

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

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**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**

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Case No. \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EX PARTE  
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION  
FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

This Court should grant the Plaintiffs a temporary restraining order to preserve the status quo until an evidentiary hearing considering a preliminary injunction can be held. The Court should do this because the sale of the historic Stamford Post Office would cause irreparable harm to the citizens of Stamford, including the Plaintiffs, and because they are substantially likely to prevail on the merits (as the following pages show). Certainly there are serious questions at stake that are worthy of judicial determination.

Finally, the harm to Defendants will be minimal compared to the complete end to the hopes and dreams of the Plaintiffs.

### **FACTUAL BACKGROUND**

1. 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.

2. 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").

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

4. 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.

5. 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 20<sup>th</sup> Century, one hundred years ago.

6. 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.)

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

8. 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.

9. 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.

10. 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.

11. 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.

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

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

14. 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.

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

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

17. 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”).

18. 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.

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

20. 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.

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

22. 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***

23. 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.

24. 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***

25. 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).

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

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

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

29. 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).

30. 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***

31. 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).

32. 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.

33. 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.

34. 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***

35. 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).

36. 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).

37. 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).

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

39. 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***

40. 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.

41. 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.

42. 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).

43. 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).

44. 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).

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

**DEFENDANT IS ENTITLED TO AN INJUNCTION  
TO STAY THE SALE OF THE STAMFORD POST OFFICE**

46. Whether to grant or deny a motion for a temporary restraining order is within the Court's discretion. To secure a preliminary injunction in the Second Circuit, the moving party “must demonstrate: (1) irreparable harm, ‘and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make it a fair ground for litigation, and a balance of hardships tipping decidedly in its favor.’” *D.D. v. N.Y. City Bd.. Of Educ.*, 465 F.3d 503, 510 (2d Cir. 2006), quoting *Mony Group, Inc. v. Highfields Capital Mgmt., L.P.*, 368 F.3d 138, 143 (2d Cir. 2004).

47. The same standard applies when applying for a temporary restraining order. See *Ward v. Thomas*, 895 F. Supp. 401, 403 (D. Conn. 1995).

*Irreparable Harm*

48. The quintessential irreparable harm is the destruction of property. The loss of title to real estate is a close second. In the present circumstance Plaintiffs face both. The USPS seeks to sell the Stamford Post Office to developers who intend to demolish at least part of the structure and build high rise condominiums on the spot. Should the sale go forward as planned tomorrow, the public interest in the building would be lost forever. Once the property transfers away from the USPS, the court no longer has the power to enforce NEPA regulations against the new, non-government owner. *See, Environmental Rights Coalition, Inc. v. Austin, 780 F.Supp 584, 588 (SD Ind. 1991); cited by Fund for Animals v Babbit, 1995 U.S. Dist. LEXIS 21994 (D. Vt. 1995) (reversed, vacated, remanded on other grounds).* The status quo must be maintained to avoid irreparable harm.

*Substantially Likely to Prevail on the Merits*

49. Plaintiffs believe they are substantially likely to prevail on the merits of the causes of action presented in the complaint. For instance, the National Environmental Protection Act is clear that “major Federal actions significantly affecting the quality of the human environment” cannot proceed without an Environmental Assessment and, depending on the result of the Assessment, an Environmental Impact Statement. 42 USC §4332(2)(c).

50. The term “environment” is broadly defined. The USPS must determine as part of every Environmental Assessment “The degree to which the [proposed] action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for

listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.” 40 CFR §1508.27(b).

51. In this instance, the sale and destruction of the nearly 100 year old Stamford Post Office with its stunning American-Italian architecture and the timeless Tiffany and Co. brass plate art is certainly the loss or destruction of a significant cultural and historical resource. The Plaintiffs believe this passionately.

52. Likewise, the Plaintiffs believe that the failure of the USPS to document the impact of selling the Stamford Post Office is in clear violation of the National Historical Preservation Act (at Sections 106 and 470) upon the community and the building. Further, alternatives have to be considered which would minimize or eliminate any harmful impacts. This has not been done.

53. Plaintiffs also believe that their cause of action under the statutory requirement that the USPS not engage in undue preferences or unreasonable discrimination is likely to prevail on the merits. Clearly here the USPS accepted a bid \$2 million dollars lower than Plaintiff Lower Fairfield Art Center, Inc.’s bid. This seems to be unreasonable preference on its face.

*Serious Questions Going to the Merits*

54. If the above discussion of the causes of action does not convince the Court that the Plaintiffs are likely to prevail on the merits, it should be sufficient to show that there are serious questions going to the merits of the claims.

*Balance of Hardships*

55. If the temporary restraining order is granted, the sale of the Stamford Post Office will be delayed for up to 10 days until the hearing on the preliminary injunction. This is a trifling harm compared to the crushing blow the sale of the building would inflict on the Plaintiffs.

56. Finally, the public interest will certainly be served by the issuance of injunctive relief in this case. To allow the sale of the Stamford Post Office without first determining the complied with applicable law (as set forth herein) undermines the public interest.

### **CONCLUSION**

For all of the foregoing reasons, Plaintiffs requests that this Court enjoin the sale of the Stamford Post Office scheduled for September 25, 2013; enter an order to that

effect substantially similar to the proposed order attached hereto; schedule a hearing for a preliminary injunction and take any further actions that it deems are equitably required.

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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