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Robin Barnes-Shell
Executive Director

THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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October 27, 2020

David H. Van Dyke, County Auditor
Prince George's County Office of Audits and Investigations
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

RE: [REDACTED] - Potential Conflict of Interests

Dear Mr. Van Dyke,

As a result of an audit conducted by the Prince George's County Office of Audits and Investigations, you have inquired as to whether Mr. Brown's role as the Chair on the Board of Community Advocates for Family & Youth ("CAFY"), a nonprofit organization that received grant funds from the County, and his role [REDACTED] with the Prince George's County Government, is a potential conflict of interest. For the reasons discussed below [REDACTED] role as Chair of the Board of CAFY, an organization that received grant funding from the County and his role [REDACTED] with the County is not a conflict of interest.

BACKGROUND

The Office of Audits and Investigations (A&I) is currently performing an audit of non-departmental grants awarded by the Prince George's County Government (the County) to the nonprofit Community Advocates for Family & Youth (CAFY). CAFY assists anyone who becomes a victim of crime in Prince George's County, Maryland. Also, CAFY offers a wide range of services to the community including counseling, court education, and legal services. CAFY received grant funding from the County for various sources including the following:

Description	Total (FY15- FY20)
CCL - Domestic Violence	\$268,486
CCL - Non-Departmental	\$ 40,000
CCL - Special Appropriation	\$11,000
Local Development Council	\$119,826
CEX - Community Partnership	\$55,000

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DSS	\$110,593
Other	\$1,248
Grand Total	\$606,153

Non-departmental grant awards are subject to the discretion of the County Council. In this case, Mr. Brown was not a part of the review process or decision making during the grant process.

During the audit it was discovered that the CAFY had a lease agreement for office space managed/owned by the Chair of the Board of Directors for the organization, [REDACTED] (See **Attachment A**). [REDACTED] was first appointed [REDACTED] in 1998 and continues to serve in that capacity. The power to appoint [REDACTED] belongs exclusively to the County Executive. The Prince George's County Charter Section 712, requires the compensation received [REDACTED] to be included as part of the County's annual budget. The [REDACTED] position is a contract position and funding is expensed through an agreement between the Maryland-National Capital Park and Planning Commission and the contract attorney. Section 27-136 of the County Charter, states the duties [REDACTED] is to be independent and "protect the public interest and promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which sound land use decisions can be made." As a part of his duties, [REDACTED] regularly appears before the Council.

Pursuant to Ethics Code Section 2-294(a)(11), [REDACTED] is required to file a financial disclosure statement. [REDACTED] filed a financial disclosure statement with the Office of Ethics and Accountability disclosing six separate interests in real property including the property located at 1300 Caraway Court. [REDACTED] further disclosed his business interest in Caraway Court, LLC, but he did not disclose on his financial disclosure statement that he was serving as the Chair for CAFY. However, [REDACTED] did disclose that he was the Chair of CAFY on the non-departmental grant application.

Also, during the audit it was noted that monthly cash disbursements ranging from \$2,000 to \$5,000 (based on the terms of the lease agreement in place at the time) were being paid by CAFY directly to Stan Brown Law Offices (See **Attachment B**). The Rental Agreement is between CAFY and Caraway Court, LLC, for which Mr. Brown serves as the resident agent and managing partner (See **Attachment C**). According to the rental agreement, the current market value of the leased property was \$6,000 per month. However, the agreement provides that CAFY would pay monetary rent in the amount of \$3000 per month. In exchange for the reduced market rent Caraway Court, LLC would receive an in-kind charitable contribution of \$3000 per month to offset the loss of \$3000 market rate rent to the Caraway Court, LLC. The agreement stated that by no later than December 31st of each year CAFY would provide Caraway Court, LLC an in-kind charitable contribution receipt for the annual \$36,000 market value of the leased premises. The agreement further provides that the rent due for January and February 2018 was waived as an in-kind charitable contribution, and the March rent would be only \$2000. The Lease Agreement was signed by [REDACTED], in his capacity as the Managing Member of Caraway Court, LLC.

APPLICABLE LAW

The Prince George's County Code of Ethics (the "Code of Ethics") is intended to govern the actions of elected officials, appointed officials,¹ and employees. The Code of Ethics seeks to ensure that trust is not eroded and that there is no improper influence, actual or the appearance thereof, in County Government.

Code of Ethics 2-290 (a) and (b), Statement of purpose and policy

- (a) The Prince George's County Council, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgement of public officials and employees will be maintained.
- (b) It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence and even the appearance of improper influence.
- (d) It is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

Sec. 2-293. - Prohibited conduct and interests.

- (a) Participation Prohibitions. Except as permitted by Board regulations or opinion, an official or employee may not participate in:
 - (1) Any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to his knowledge, he, his spouse, parent, child, brother, or sister has an interest therein.
 - (2) Any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, when any of the following is a party thereto:
 - (A) Any business entity in which he has a direct financial interest of which he may reasonably be expected to know;
 - (B) Any business entity of which he is an officer, director, trustee, partner, or employee, or in which any of the above-listed relatives has this interest;

¹ **Official** means an elected official, an employee of the County, or a person appointed to or employed by the County or any County agency, board, commission, or similar entity whether paid in whole or in part with County funds and whether or not compensated

(C) Any business entity with which he or, to his knowledge, any of the relatives listed in paragraph (1) of this Subsection is negotiating or has any arrangement concerning prospective employment;

(D) Any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any of the above-named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;

Sec. 2-293. Prohibited conduct and interests.

(d) Solicitation or Acceptance of Gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) No official or employee may knowingly accept any gift, directly or indirectly, from any person that he knows or has reason to know:

(A) Is doing business with or seeking to do business with the Council, as to members thereof, or, as to other officials or employees, with their office, agency, board, or commission;

(B) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duty; or

(C) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(D) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

ANALYSIS

In applying the provisions of the Ethics Code to the facts of the instant case, there are three provisions that are relevant to your inquiry regarding [REDACTED]. Firstly, Section 2-293(a) prohibits a County official or employee from participating in any matter with an entity he is an officer, director, trustee, partner, or employee. Secondly, Section 2-293(d) of the Code prohibits a County official or employee from soliciting gifts or knowingly accepting any gift, directly or indirectly from a person he knows is doing business with or seeking to do business with the Council as to its members or other officials or employees, with their office agency, board or commission. A gift is defined by Section 2-291(a)(6) as the transfer of anything of economic value regardless of the form without adequate and lawful consideration. Thirdly, Section 2-290 of the Ethics Code provides that the people have a right

to be assured that the impartiality and independent judgement of public officials and employees will be maintained.

In the case at hand, [REDACTED] serves as the Chair of CAFY, an organization that received grant funding from the County. CAFY entered into a lease agreement with Caraway Court, LLC to rent two condominium units located in Largo, Maryland (**See Attachment A**). Although the market value of the leased units was \$6000.00, per the agreement, CAFY agreed to pay rent in the amount of \$3000.00 per month. In exchange for the reduced market rent, Caraway Court, LLC was to receive an in-kind charitable contribution of \$3000.00 per month to offset the loss of the \$3000.00 market rate rent to Caraway Court, LLC. In addition to serving as the Chair for the CAFY Board, [REDACTED] serves as the principal partner and resident agent for Caraway Court, LLC (**See Attachment B**). Section 2-293 (a)(2)(b) provides that an official may not participate in any matter involving a business entity of which he is an officer, director, trustee, partner, or employee.

As [REDACTED], [REDACTED] appears at all hearings on zoning matters to protect the interests of the citizens and residents of Prince George's County, Maryland. [REDACTED] is not acting in his capacity [REDACTED] regarding the lease agreement between CAFY and Caraway Court, LLC. It appears his involvement with CAFY is separate and distinct from his position as [REDACTED]. CAFY offers counseling, court education, and legal services to the citizens and residents of Prince George's County, Maryland, whereas, [REDACTED] addresses zoning matters in the County. [REDACTED] signed the lease agreement as the Managing Member of Caraway Court, LLC and not as [REDACTED]. The Office of Ethics and Accountability has not received any information or documentation in connection with the CAFY/Caraway Court, LLC lease agreement referencing [REDACTED] in his capacity as [REDACTED] in any way. Also, it is important to note that [REDACTED], as [REDACTED] has no authority to impact or influence the County Council's decisions regarding funding awarded to CAFY. Funding for grants to non-profit organizations such as CAFY is included in the County Executive's proposed annual budget, which is approved by the Council, after, the budget process. Here, [REDACTED] was not a part of the review process or decision making during the grant process.

Section 2-293(d)(3)(a) further provides that "no official or employee may knowingly accept any gift, directly or indirectly, from any person that he knows or has reason to know: is doing business with or seeking to do business with the Council, as to members thereof, or, as to other officials or employees, with their office, agency, board, or commission." It can be argued that CAFY's agreement to pay reduced market rent and in exchange for this reduced rate, Caraway Court, LLC was to receive an in-kind charitable contribution of \$3000.00 to offset loss of the market rate rent is a financial benefit to [REDACTED]. Caraway Court, LLC is receiving rent from CAFY to utilize two condominium units per the lease agreement. As a limited liability Company, Caraway Court, LLC, is a business structure that can combine the pass-through taxation of a partnership or sole proprietorship with the limited liability of a corporation. CAFY is paying [REDACTED] firm rent monies, which come from County grant funding approved by the County Council, and he is receiving a tax benefit from the in-kind charitable contributions. Once again, in this scenario, [REDACTED] firm is receiving payment from CAFY on behalf of Caraway Court, LLC, and he is not involved in this transaction as [REDACTED]. Furthermore, CAFY is not a County agency, board or commission. Here, [REDACTED] as the Managing Member of Caraway Court, LLC is accepting an in-

kind contribution on behalf of Caraway Court, LLC from CAFY, a non-County entity that is receiving County funds.

However, the fact that [REDACTED] is the Chair of CAFY and has entered into an agreement with Caraway Court, LLC, of which he serves as its Managing Member proves to be quite problematic. [REDACTED] wears several hats as the Managing Member of Caraway Court, LLC, attorney for [REDACTED], Chair on the Board of CAFY and [REDACTED]. The roles are not clearly delineated, and it is hard to determine when he is working in different capacities. [REDACTED] is appointed by the County Executive and confirmed by the County Council as [REDACTED]. Thus, he is subject to the County Ethics Code as an official of the County. Pursuant to AP-152, "The County position is viewed as primary employment and all other employment is considered secondary employment." County Administrative Procedure 152 was developed to provide guidance to County employees and officials and their respective Department Heads, in determining whether an employee's or official's outside employment is prohibited by the Code of Ethics. AP-152 provides Department Heads with a checklist to assist in evaluating whether a conflict of interests may exist with an employee's secondary employer.² Negative responses to the checklist indicate that a conflict of interest may exist, and further review is required to determine if an exception to the prohibition may be granted. The criteria to consider are:

- A. The [County] duties do not significantly impact on the outside employer or a contract between the outside employer and the agency.
- B. The employee is not directly supervised by a person whose duties significantly impact on the outside employer or a contract between the outside employer and the agency.
- C. The employee does not supervise a person whose duties significantly impact the outside employer or a contract between the outside employer and the agency.
- D. The employee is not affiliated with the specific unit in the agency that exercises authority over or contracts with the outside employer.
- E. The employee has complied with other relevant sections of the [Code of Ethics].
- F. The outside employment involves no non-ministerial duties significantly relating to the agency's authority over the employer.
- G. The employee's duties do not involve negotiating or carrying out a contract between the agency and the outside employer (except for broad fixed reimbursement contracts).
- H. The private compensation is not directly funded by the [County] contract.
- I. The specific employment circumstances do not otherwise create a conflict of interest or the appearance of a conflict.

² In this matter, the Council Administrator would review the secondary employment activities of the People's Zoning Counsel.

There is no connection or direct conflict between [REDACTED] role as [REDACTED] and his serving as the Board Chair for CAFY. It is important to note as a County official under the Ethics Code Section 2-294 [REDACTED] has an obligation to disclose any position, he holds on a County board or commission, which was not done in this case. Applying the facts of this matter to the criteria outlined above and the requirements of Administrative Procedure 152, the secondary employment of [REDACTED] as the Chair for CAFY would not be prohibited.

However, [REDACTED] functioning in four different roles which intermingle at times creates an appearance of a violation or conflict of interest. [REDACTED] is not maintaining safeguards that would clearly show that each role is separate and distinct from the other. Although there is no direct violation of the Code of Ethics this does not reflect well on the People's Zoning Counsel. The Code of Ethics seeks to ensure that trust is not eroded and that there is no improper influence, actual or the appearance thereof, in County Government. This confidence and trust disappear when the conduct of the County's business is subject to improper influence or the appearance of improper influence. The Ethics Code further provides that people have the right to be assured that the impartiality and independent judgment of public officials and employees will be maintained. Clearly, [REDACTED] involvement on both sides of the agreement in which his business is receiving monies creates an appearance of impropriety which can bring the County into disrepute. Thus, it is essential and important that [REDACTED], as a County Official avoid the appearance of impartiality and improper influence.

CONCLUSION

For the reasons discussed herein, we conclude that based on the facts as presented by the Office of Audits and Investigations in your request and the information reasonably obtained by OEA, the County was aware from the grant application that [REDACTED] was Chair on the Board of Community Advocates for Family & Youth ("CAFY"), and still made the decision to accept the application and move forward with doing business with [REDACTED] in this capacity. There is no conflict of interest with [REDACTED] role as Board Chair of CAFY, a nonprofit organization that received grant funds from the County, and his role [REDACTED] with the Prince George's County Government. However, as a County official he is required under the ethics code to disclose any position he holds on a County board or commission.

I trust the information provided herein will be of assistance to you. If you have any questions or need further information, please contact the Office of Ethics and Accountability at 301-883-3445.

Sincerely,



Cassandra Burckhalter
Board Chair

cc: Robin Barnes Shell, Executive Director, OEA

9201 Basil Court, Suite 155, Largo, Maryland 20774
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