

NOVAK Statement 8/13/19

was proposed

This week, ~~Commissioner Boos proposed~~ a new site for our future town office on Freemont St. near the Library, adjacent to the Carpenter St. Alley. The lot is large enough to also accommodate a new police station ~~at some time in the future~~. This is a positive step but several important issues remain to be studied – ~~some examples are listed below~~ for instance?

- The Serendipity hair salon would have to be moved – at a cost of \$100,000 +
- The town parking lot would have to be ~~ripped up~~ <sup>removed</sup> to accommodate a police station – a lot which cost the town \$200,000 to build
- The proposed town office could cost up to \$3.1 million plus the \$300,000 already mentioned – or about \$4,100 per taxable lot in St. Michaels

~~The~~ the Library has plans to expand which the County's would pay for – thus offering expanded services to residents and those living nearby. This expansion would not be possible if the town office is built on this site.

<sup>continues to be</sup> What ~~is~~ needed is a comprehensive analysis of the entire Freemont St. area to determine the best mix of uses for this limited space and other town locations, including the Mill St. lot, should be studied to determine the most cost-effective site for the town office and police station.

Thank you ~~for listening to St. Michaels residents.~~

8/13/19  
Part of record

Statement of Jeffrey McGuiness 8/13/19

I'd like to make a few comments about the St. Michaels Action Committee—or SMAC—and the lawsuit it has filed in the Talbot County Circuit Court against the St. Michaels Ethics Commission

SMAC is a limited liability company, an LLC, which describes itself as a group of concerned citizens promoting transparency in government. Yet it uses the mask of an LLC to keep the identity of all but a few of its participants hidden. That is unfortunate because if only the lawyers are talking, it is very difficult to resolve a disagreement.

After SMAC filed its lawsuit, I did a search of the State of Maryland's Business Entity Database and learned that it was created by St. Michaels resident John Novak in April of this year. And from reading the Star Democrat, David Briemhurst, in addition to Mr. Novak, appears to be its spokesperson. Beyond that, it's difficult to say who is involved.

A few days ago, I sent an email to the Town of St. Michaels, Mr. Novak and the several attorneys SMAC has retained requesting the identity of SMAC participants. I also wrote a letter to the Star Democrat on the subject which was published, and a few days later a reply by Mr. Briemhurst appeared in the paper. If you haven't read his letter, I would encourage you to do so. Simply search for the headline "Enquiring Minds," the inference being how dare anyone ask who we are.

Mr. Briemhurst's letter makes several points that I believe are worthy of consideration by the Commissioners of St. Michaels.

For example, my letter to the Star Democrat concludes with the sentence, "The responsible journalism *The Star Democrat* usually practices would tell the taxpayers of St. Michaels who the people filing a lawsuit against them actually are." Mr. Briemhurst responds by saying that Jeff McGuiness "should know that SMAC is not suing the Town of St. Michaels, as he erroneously claims in his letter. Its suit is against the St. Michaels Ethics Commission, a separate body that should be independent of the Town."

Note that he says "should" be independent.

Mr. President, would you tell me who created the St. Michaels Ethics Commission? Who established its rules and has the power to amend those rules? Who staffs it? Who pays for the staff and its legal counsel? And, regarding the central point of my letter to the editor, who pays the attorneys' fees for lawsuits against it such as the one filed by SMAC?

Would you be willing to tell you how much the taxpayers of St. Michaels have spent thus far on the SMAC lawsuit?

In other words, St. Michaels residents pay taxes that are used to conduct the affairs of the St. Michaels Ethics Commission. The Ethics Commission does not levy taxes of its own. So again, I reiterate that it would be appropriate to know who all the members of SMAC are.

Over the years, there have been several vigorous debates in St. Michaels, some of which ended up in lawsuits and some of which I participated in as a named plaintiff. In these controversies, no one hid behind an LLC or otherwise masked their identity. Everything and everyone was in plain sight.

More significantly, these issues were argued on their merits. That, however, is no longer the case. Recently, the preferred choice of some in our community is the politics of personal destruction. Over the past several months, this has ranged from petty accusations regarding when Commissioners pay their water bills to charges of conflicts of interest and malfeasance. This behavior has become the coin of the realm, and the St. Michaels Ethics Commission has become a prominent player in debates over Town matters. Since that's the case, the time has come for a thorough review of the rules governing the Ethics Commission.

I think it is important to remember that SMAC is registered with the State of Maryland as a business entity. I would encourage the Commission to begin exploring the circumstances under which business entities seeking to come before the Ethics Commission be allowed to do so. If an LLC or other business entity is formed for the primary purpose of political advocacy and as a front for litigation against the Town and its related entities, then as a condition of operating in the Town of St. Michaels, that entity should be assessed attorney's fees, court costs and any other costs associated with its litigation in matters ultimately found to be without merit. If someone is using Town agencies to harass or intimidate Town officials for improper reasons and if their actions are found to be unfounded, then those entities should, at a minimum, pay the full cost of any legal proceedings they initiated. In addition, penalties and fines should be considered.

There is a further point in Mr. Briemhurst's letter. He states, "As an experienced attorney, Mr. McGuinness should know that a limited liability company may be either for profit or not for profit. SMAC is a membership organization not for profit."

I appreciate Mr. Briemhurst's backhanded compliment, but the fact of the matter is that there are not many LLCs formed as tax-exempt entities, and I can't tell from the letter whether he is saying that SMAC considers itself a tax-exempt organization or whether it is being operated in a way that does not produce a profit, using that to characterize it as not for profit. I do know that under IRS rules, for an LLC to incorporate as a nonprofit corporation, all LLC members must in effect be classified as nonprofit organizations themselves, and I doubt that's the case here. Therefore, saying SMAC is a not for profit organization raises a number of questions that can only be answered by if appropriate disclosure rules were in place.

Consideration should be given to amending the Town's rules to require that the identity of all members and participants in an LLC or any other business entity seeking to come before the Ethics Commission be disclosed in order for the members of the Ethics Commission to be in a position to determine whether there is a conflict of interest between the interests of the persons bringing the suit and the matter before the Commission.

I would suggest that the Town Commissioners start by looking at a rule utilized by the federal court in Maryland in similar circumstances to figure out who really is before it. U.S. District Court of Maryland Local Rule 103.3 requires all business entities filing suit to disclose their affiliations, and I underscore the word affiliations, so that judges can determine if they have a conflict of interest in hearing the matter that would require recusal. Specifically, the Maryland federal court rule requires disclosure of:

The identity of any parent or other affiliate of a corporate party and the description of the relationship between the party and such affiliates. The identity of all members of any party that is a business entity established under state law, other than a corporation...

In other words, an LLC.

We need to know that when an organization says it is a group of concerned citizens, are all involved residents and taxpayers of St. Michaels? Are there petitioners who are members of Town boards or commissions? Who is paying for the litigation? If a property matter is at issue, is the LLC fronting for a developer or some other entity with a financial interest in the property in question? Is there a competition or a history of some kind involving the entities named in the suit that the Ethics Commission needs to be aware of in making its determination? Is there a hidden motive behind the suit? What types of discovery should be permitted to ensure there is complete disclosure?

I would suggest starting with this Maryland federal court rule but then requiring more. As the Commission knows, there has been considerable litigation over standing in cases involving challenges to land use actions in the State of Maryland. Reviewing who has standing and for what purpose and before which agencies would also be a worthy line of inquiry. I would be glad to provide additional thoughts in writing if that would be of interest. Time does not permit me to get into that.

In sum, an extensive review of the Town's ordinances, rules and regulations needs to be conducted to ensure St. Michaels taxpayers are protected from Town resources being improperly used regarding matters coming before the Town of St. Michaels. It's time the masks came off.