

# CITY OF COLLEGE PARK ETHICS COMMISSION

## ADVISORY OPINION 2016-01

August 30, 2016

In response to concerns raised by a City resident, Mayor Patrick Wojahn has asked the Ethics Commission for an advisory opinion regarding whether Councilmembers Monroe Dennis and P.J. Brennan must recuse themselves from participating in the Council's consideration of the proposed "Boulevard at 9091" development project ("Development Project") and the proposed permit parking zone around the Development Project because of the proximity of their homes to the Development Project. Mayor Wojahn also requested an advisory opinion regarding whether a Councilmember should ever have to recuse him or herself from participating in a vote on a development matter if that Councilmember has no interest in the development other than the fact that the Councilmember lives in a certain proximity to the development.

### I. Facts

The proposed Development Project involves the construction of 45 townhomes, 238 apartments, 4100 square feet of retail space, and a parking garage at 9091 Baltimore Avenue, in District 2 of the City of College Park. The proposed permit parking zone ("Permit Parking Zone") would be located between Baltimore Avenue, Erie Street,<sup>1</sup> Rhode Island Avenue, and Blackfoot Road, in Districts 1 and 2 of the City of College Park.

Councilmember Dennis lives .67 miles (approximately 10 blocks) from the proposed Permit Parking Zone. Councilmember Brennan lives .6 miles (approximately 8 blocks) from the proposed parking zone. Both Councilmembers represent District 2.

### II. Applicable Law

Chapter 38 of the College Park Code establishes ethical standards for City officials. The goal of the Ethics Chapter is to ensure that City officials perform their duties with only the best interests of the City in mind. Section 38-11 prohibits City officials from participating in certain matters and holding certain employment relationships that may create conflicts between their private interests and the interests of the City.

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<sup>1</sup> The proposed Permit Parking Zone does not extend to Erie Street, rather it extends approximately one quarter of a block north from Delaware Street on the cross streets between Delaware Street and Erie Street.

Section 38-11(C), which prohibits City officials from participating in matters in which they have a conflict of interest, provides, in pertinent part, as follows:

- C. Participation prohibitions. Except as permitted by commission regulation or opinion, an official or employee may not participate in:
  - (1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

Section 38-4 defines “interest” as “[a]ny legal or equitable economic interest, whether or not subject to an encumbrance or condition, which is owned or held, in whole or in part, jointly or severally, directly or indirectly, by any person subject to this chapter.” The Commission is not aware of any Maryland precedent interpreting the term “interest” for purpose of public ethics laws. However, Black’s law dictionary provides the following definitions of “interest”:

**interest** n. (15c) 1. The object of any human desire; esp., advantage or profit of a financial nature <conflict of interest>. 2. A legal share in something; all or part of a legal or equitable claim to or right in property <right, title, and interest>. • Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity.

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**financial interest** (1846) An interest involving money or its equivalent; esp., an interest in the nature of an investment. — Also termed pecuniary interest.

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**equitable interest** (17c) An interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary.

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**legal interest** (17c) 1. An interest that has its origin in the principles, standards, and rules developed by courts of law as opposed to courts of chancery. 2. An interest recognized by law, such as legal title.

INTEREST, Black's Law Dictionary (10th ed. 2014).

### III. Discussion

#### A. Recusal relating to Boulevard at 9091.

Having no knowledge of evidence to the contrary, the Commission, for the purposes of this Advisory Opinion, will assume that Councilmembers Dennis and Brennan have no financial investments in the proposed Development Project and no interest in any business entities that have a financial interest in the proposed Development Project. Therefore, the sole inquiry in this section is whether the proximity of the Councilmembers' homes to the proposed Development Project and the related proposed Permit Parking Area require them to recuse themselves from the Council's consideration of those matters.

Whether a Councilmember must recuse him or herself from a development matter under consideration by the Council depends on whether the Councilmember or his or her relative has an "interest" in the matter as defined in the Ethics Chapter. As noted above, the Ethics Chapter defines interest, in pertinent part, as "[a]ny legal or equitable economic interest."

The proposed Development Project and Permit Parking Area clearly have the potential to impact residents and property owners in nearby neighborhoods. Potential impacts may include positive and negative impacts such as increases in traffic, changes in views, improved access to retail services, and increased demand for street parking. The potential impact is likely greatest upon the residents and owners of the properties located closest to the proposed Development Project and Permit Parking Area. Although these impacts are not economic impacts, they may have economic repercussions on residents and homeowners, such as increasing or decreasing property values and rental rates.

The Commission does not believe that the proximity of Councilmember Brennan or Councilmember Dennis's homes to the proposed Development Project and Permit Parking Area result in them having a legal or equitable economic interest in those matters for the following reasons.

First, whether the proposed Development Project or Parking Permit Area will have an economic impact upon the Councilmember's property values and whether it would be positive or negative is unclear. Given the distance between their homes and the Development Project and Permit Parking Area, eight to ten fully developed residential blocks, the project and parking areas appear unlikely to have any impact on street parking demand by their homes or even be visible from their homes, it appears unlikely that they would have any impact on the value of the Councilmembers' properties.

Second, even assuming the impact of the Development or Permit Parking Area upon the value of the Councilmembers' property is clear, such an impact would not give them a legal or equitable economic interest in either matter. Although *Black's Law Dictionary* does not define "economic interest," it defines the substantively equivalent phrase, "financial interest," which contemplates "[a]n interest involving money or its equivalent; esp., an interest in the nature of an

investment.” Clearly, the Councilmembers do not own any interest in the Development Project or Parking Area and have not made any investments in the project merely by owning homes nearby. In addition, the Councilmembers do not have a legal<sup>2</sup> or equitable<sup>3</sup> interest in the matters.

Finally, the Commission notes that prohibiting Councilmembers from participating in the Council’s consideration of development projects and related matters based on the proximity between their homes and the proposed project would deny the Councilmembers’ constituents, many of whom live in similar proximity to the project, representation regarding a matter that is likely to affect them to a greater extent than residents of other wards that are farther from the proposed project.

B. General Recusal Requirements Relating to Development Projects.

The Commission does not believe that the proximity of a Councilmember’s home to a development project, in and of itself, gives the Councilmember an interest in the project that could give rise to a conflict of interest under the Ethics Chapter.

For the reasons discussed in the preceding section, development projects that potentially have indirect financial impacts upon a Councilmember’s property value or rental rate do not give Councilmembers a legal or equitable economic interest in the project.

IV. Conclusion.

Based on the facts provided by Mayor Wojahn and the facts readily available to the Commission, we conclude that, under the Ethics Chapter, Councilmembers Dennis and Brennan do not have an interest in the Boulevard at 9091 development project or the related proposed parking permit area. The Commission concludes that, as a general matter, the mere proximity between a Councilmember’s home and a proposed development project does not give the Councilmember an interest in the project requiring the Councilmember to refrain from participating in the Council’s consideration of the matter.

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Joseph Theis, Chair

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2 “1. An interest that has its origin in the principles, standards, and rules developed by courts of law as opposed to courts of chancery. 2. An interest recognized by law, such as legal title.”

3 “An interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary.”

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