



## THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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### BOARD FINANCIAL DISCLOSURE STATEMENT WAIVER DECISION

August 28, 2014

[REDACTED]  
Accokeek Development Review District Commission  
[REDACTED]

Re: Case Number: 15-2013(2)

Dear [REDACTED],

We have reviewed the request made by members of the Accokeek Development Review District Commission (the "Commission"), dated June 26, 2014, seeking a waiver from the filing of Financial Disclosure Statements. In analyzing the Commission's request for waiver, an examination was made of Executive Order No. 13-2014, as well as the Prince George's County Code (the "Code"), in particular, Sections 2 and 24 dealing with Ethics and Development Review Districts, respectively. For the following reasons, the Commission should be required to file financial disclosure statements:

### **ANALYSIS**

#### **A. Section 2-294**

Section 2-294(a)(34) of the Code requires certain officials, employees, and/or appointees of the County government whom the County Executive designates by Executive Order to file financial disclosure statements as provided in the Section. Officials subject to this disclosure requirement must be "directly responsible for making governmental decisions, policy or taking governmental action pursuant to any such decision or policy or recommending any such decision, policy or action with regard to:

- (A) Procurement or contracting;
- (B) Administering or monitoring grants or subsidies

- (C) Planning and zoning;
- (D) Inspecting, licensing, regulating, or auditing any nongovernmental enterprise; and
- (E) Other activities where the decision, action or policy might have significant economic impact on the interests of any nongovernmental enterprise.”

In 1997, the Commission was created pursuant to legislation enacted by the Prince George’s County Council (the “County Council”), to review and comment on all applications for subdivision of land located within the Accokeek Road Corridor boundaries and to be a party of record in all zoning and subdivision matters for which parties of record are identified involving property within the Commission’s boundaries that are before the Zoning Hearing Examiner, the Planning Board, or the District Council.<sup>1</sup> As a “Development Review District Commission,” the Commission is entitled to notification, review, and the opportunity for comment on any zoning case or “Comprehensive Design Plan” within its boundaries that is filed with the Planning Board.<sup>2</sup> Section 24-144 of the Code states that the purpose of a Development Review District is to:

- (1) “Promote those qualities in the environment which bring value to the County;
- (2) Foster the attractiveness and functional utility of developing areas of the County and enhance the desirability of the County as a place to live and work;
- (3) Preserve the integrity, quality, and discernible character of identifiable areas of the County;
- (4) Protect public investments in the County as a whole;
- (5) Raise the level of community expectations for the quality of its environment within the County;
- (6) Preserve property values and thereby promote the health, safety, and general welfare of the citizens of the County in general; and
- (7) Contribute to the attractiveness of the County so as to maintain and improve the economic value and stability of the property therein.”

As a body enacted pursuant to statute, the Commission, along with other boards and commissions, compose a formal system through which citizens can advise the County Executive and County Council on major issues affecting the County. Although the Commission’s role may not be one of a decision making process or of having final say in a matter, the Commission is responsible to the County Executive and the County Council. With its opportunity for review and comment on all applications for subdivision of land located within its boundaries, the Commission effectively recommends action with regard to planning and zoning matters, the very concern expressed in Section 2-294(a)(34)(C). Thus, it is no understatement to say that members who serve on the Commission are part of an important process involving the development of land in Accokeek, Maryland.

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<sup>1</sup> See Prince George’s County Code Section 27-687.

<sup>2</sup> *Id.*

## B. “Official”

Furthermore, members of the Commission should be required to file financial disclosure statements because they are considered “officials” of the County. In 2012, the County Council expanded the term “**official**” to mean “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.”<sup>3</sup> The reasons given for this amendment include the need to comply with State law and the “recogni[tion] that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees...” The County Council went on to declare “that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained...[that] 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...[and so] [f]or the purpose of guarding against improper influence, the County Council enacts this Code of Ethics to require County elected officials, officials, [and] employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for their conduct of local business...[and that] it is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.”<sup>4</sup> It is important to note that not only was the Code revised to include and define the word “official” but it was also amended to add and subject boards and commissions to financial disclosure.<sup>5</sup>

A member of the Commission is considered an “official” under the meaning of the term as defined in the Ethics Code. The Commission is comprised of nine (9) members, who represent landowners, residents and developers. Members serve 3-year staggered terms. Of the 9 members of the Commission, at least five (5) must be resident property owners within the boundaries of the Commission. It is immaterial that members of the Commission are not paid and or receive no stipend. It is also irrelevant that the Commission receives no funds from the County, or for that matter, that it receives a budget of \$1,000.00 from the Maryland-National Capital Park & Planning Commission. Members of the Commission are still considered officials of the County whether they receive remuneration or not. It is the County Executive who establishes a commission subject to confirmation by the County Council following a public hearing. The County Executive also designates one member of the Commission to serve as Chairman and one member to serve as vice-chairman. Commission members serve until their successors are appointed or qualified. The Commission also has the power to adopt rules and procedures that are subject to approval by both the County Executive and the County Council.<sup>6</sup>

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<sup>3</sup> See Prince George’s County Code Section 2-191 and CB-36-2012.

<sup>4</sup> *Id.*

<sup>5</sup> Underscoring indicates language added to existing law. [Brackets] indicate *emphasis* added by the above-signed.

<sup>6</sup> See Prince George’s County Code Section 24-146.

### **C. Executive Order No. 13-2014**

Lastly, a review of Executive Order No. 13-2014, as promulgated pursuant to Section 2-294 (34) of the Code, lists the Commission as one of 48 boards and commissions designated by the County Executive as being required to file financial disclosure statements. Executive Order No. 13-2014 was issued to further the public trust and to set minimum standards for the conduct of local business by members of boards and commissions. Through the disclosure of relevant financial information, the impartiality and independent judgment of board and commission members can be assured. Executive Order No. 13-2014 serves to bring into compliance those boards and commissions not expressly captured in Section 2-294 of the Code. Although not enumerated in Section 2-294, the functions of the boards and commissions listed in Executive Order 13-2014 implicate the requirements of the Section. Executive Order 13-2014 became effective on April 23, 2014.

### **CONCLUSION**

In conclusion, and with the intent of the County Council in mind – that provisions of the Ethics Code are to be broadly applied in order to effectuate its purpose, the Commission's request for waiver was analyzed under the Ethics Code and the Commission's enabling statutes. The Commission should be required to file financial disclosure statements because 1) Section 24-147 of the Code states that the Commission's work entails reviewing, commenting, and being a party of record in all zoning and subdivision matters within its boundaries that come before the Zoning Hearing Examiner, the Planning Board, or the District Council; 2) the Commissions members are "officials" as defined in Section 2-191 of the Code; and 3) a review of Executive Order No. 13-2014, as promulgated pursuant to Section 2-294(a)(34) of the Code, lists the Commission as one of 48 boards and commissions designated by the County Executive as being required to file financial disclosure statements due to the significance of their work.

'Channel[ing] public input into planning decisions,' as quoted in the Commission's request for waiver, is an important role, and the filing of financial disclosure statements serve to remind public officials and employees of their financial interests to help them avoid conflicts of interests, while at the same time promoting public confidence in the integrity of government by providing citizens with information about those who serve them. Section 2-294(h) of the Code permits the Board to grant exemptions or modifications to the financial disclosure requirement where it finds that application of Section 2-294 would (i) constitute an unreasonable invasion of privacy; (ii) would significantly reduce the availability of qualified persons for public service; and (iii) would not be contrary to the purpose of the Section. Nothing advanced by the Commission in its request for waiver, supports the granting of an exemption or modification over the compelling interests of the County in maintaining the trust of its citizens.

Sincerely,

Covette Rooney  
Board Chair

Enclosure: Executive Order No. 13-2014