

Anne Arundel County Ethics Commission

Advisory Opinion

00-49

Issue:

Whether, and to what extent, a member of the county council may become involved as a residential property owner, in matters concerning a proposed development project in that member's community.

Background:

A county council member resides in a community that shares a single access road with a proposed subdivision, and whose property may be impacted by that subdivision. As a property owner, the council member may have concerns about the proposed development, as may the community association to which the council member belongs. Since the project is in the most preliminary stages of the subdivision process, the council member requests guidance as to the extent to which the member may become involved in the subdivision process.

Discussion:

Sections 3-101(a), 3-104(a), and 3-105(c)(1) are relevant to this issue. Section 3-101(a) prohibits an employee, including a council member, from participating in an official capacity, in any discretionary matter in which the employee has an interest. The subdivision process is an administrative matter, and the county council has no apparent role in the process. Since there is no official council involvement in the development of a subdivision, there is no reason that §3-101 would apply in this instance.

Section 3-104(a) prohibits a council member from misusing the prestige, title, or authority of office to provide a benefit oneself or another. This section would prohibit a council member from acquiring otherwise confidential or privileged information that would benefit either the council member individually, or the council member's community association. The ethics commission has also interpreted this provision to prohibit a council member from giving testimony at a county administrative hearing unless that testimony provides essential facts that cannot be obtained from other sources. See, AO-00-05.

Section 3-105(c)(1) prohibits an employee from assisting or representing any person or entity in any matter in which the county has an interest. In the present situation, it would prohibit a council member from assisting or representing that member's community association in any stage of the subdivision process, since the community association may at some point, espouse a viewpoint that conflicts with the county's position.

However, as a property owner, and on the member's own behalf, the council member

may obtain any public information, attend any public meetings, and take any steps that are available to other property owners, to follow the administrative processes, and to protect the member's residential property interests. It is only when that member is acting as a public official, or reasonably appears to be acting as a public official, that the member's activities in this instance will be proscribed by the above-referenced sections of the ethics law.

Conclusion:

Sections 3-101, 3-104, and 3-105(c) of the Public Ethics Law, seek to prevent official activities that conflict with personal interests. It is permissible for a county council member, acting in a strictly personal capacity, to obtain any information, or to participate in any proceedings, available to other property owners who are similarly situated, in order to protect that member's property rights.

Date:

By: the Anne Arundel County Ethics Commission