

December 12, 2005

By Electronic & Interoffice Mail

Re: IO-05-72

You inquired whether you may co-sponsor and otherwise participate in an amendment to proposed Bill 77-05 at the request of an entity who is also, coincidentally, the landlord of commercial property that you lease for your private employment. The ethics commission advises that it would violate the ethics law for you to participate in the amendment.

This entity, your landlord, is in the business of “real estate sales and development; property management”, according to the lobbyist hired to represent the entity. The work for which the lobbyist was hired includes, “amendments to zoning, subdivision and site development regulations; including county bills 77-05 and 78-05.

The entity is the owner of a building located at the corner of Rte. 2 and West Street, on the side closest to Rte. 50 and across from the Double T diner. The entity also owns the land behind the diner which is zoned commercial but is currently residential. The entity wants to tear down the houses and replace them with a commercial building. These properties are within the Parole Town Center overlay, which is sizeable, comprising the area from West St. at Rte. 2 south to Admiral Cochrane, east to the parking lot on Riva Road and Admiral Cochrane, and north, encompassing the Annapolis Mall and the hospital. The now defunct Parole shopping center is at the core of the overlay.

The amendment which you were asked to co-sponsor, would increase the current floor area ratio (FAR) from 1.5 to 2, for commercial buildings in the Parole Town Center Overlay. The increase would permit taller buildings in the area.

As the sole proprietor of a private business, you lease your office from this entity. You have 4 ½ years remaining on a 5 year standard commercial lease. The relevant provision of the ethics law, Sec. 5-101(a)(2)(vi), expressly made applicable to county council members by Sec. 5-110(c)(5), prohibits participation by an employee in a matter in which one of the parties to the matter is a business entity that is a creditor of the council member, and as a creditor, is in a position to affect directly and substantially the interest of the council member. Your landlord is your creditor and could, during the leasehold period affect the conditions of your lease. In 4 ½ years, this same landlord could also affect the terms of your lease renewal.

Another applicable section of the ethics law is §5-101(a)(2)(iv), which prohibits participation in a matter where one of the parties to the matter is a business entity that has a contract with the council member, if that contract reasonably could be expected to result in a conflict of interest if participation occurs. Since the entity asked for the amendment, the entity is a "party" to the “matter” of the amendment. In that case, your participation would violate both provisions of the ethics law.

This opinion does not prohibit you from otherwise participating in Bill 77-05, as long as you refrain from participating in the public hearing, debate, consideration, or vote on the amendment about which you inquired.

Thank you for your inquiry. If you have additional questions, please call me.

Sincerely,

Betsy K. Dawson
Executive Director