow an agency to prepare an Environmental Assessment (“EA”) to determine whether an EIS is required. 40 C.F.R. §1501.4(a)-(b).

45. The EA is a "concise public document" that "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an [EIS]." 40 C.F.R. §1508.9(a).

46. The Postal Service’s policy is to prepare an Environmental Assessment for the disposal of real property where there will be a “known change in use to a greater environmental intensity.” 39 CFR 775.5 (b)(10).

47. The intent to sell the property for large urban development is clearly a “known change in use to a greater environmental intensity.”

48. At a minimum, replacing the current historic structure with a multi-story, high rise luxury condominium building or other similar structure will create greater levels of pollution and will change the skyline, pose a safety and environmental threat from increased truck and vehicular traffic.

Environmental Impact Statement

49. The Postal Service has a stated policy to prepare an EIS whenever a proposed action is “significant” either in context or intensity. 39 CFR 775.6 (a), citing 40 CFR 1508.27. Both forms of significance exist here.

50. Closing historic post offices is contextually significant (40 CFR 1508.27 (a)) on a local as well as national level, and the effects are potentially permanent, particularly where the Postal Service does not intend to preserve the historic post office.

51. Additionally, the effects of the proposed closure and disposal of the Stamford Post Office has greater potential intensity, including a *cumulatively* significant impact because multiple other historic post offices are being closed and sold by the USPS throughout the nation; this post office is listed in the *National Register of Historic Places*; and the closure and disposal of the Stamford Post Office “*may cause loss or destruction of significant...cultural, or historical resources.*” 40 CFR §1508.27 (b).

52. Under the NEPA regulations, an EIS must be prepared for intensely significant action even if the beneficial effects outweigh the adverse effects, and “[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 CFR §1508.27 (b)(1) and (7).

53. NEPA’s implementing regulations require that an EIS discuss, analyze and evaluate the direct and indirect environmental effects of the alternatives, including the proposed action, as well as means to mitigate adverse environmental consequences (if not included in the alternatives). 40 C.F.R. §§ 1506.16(a), (b), (h).

54. The NEPA regulations require the USPS to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 CFR §1502.14.

FIRST CAUSE OF ACTION
Injunction: USPS Has Failed to Comply with NEPA Requirements

55. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege those paragraphs as though fully set forth here.

56. The USPS is primarily and significantly responsible for the decision to relocate and sell the historic Stamford Post Office.

57. The USPS decision to relocate postal services away from the historic Stamford Post Office and to sell this historic Post Office, which is federal property, constitutes a “major federal action” under NEPA because it will result in changes in both the context and the intensity of the use of the space.

58. Section 102(2)(C), of NEPA requires that the USPS prepare and submit an EA/EIS in conjunction with its decision to relocate and sell the historic Post Office.

59. The Postal Service regulations, including 39 C.F.R. §775, also require the USPS to prepare and submit an EA/EIS in conjunction with its decision to relocate and sell the historic Post Office.

60. The relocation and sale of the historic Post Office is not “categorically excluded” because the quality of the human environment will be significantly altered.

61. The USPS failed to prepare an EA/EIS.

62. Relocating and selling this historic Post Office will have the following negative effects on the local environment: Cappelli Enterprises intends to demolish part of the Stamford Post Office and erect high rise luxury residential condominium buildings. The New Deal era art

that graces the building will be closed to the general public and lost to taxpayer appreciation. The community space created by the public post office in such a unique, beautiful and architecturally significant building will be lost.

63. The Plaintiffs will be directly harmed by these negative effects.

64. These negative effects and resulting injuries to the Plaintiffs fall under the scope of harms NEPA was enacted to prevent.

65. Wherefore, Plaintiffs seek an injunction under Federal Rule of Civil Procedure 65 from this Honorable Court, preventing the USPS from awarding a contract for the sale of, demolition of, or construction on of this federal property, until such time as an EA/EIS is properly prepared and submitted to the EPA for public review and comment, and the USPS has fully complied with its obligations under federal law (as set forth more fully in an accompanying motion and memorandum of law).

SECOND CAUSE OF ACTION

Injunction: USPS Has Failed to Meet National Historical Preservation Act Requirements

66. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege those paragraphs as though fully set forth at this point.

67. The Defendants violated Sections 106 and 470 of the NHPA by failing to document the impacts of USPS' decision to relocate and sell the Stamford Post Office on the building and the surrounding community, and by failing to consider alternatives that would minimize or eliminate those impacts.

68. Because the Stamford Post Office is included on the National Register, Section 470 of NHPA requires that effects on the historic building be considered. This has not been done: no restrictive covenants have been obtained from the buyer, no report has been released, no expert consulted, no public input has been sought.

69. Wherefore, Plaintiffs seek an injunction under Federal Rule of Civil Procedure 65 from this Honorable Court preventing the USPS from awarding a contract for the sale of, demolition of, or construction on this federal property until such time as a NHPA study is undertaken in good faith as required by the applicable law and regulations set forth herein (as more fully set forth in an accompanying motion and memorandum of law).

THIRD CAUSE OF ACTION

Injunction: USPS Must Satisfy the Requirements of the Public Trust

70. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege those paragraphs as though fully set forth at this point.

71. The Public Trust Doctrine has been recognized since 1892 when the United States Supreme Court adopted the English common law principle in *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892). It has been applied to prevent the government from alienating the public right to access navigable waters and natural resources.

72. Recently, the California Supreme Court held that Mono Lake is held by the California State government in public trust for the interest of the people. “Thus, the public trust is more than an affirmation of state power to use public property for public purposes. It is an

affirmation of the duty of the state to protect the people's common heritage . . .” *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 441 (1983).

73. The Stamford Post Office has become a part of the people of south-western Connecticut’s common heritage. The building is a touchstone landmark, filled with the memories of many lifetimes. Its art and visage should be preserved for the public who paid for it and have used it lovingly for nearly 100 years.

74. The mission of the USPS is not simply to be a profit seeking business, but also to serve a “basic function” and have the “obligation . . . to bind the nation together.” 39 USC §101(a). This is why such great effort and taxpayer expense was made to create masterful structures such as the Stamford Post Office.

75. The historic post office structures, open to the public, filled with wonderful art, are a national treasure. The current USPS administration should not be allowed to sell them off in quick sales to commercial interests without protecting the public’s interest in them.

76. To date, the USPS has undertaken no analysis and given no thought to the beneficiaries of the significant public expenditures made to build and create amazing spaces such as the Stamford Post Office.

77. Wherefore, before any sale is allowed, Plaintiffs request that this Court require the USPS to show how the public’s interest in preserving the Stamford Post Office and preserving access to the property and its art, will both be protected. An injunction should be granted until such showing is made (as more fully set forth in an accompanying motion and memorandum of law).

FOURTH CAUSE OF ACTION
Undue Preference and Unreasonable Discrimination

78. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege those paragraphs as though fully set forth at this point.

79. The Center for Art and Mindfulness, Inc., and its predecessor, the Lower Fairfield Art Center, Inc. “users of the mails” within the meaning of 39 USC Section 403(c), as is Cappelli Enterprises.

80. The Stamford Post Office provides services to mail users, such as the Center for Art and Mindfulness, Inc., as part of the Postal Service network.

81. The Postal Service, through its realtor, Cushman and Wakefield, determined to sell the Main Stamford Post Office through an auction, with bids due on May 31, 2012.

82. The Center for Art and Management, Inc., was the high bidder with a bid of \$5.5 million. This amount was subsequently reduced by \$500,000, because the building had asbestos in the basement, as determined by an environmental report the Center conducted as part of the due diligence process.

83. The only other bidder, Cappelli Enterprises, bid substantially less: \$3 million.

84. When the Center for Art and Management, Inc., tried to negotiate a contingent purchase agreement with a reasonable down payment and a year to raise the development money, the Postal Service declined.

85. Instead, the Postal Service went back to the significantly lower bidder, Cappelli Enterprises, and offered it the opportunity to purchase the building, and accepted its contingent

offer, allowing Cappelli one year in which to purchase the building while it looked for tenants and financing.

86. In sum, when dealing with the much higher bidder, the Center for Art and Management, Inc., the Postal Service pressed for a noncontingent firm transaction, but instead sold the building for an appreciably lower amount to the losing bidder, Cappelli Enterprises, while allowing it almost the same contingent terms which it had refused to allow for the Center.

87. In selling to the low bidder on preferential terms, the Postal Service has made an undue or reasonable discrimination against the Center for Art and Management, Inc., as a user of the mails, and it has granted an undue or unreasonable preference to another such user of the mails, Cappelli Enterprises, in violation of 39 USC Section 403(c).

WHEREFORE, the Plaintiffs pray for judgment against Defendants Donahoe and USPS as follows:

1. That an injunction be granted until such time as the USPS prepare a good faith EA/EIS and submit to the EPA for public review and input;
2. That an injunction be granted until such time as the USPS comply with the National Historical Preservation Act and follow the process established by Section 106 of that Act.
3. That an injunction be granted until such time as the USPS can show that it has met its public trust obligations.

4. That the USPS be prevented from undue and unreasonable discrimination against Plaintiff Center for Art and Management, Inc., and its purchase offer, and that it be enjoined from granting an undue and unreasonable preference to Cappelli Enterprises by accepting its purchase offer.

5. For its costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 USC §2412, or pursuant to any other applicable law/equity, and for such other relief as this Honorable Court deem just and proper.

DATED this 25th day of September, 2013.

**PLAINTIFFS,
THE NATIONAL POST OFFICE COLLABORATE, CENTER
FOR ART AND MINDFULNESS, INC., FORMERLY KNOWN
AS THE LOWER FAIRFIELD ART CENTER, INC., AND
KAYSAY H. ABRHA, AN INDIVIDUAL**

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