



Angela D. Alsobrooks
County Executive

Robin Barnes-Shell
Executive Director

THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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May 13, 2021

[REDACTED]

RE: Financial Disclosure Statement - Prohibited Conduct – Conflict of Interest

Dear [REDACTED],

As a County Council Member, you have inquired as to whether your broker representation work with the White Rose Foundation in the purchase of condominium space within a proposed Mission First HDC and Lisa Bolden Development Corporation Senior Housing Development, located in the City of Suitland in Prince George's County, Maryland must be disclosed in the Financial Disclosure Statement you are required to file with the Office of Ethics and Accountability. Please note as it relates to this advisory opinion that advice is only provided for something the requestor intends to do, not for behavior that has already occurred. Any information of past behavior provided in requests deemed to have been a violation of the County's Code of Ethics or Ethics and Accountability Law may be used against the official or employee in any subsequent OEA investigation/referral or Board of Ethics enforcement action.

Section 2-294(a)(1) of the Ethics Code provides that members of County Council are required to file financial disclosure statements. Section 2-294(e)(5) further provides that all statements filed pursuant to this Section shall disclose employment with or interest in entities doing business with the County. Additionally, pursuant to Section 2-294(e)(8) you are required to disclose the name and address of each place of salaried employment and of each business entity of which you are a sole or partial owner and from which you received earned income, at any time during the year for which the statement is filed. Therefore, you are required to disclose your broker representation work with the White Rose Foundation. As a result of this inquiry, your broker relationship with the White Rose Foundation has raised other possible Code of Ethics issues that must be addressed at this time. Thus, guidance will be given on the following issues: (i) what secondary employment restrictions exist for you as a County Council official and (ii) whether and to what extent as a Council Member you may need to recuse yourself from Council matters in which your business

has an interest. For the reasons discussed below you are required to consult with the Board of Ethics regarding the permissibility to engage in secondary-employment work as a broker with any business entity especially an entity doing business with the County.

BACKGROUND

You are the owner and president of [REDACTED] LLC, which is a Commercial Real Estate Brokerage firm. You are the firm's primary broker. In December of 2018, you became a County Council Member for District 8. The constituent areas for your district include Andrews Air Force Base, Camp Springs, Clinton, Forest Heights, Fort Washington, Glass Manor, Marlow Heights, Oxon Hill and Temple Hills. Currently, you are working as a broker with the White Rose Foundation in the purchase of condominium space within a proposed Mission First HDC and Lisa Bolden Development Corporation Senior Housing Development located in the City of Suitland in Prince George's County, Maryland. The purchase of the site is scheduled to close in October 2020. The White Rose Foundation of Prince George's County Maryland ("WRF") is also the charitable arm of the Prince George's County Maryland Chapter of the Links, Incorporated. In addition, it partners with other nonprofit organizations, for profit companies, County, State, and Federal Governmental Entities, and other institutions to implement transformative programs that address the societal structures which result in disparities in the areas of education, health and economics for youth, men, women and seniors in the community.

The WRF received funds to purchase the site referenced above from both the State of Maryland, as well as Prince George's County through the Community Development Block Grant ("CDBG"). You stated that WRF was awarded the funding from the County in 2018, before your tenure on the Council. However, the CDBG agreement entered into between Prince George's County, Maryland on behalf of the Prince George's County Department of Housing and Community Development and the Operating Agency, WRF, indicated that the term of performance was from a start date effective as of July 1, 2019 to an end date of December 31, 2020. Furthermore, under Attachment A of the Agreement, the Scope of Services provides that the WRF "shall assure that CDBG funds (Attachment B) are used to support the acquisition and buildout of onsite office space to host programs for the seniors at the Suitland Senior Residences. Approximately 137 individuals will benefit from this project." **(See PY 45 Community Development Block Grant (CDBG) Agreement)** Pursuant to this agreement the project budget provided the total CDBG costs to be Three Hundred Fifty Thousand (\$350,000.00).

Also, it is important to note that the CDBG agreement includes a Revised Estimated Activities Schedule which describes a complete build-out of activities to start on October 1, 2020 with a completion date of December 31, 2020. Additionally, Attachment 2 of the agreement outlines the supplemental budget of the project which indicates that the WRF will seek additional funding by applying for the Prince George's County Council Community Partnership Grant. You indicated during your initial inquiry to OEA that you were waiting to receive fees or a payment as a result of your broker relationship with the WRF on this project. However, you have now confirmed that a 3% commission of \$22,500 is to be paid to you for your services at the time of settlement.

On November 19, 2019, Resolution CR-83-2019 was adopted by the County Council concerning the Fiscal Year 2020 Annual Action Plan for Housing and Community Development.¹ This resolution addresses the reallocation of funds from various fiscal years for the CDBG. The County Council received funding recommendations including a recommendation for the WRF to receive \$350,000.00 for a Suitland location (**See Attachment A**). The County Council adopted the resolution with 11 council members, including yourself, voting in favor of the resolution (**See Attachment A Agenda Item Summary**). The County Council adopted Resolution CR-046-2020 on July 21, 2020 concerning Fiscal Year 2021.² It was recommended that the WRF receive funding in the amount of \$405,278.00 under CR-046-2020. The County Council adopted this resolution with 11 council members, including yourself, voting in favor of the resolution (**See Attachment B Agenda Item Summary**). Also, there is CR-56-2019 which was adopted July 23, 2019 concerning Payments in Lieu of Taxes for the Senior Residences in Suitland.³ Similar to CR-0862019 and CR-046-2020, the County Council adopted this resolution with 11 council members, including yourself, voting in favor of the resolution (**See Attachment C Agenda Item Summary**).

Also, as a result of this inquiry, OEA received information from the Council Administrator that during Fiscal Year 2019 the WRF was a recipient of a \$5,000.00 grant from your office.

ANALYSIS

The Code of Ethics is intended to ensure that the conduct of the County's business is free from even the appearance of partiality, favoritism or pressure. County employees and officials must always act impartially and with independent judgment to avoid even the appearance of a conflict of interest. The intention of the Code of Ethics is that the provisions set forth therein be liberally construed to accomplish this purpose.⁴ For the purpose of applicability of the Code, your County position is viewed as primary employment and all other employment, including ownership of a private business is considered secondary employment.

¹ CR-83-2019 A RESOLUTION CONCERNING FISCAL YEAR 2020 ANNUAL ACTION PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT for the purpose of amending the Prince George's County Fiscal Year ("FY") 2020 Annual Action Plan for Housing and Community Development by adding eligible Community Development Block Grant ("CDBG") Program activities not originally funded or described in the FY 2020 Annual Action Plan, and the reprogramming and reallocating of two million, eighty seven thousand, eight hundred seventy eight dollars and sixty-six cents (\$2,087,878.66) in Community Development Block Grant ("CDBG") funds from the County FY 2014, FY 2015, FY 2016, FY 2017, FY 2018 and FY 2019 Annual Action Plans funds to support the activities.

² CR-046-2020 A RESOLUTION CONCERNING FISCAL YEAR ("FY") 2021 ANNUAL ACTION PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT for the purpose of approving and adopting the Prince George's County Fiscal Year ("FY") 2021 Annual Action Plan for Housing and Community Development ("FY 2021 Annual Action Plan").

³ CR-056-2029 A RESOLUTION CONCERNING PAYMENTS IN LIEU OF TAXES ("PILOT") AGREEMENT for Suitland Senior Residences at Town Square for the purpose of approving the terms and conditions of a Payments in Lieu of Taxes ("PILOT") Agreement between Prince George's County, Maryland (the "County") and Suitland Senior, LLC (the "Owner").

⁴ See, Prince George's County Code of Ethics § 2-290-Statement of purpose and policy.

I. Secondary Employment

First, Section 2-293(b), of the Ethics Code states that except as permitted by regulation of the Board of Ethics (the "Board") when such interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official⁵ or employee⁶ may not:

- (i) Be employed by, or have a financial interest in, any entity subject to his authority or that of the County agency, board, or commission with which he is affiliated or any entity which is negotiating or has entered a contract with that agency, board, or commission; or*
- (ii) Hold any other employment relationship which would impair the impartiality or independence of judgment of the official or employee.*

The Ethics Code prohibits officials and employees from engaging in secondary employment that is directly related to an employee's County duties, unless those duties are administrative and ministerial in nature. This prohibition does not apply to an employee whose duties are ministerial, unless the proposed employment creates a conflict of interest or the appearance of conflict of interest. County Administrative Procedure 152 (AP-152), was developed to provide guidance to County employees, officials and Department Heads, in determining whether an employee's or official's outside employment is prohibited by the Code of Ethics. Because you are an Elected Official, consultation with the County Administrator and the Office of Ethics and Accountability regarding any secondary employment is necessary to avoid actual or apparent conflict of interests. Any employee or official that is engaged in secondary employment should only be doing so with the appropriate approvals and advice in compliance with the Code and Administrative Procedure 152, as applicable. **(See Attachment D-Administrative Procedure 152).**

There is a presumed conflict of interest regarding actions taken by you on behalf of any person or business entity that is either doing or seeking to do business with the County, or one which has a contractual or regulatory obligation involving the County and subject to the authority of the County Council. Similarly, there is a presumed conflict of interest for you to be involved in any matters in your official capacity if you would also financially benefit from those matters. The conflicts created by the proposed private business association with the WRF would exist regardless of whether you were acting as the direct broker for the WRF in the purchase of a condominium site in Suitland Maryland or if you were instead acting in another capacity that would ultimately result in a financial benefit to you. In this case, the developers are seeking to purchase and build commercial space in the County. As a broker to WRF, you stated before that

⁵ 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 or not paid in whole or in part with County funds and whether or not compensated.

⁶ Employee means an individual who is employed by the County. Employee does not include an elected local official. Employee does not include an employee of: (A) The offices of the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court; (B) The County Health Department; or (C) The County Department of Social Services.

you provide advisory services which may include assistance with zoning issues. Matters such as zoning are subject to the authority of the County Council acting as the District Council. This would also potentially involve other County agencies such as the Department of the Environment, Department of Permitting, Inspections and Enforcement. Those agencies are subject to the authority of the Council.

In this case, you are acting as the broker for the WRF. The WRF has entered into an agreement with Prince George's County, who is acting on behalf of the Department of Housing and Community Development to obtain funding from the CDBG. This is problematic, because ultimately the CDBG must be approved by the County Council. Not to mention that you will receive a financial benefit as a result of your broker relationship with the WRF. Here, there is a presumed conflict of interest regarding actions taken by you for a business entity seeking to do business with the County or one which has a contractual or regulatory obligation involving the County and subject to the authority of a County agency and the County Council. Activities involving such entities would generally be prohibited. Likewise, you would be prohibited from participating in any activities on behalf of an entity that would be adverse to the interests of the County or in competition with the County. Great care should be taken to guard against potential matters that could be directly or tangentially related to the County and/or your official activities or training as a County Council member or related County activities. It would be advisable to evaluate the extent to which the County's interest and that of any potential client may overlap. This evaluation of potential, actual, or perceived conflicts should extend to the activities of all other employees employed by your company as their actions may be ascribed to you.

Previously, you stated that you are a member of the boards for The Community Foundation in Prince George's County, the Links Incorporated and the St. Ann's Center for Children, Youth and Families. However, you just recently informed Counsel for OEA that you are not a board member of the Links Incorporated. Your membership on these boards is uncompensated. As part of your responsibilities on those Boards you assist in their fundraising efforts. For the purpose of applicability of the Ethics Code uncompensated service on a board is considered secondary employment. The same conflict of interest prohibitions would apply. Section 2-293(b) would prohibit you from serving on any board that is doing business with the County or that has contractual or regulatory obligations involving the County, and subject to the authority of the County Council or another County agency. If your duties on any of the boards involve fundraising, you may not target people or entities doing business with the County as part of those fundraising efforts. If any issues arise that would involve your participation as a Council Member in a matter that affects the interests of any of the boards of which you are a member, you should seek ethics advice on the matter and as discussed in detail below, file any necessary affidavits with the Council and Board of Ethics as appropriate.

Secondly, Section 2-293(c), Use of Prestige of Office, of the Ethics Code states that an official or employee may not intentionally use the prestige of his office for his own private gain or that of another. The performance of usual and customary constituent services does not constitute the use of the prestige of office for private gain or that of another. Constituent services are those services performed without bias or favoritism, offered to others similarly situated on an

equal basis without additional compensation. These provisions have been interpreted as prohibiting the County from endorsing or promoting commercial activities. As a County official you would be prohibited from using the prestige of your County office and title or any reference to your position with the County in literature, solicitations, advertising and other materials to assist in promoting [REDACTED], or other business with which your company is affiliated, as well as any other entities such as the organizations in which serve as a member of their board. The nature of your position in the County requires you to interact with various individuals in the local, state and federal government, as well as in the public and private sector. It may be difficult for people to separate you from your association with the County and could lead to confusion as to whether you're acting in an official capacity as a County official or merely acting as a private citizen. Confusion by the public or others as to your role could result in an inference of the County's endorsement of your private activities, which would be prohibited under the Ethics Code. It would be incumbent upon you to exercise great care to ensure that all persons with whom you engage on behalf of [REDACTED], LLC or its clients [current and prospective] and the boards on which you serve, that you are not in any way acting in your official capacity as a County official. You would also be prohibited from identifying yourself as a County official while engaged in your secondary employment.

Further, Section 2-293(g) of the Ethics Code, prohibits the disclosure of confidential information which has been acquired by reason of your position with the County and which is not available to the public. This would include your access to personal information such as phone numbers, emails and home addresses of your County contacts.

Lastly, any income earned as a result of secondary employment will need to be reported on the annual Financial Disclosure Statement filed by you and any of your staff who are also required to file. This would include any gifts received that are not otherwise exempted by the Code even if given in connection to your secondary employment.

II. Participation

Further, Section 2-293(a) of the Ethics Code prohibits a County official from participation in any matter in which they have an interest, including a financial interest; or in matters where a business entity in which they have 1) an employment interest, 2) applied for employment, or 3) a direct financial interest, is a party to the matter. The Ethics Code does not make an exception for interests that were created prior to the official's affiliation with the County. If those interests continue during the time in which the official wishes to participate in a matter, the participation is prohibited.

There is a presumed conflict of interest regarding actions taken by you on behalf of any person or business entity that is either doing or is seeking to do business with the County, or one which has a contractual or regulatory obligation involving the County and is therefore subject to the authority of the County Council. Similarly, there is a presumed conflict of interest with your involvement in any matters in your official capacity if you would receive a financial interest in

those matters. Whether you act as the broker for the WRF of the Development in Suitland or in any of the other proposed arrangements in which you and/or your business would be involved in bringing tenants to property, would result in you having an interest in a business that is doing business with the County. In this case, as stated earlier, you are the broker for the WRF, which received funding from the CDBG to purchase the condominiums for senior residents in Suitland, Maryland.

In 2019, the County Council voted to adopt CR-083-2019 and CR-046-2019, which both addressed the funding for the CDBG (**See Attachment B and C**). The County Council voted 11-0 to adopt both resolutions, including a favorable vote from you on both matters. The WRF received \$350,000.00 as a result of the vote on CR-083-2019, and it received 405,758.00 as a result of the vote on CR-046-2019 (**See Attachment A and B**). The WRF signed the PY 45 CDBG Agreement with Prince George's County, Maryland on behalf of the Prince George's County Department of Housing and Community Development (**See PY 45 Community Development Block Grant (CDBG) Agreement**). Moreover, you have indicated that a 3% commission of \$22,500 is to be paid to you for your services at the time of settlement. Not only are you employed by the WRF as its broker, but you have a direct financial interest as you are receiving monies as a result of the business deal.

Also, as a result of this inquiry, OEA received information from the Council Administrator that during Fiscal Year 2019 the WRF was a recipient of a \$5000.00 grant from your office. The Special Appropriation Grant provides that each council member allocates grant funding to a nonprofit organization. The council member has an amount of \$100,000 to award as a single grant or can break up the funds and award numerous grants to a non-profit organization. There is a grant team that approves the grant application, however, with Special Appropriation grants the council member decides which organization gets the grant. In your case, you allocated \$5,000.00 to the WRF which you are employed by as its broker. This is a problem because the WRF does a great deal of business with the County and seeks funding that requires approval from the County Council of which you are a member. You are in direct violation of 2-293(a) and prohibited as a County Council Member from participating in any matter where a business entity in which you have an employment interest or a direct financial interest, is a party to the matter.

Section 2-293(a)(2)(D) of the Ethics Code states that an official or employee may not participate in any matter involving a business entity that is a party to an existing contract with the official or employee or his relatives (spouse, brother, sister, parent child), if the contract could reasonably be expected to result in a conflict between the private interest of the official or employee and his official duties. The intent of the restriction is to avoid improper influence or the appearance of improper influence in order to maintain public trust in County government. The County's Code of Ethics is to be liberally construed to accomplish this purpose.

III. Conflicts of Interest: County Council

Ethics Code Section 2-293.01 (County Council; affidavit of impartiality) states:

**9201 Basil Court, Suite 155, Largo, Maryland 20774
MAIN (301) 883-3445 FAX (301) 883-3450 MD RELAY SERVICE 711**

(a) A County Council Member who believes there to be an appearance of conflict or a possible actual conflict under Section 2-293 of this Code with respect to legislative matters pending before the County Council, who proposes to participate, may file a sworn statement with the Clerk of the Council and the Board of Ethics which describes the circumstances of the appearance of conflict or the possible actual conflict and the legislation to which it relates, asserting that the Council Member is able to vote and otherwise participate in legislative action relating thereto fairly, objectively, and in the public interest. All sworn statements filed pursuant to this Section are available for public review.

(b) A public statement filed pursuant to this Section shall be filed with the Board of Ethics sufficiently in advance of taking action for review by the Board of Ethics prior to the action or as soon as reasonably possible, whichever is sooner. The Board of Ethics shall review the statement prior to the proposed action by the Council Member where possible and advise the Council Member if it concurs in the determination that participation can be allowed under Section 2-293. Where the Board of Ethics is unable to review the statement prior to official action, it shall review the statement to determine if it concurs with the action of the Council Member. If the Board of Ethics does not concur with the Council Member, it may file a complaint, provide advice, or take other appropriate action. If a complaint is filed by or with the Board of Ethics relating to the action and disclosure, the Board of Ethics shall immediately provide written notice of the complaint to the Council Member.

(c) Notwithstanding Section 2-293, a Council Member who would be disqualified from participation in a legislative matter shall disclose the nature and circumstances of the conflict and may participate if the disqualification would leave the body with less than a quorum capable of acting.

The procedure described above should be followed in any circumstance in which you believe there is a potential overlap of interests between your duties as a Council Member and your secondary employment activities. In this case, you did not file an affidavit for the matters you voted on related to the funding for the WRF. It is incumbent upon you to be aware of the possibility of real or perceived conflicts created by your secondary employment or other activities and when it is appropriate to file the affidavit.

CONCLUSION

In conclusion, the purpose of the Ethics Code is to assure the citizens that County officials and employees will maintain impartiality and independent judgment in a manner that is not subject to improper influence or the appearance of improper influence. Pursuant to the County Ethics Code Section 2-294 you are required to disclose your broker representation work with the White Rose Foundation. For the purpose of applicability of the Code, your County position as a Council Member is viewed as primary employment and all other employment, including your ownership

of [REDACTED], LLC, which is a Commercial Real Estate Brokerage firm is considered secondary employment. Moreover, for the reasons discussed herein, we conclude that based on the facts as presented by you in your request and the information reasonably obtained by OEA, you are required to consult with the Board of Ethics regarding the permissibility to engage in secondary employment work as a broker with any business entity especially an entity doing business with the County. However, you are in direct violation of Section 2-293(a) and prohibited as a County Council Member from participating in any matter where a business entity in which you have an employment interest or a direct financial interest, is a party to the matter. It is recommended that you file an affidavit in accordance with Section 2-293.01 and recuse yourself from any matter coming before the County Council involving an entity you work with or have a business relationship of any sort that does business with the County Council. Lastly, please understand that pursuant to Ethics Code Section 2-297, the Board of Ethics can take appropriate action if you are found to be in violation of any provision of the Prince County Ethics Code.

I trust the information provided herein will assist you in your future endeavor. 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