

COMPLAINT OF * **BEFORE THE ETHICS COMMISSION**
ST. MICHAELS ACTION * **FOR THE TOWN OF ST. MICHAELS**
COMMITTEE, LLC *
* **Complaint No. 2019-1**
RE: *
WILLIAM E. BOOS *

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DECISION

The Complaint

On April 10, 2019, Complainant St. Michaels Action Committee LLC (the “Complainant” or “SMAC”) filed a three-count ethics complaint (the “complaint”) with the St. Michaels Ethics Commission (the “Commission”) against William E. Boos (the “Respondent” or “Commissioner Boos”), a member of the Commissioners of St Michaels (the “Town Commissioners”) currently fulfilling the role of President of the Town Commissioners.

The complaint “seeks findings that Commissioner Boos has violated his duty under § 22-5(D) and § 22-5(A) of the St. Michaels Ethics Ordinance (the “Ethics Ordinance”) to recuse himself from actions in which his judgment has been impaired as a result of his employment relationship with Curtis Stokes & Associates, and the [boat brokerage] relationship between Curtis Stokes & Associates and the Chesapeake Bay Maritime Museum.”

The actions for which SMAC seeks redress are Commissioner Boos’ votes on October 17, 2018, November 14, 2018, and February 13, 2019 concerning properties owned by the Town and generally referred to as the Fremont Street Property and 301 Mill Street which allegedly impermissibly furthered the interests of the Chesapeake Bay Maritime Museum (the “Museum”). The complaint asserts that the Museum has expressed a strong interest in purchasing 301 Mill

Street and that Mr. Boos' impartiality or independence of judgment is impaired with respect to matters before the Town Commissioners affecting the Museum. In particular, the Complainant alleges that "on October 16, 2018, the day before the meeting at which Commissioner Boos voted 'no' on commencing a study of 301 Mill Street and instead suggested amending the Zoning Code to keep the development at the Fremont Street Property on track, Museum President Kristen Greenaway sent an email to Commissioner Boos stating that she had 'just left a message on [his] brokerage ph[one]' and asking to 'please meet/talk.' She had a 'brokerage related concept' that she wanted to discuss."

Additionally, the complaint requests the Commission to declare as void prior votes made by Mr. Boos as a Town Commissioner and direct that a feasibility study of 301 Mill Street be performed. Pursuant to § 22-4(C) of the Ethics Ordinance, the Commission is authorized to "make determinations" as to whether Mr. Boos violated §§ 22-5(A) or (D), however, as acknowledged by SMAC's counsel at the hearing, nowhere does the Ethics Ordinance authorize the Ethics Commission to declare as void Mr. Boos' prior votes as a Town Commissioner or direct that a feasibility study of 301 Mill Street be performed.

Procedural History

On April 25, 2019, the Commission deliberated on the complaint without a hearing and voted unanimously to dismiss the ethics complaint for the reasons set forth in an Order of Dismissal dated May 1, 2019. On May 31, 2019, Complainant filed with the Circuit Court of Talbot County (the "Circuit Court") a Petition for Judicial Review or, in the Alternative, Petition for Writ of Administrative Mandamus in Case No. C-20-CV-19-000086 (the "Circuit Court Proceeding"). On January 2, 2020, the Circuit Court issued a Memorandum Opinion and Order Granting Writ of Mandamus and the Final Order Granting Petition for Administrative Mandamus (the "Court

Orders”) remanding the matter to the Commission and ordering the Commission “to hold a hearing, place witnesses under oath, record the proceedings, permit the presentation of evidence by all interested persons and to allow for reasonable cross examination of witnesses.”

The Hearing

In accordance with the Court Orders, the Commission held a hearing on February 25, 2020 at the St. Michaels Town Office in which Complainant and Respondent (collectively, the “parties”) and their respective counsel participated. The hearing was open to the public and conducted in accordance with the Commission’s Rules of Procedure and in a format consented to in advance by both parties. The Commission’s three members - Sidney Davenport-Trond (Chair), Peter Hartjens, and John E. Hunnicutt - were all present, constituting a quorum.

After opening arguments, Complainant, bearing the burden of persuasion, presented its case first, with Respondent following. Complainant offered three witnesses – Commissioner Boos, David Breimhurst, and Doug Rollow. Respondent offered two witnesses - Curtis Stokes and Kristen Greenaway. Both parties submitted documentary exhibits and, following the hearing, filed proposed findings of fact and conclusions of law.

Deliberations

On April 1, 6 and 8, 2020, the Ethics Commission met by conference call (due to the COVID-19 pandemic) to deliberate its findings of fact and conclusions of law. For the reasons stated further below and based on the preponderance of the evidence presented at the hearing, the St. Michaels Ethics Commission unanimously concludes that none of the votes or actions taken by Commissioner Boos that have been raised by SMAC in this proceeding created an impermissible

conflict of interest under §§ 22-5(A) and (D) of the Public Ethics Ordinance of the Town of St. Michaels.¹

Findings of Fact

We adopt the following Findings of Fact:

1. Commissioner Boos was sworn in as a Town Commissioner in June 2016. He became President of the Town Commissioners on June 14, 2017.

2. At or around the time when Commissioner Boos was elected as a Town Commissioner, he had sold his local boat brokerage business to Curtis Stokes & Associates (“CSA”), after which Commissioner Boos became an independent contractor for CSA.

3. As an independent contractor for CSA, Commissioner Boos was paid commissions on a transaction-by-transaction basis for services he rendered to CSA either by directly brokering the sale of boats or by assisting other independent contractors of CSA by handling the paperwork associated with those brokers’ sales in particular boat brokerage transactions. Although not executed, the more specific terms of Commissioner Boos’ independent contractor relationship with CSA is set forth in Exhibit R-1 which we accept as true and incorporated herein by reference. As mentioned above and for reasons explained below, for our purposes the import of the independent contractor relationship between Commissioner Boos and CSA is that it exists on a boat brokerage transaction-by-transaction basis which lends itself to enabling Commissioner Boos to separate himself from CSA if and when he chooses to do so.

4. Commissioner Boos devotes approximately thirty (30) hours per week to his position as a Town Commissioner and approximately five (5) hours a week to his independent

¹ As a result of our deliberations we have, in large measure, adopted the findings of fact and conclusions of law proposed by Commissioner Boos.

contractor services for CSA. Commissioner Boos earned approximately \$13,000.00 from CSA in 2019. Commissioner Boos serves as an independent contractor for CSA on a part-time basis and the amount of money that he earns from CSA is not material to his economic well-being. Commissioner Boos considers serving as a Town Commissioner to be a full-time job and far more important and fulfilling for him than his relatively minimal amount of time devoted to CSA. Despite the foregoing, we find that Commissioner Boos was and remains “affiliated” with CSA within the meaning of § 22-5(A) of the Town’s Ethics Ordinance. However, with respect to the application of § 22-5(D) of the Town’s Ethics Ordinance, the Commission observes that on a case-by-case basis it may matter whether a Town official’s outside employment relationship impairs his or her independence of judgment on a particular Town issue depending on whether that employment relationship is material to the economic well-being of the Town official and his or her family or incidental. For purposes of the votes or actions taken by Commissioner Boos that have been raised by SMAC in this proceeding, we find that Commissioner Boos’ employment relationship with CSA is incidental.

5. Prior to the election of Commissioner Boos as a Town Commissioner, the Town Commissioners had entered into a non-binding Letter of Intent with the Museum to explore an ownership exchange of 301 Mill Street (the “Town Skateboard Park”) and 107 Mill Street (the “Museum Parking Area”) on terms and conditions to be negotiated in the future, including price. [Ex. C-23].

6. After Commissioner Boos became a Town Commissioner, the Town Commissioners negotiated with the Museum to further explore the ownership exchange of the Town Skateboard Park and the Museum Parking Area, as President of the Town Commissioners, Mr. Boos signed letters of negotiation that were approved by the Commissioners.

7. All negotiations between the Museum and the Town Commissioners concerning a proposed ownership exchange of the Town Skateboard Park and the Museum Parking Area ceased as of May 2018. However, the Museum has always made it clear that it has a continuing interest in an ownership exchange of the Town Skateboard Park and the Museum Parking Area.

8. In the Summer of 2018, the Town Commissioners were deciding where to locate a new Town Office and Police Station (collectively the “Town Office Location Issue”). Among the properties then owned by the Town that were under consideration were the Town Skateboard Park, Town property situated on the corner of Fremont Street and Canton Street (the “Fremont Street Property”) and Town property situated on Boundary Lane (the “Boundary Lane Property”).

9. At the Town Commissioners’ meeting on July 11, 2018, they considered the Town Office Location Issue. At this meeting, the Town Commissioners were in possession of a recommendation from the Town Office Building Committee that, by a 3 to 2 vote, selected the Fremont Street Property as the preferred site for the location of the New Town Office. However, the Town Office Building Committee also stated that the Town Skateboard Park was its second choice. Consequently, it recommended that the Commissioners continue to look at the Town Skateboard Park as an option and authorize a sewer line inspection to determine the viability and cost of relocating sewer lines which were important to determine whether the Town Skateboard Park is a buildable lot. [See C-32]. At the Town Commissioners’ meeting on July 11, 2018 Commissioner Boos submitted a motion for the Town Commissioners to approve the Fremont Street Property as the location for the New Town Office. Because there was no second to his motion, Commissioner Boos’ motion was unsuccessful (the “First Commissioner Boos Vote on the Town Office Location Issue”). There was further discussion among the Town Commissioners whether to authorize funding for a study to determine the viability and cost of relocating sewer

lines on the Town Skateboard Park (the “Town Skateboard Park Feasibility Issue”). This issue was brought to vote and passed by a vote of 3 to 1, with Commissioner Boos voting against it. After reviewing the Minutes of the Town Commissioners’ Meeting on July 11, 2018 [C-6], the Transcript by Dorothy Olley of that meeting [R-3], and the testimony of Commissioner Boos, the Commission finds that in addition to Commissioner Boos’ “no vote” on the Town Skateboard Park Feasibility Issue, his comments also indicated that he did not favor authorizing a study to determine the viability and cost of relocating sewer lines on the Town Skateboard Park. The Commission further finds that as of July 11, 2018, Commissioner Boos voted for the location of the New Town Office to be at the Fremont Street Property because of its more centralized location.

10. At the Town Commissioners’ meeting on August 8, 2018, they again considered the Town Office Location Issue. At this meeting of the Town Commissioners, Commissioner Boos again moved for the Town Commissioners to approve the Fremont Street Property as the location for the New Town Office. This time, the Town Commissioners approved Commissioner Boos’ motion by vote of 4 to 0, which again included a vote from Commissioner Boos in favor of the Fremont Street Property as the location for the New Town Office (the “Second Commissioner Boos Vote on the Town Office Location Issue”). During this meeting there was also a discussion of the proposed swap of the Town Skateboard Park for the Museum Parking Area. Commissioner Boos stated that he was in favor of the swap because it would expand the Town’s parking and made the most sense for the Town.

11. At the Town Commissioners meeting on October 17, 2018, it again considered the Town Office Location Issue. At this meeting of the Town Commissioners, Commissioner Michael Bibb made a motion to look into the feasibility of the Town Skateboard Park for the New Town Office which was seconded by Commissioner Harrod. The motion failed by a vote of 2 to 2 with

Commissioner Boos for the second time voting against the Town Skateboard Park Feasibility Issue.

12. It is at this juncture that SMAC asserts that Commissioner Boos possessed an irreconcilable conflict of interest which should have caused him to recuse himself from voting at the October 17, 2018 Town Commissioners' meeting. Generally, SMAC contends that by this time there was an economic relationship between the Museum and Commissioner Boos' affiliate, CSA, that precluded him from rendering his vote against the Town Skateboard Park Feasibility Issue on October 17, 2018 or from thereafter participating in any vote of the Town Commissioners on either that issue or on any matter pertaining to the Town Office Location Issue.

13. On October 16, 2018 the President of the Museum, Kristin Greenaway, sent an email to Commissioner Boos explaining that she had left a telephone message for him to discuss a brokerage related concept. [C-34]. Although at some point between October 16 and October 22, 2018, Commissioner Boos and Ms. Greenaway of the Museum had some communication as demonstrated by Ex. C-60, p. SMAC PIA000233, it is unclear when that occurred. Commissioner Boos testified that at some time before October 22, 2018 he had a general telephone conversation with Ms. Greenaway during which she generally inquired about the kind of services a boat broker offers and whether those services could assist the Museum to obtain a better return on its sales of boats donated to the Museum. Based on the evidence presented, we cannot, and do not, find that this communication occurred prior to the Town Commissioners meeting of October 17, 2018. We can only conclude that it occurred prior to October 22, 2018.

14. After October 22, 2018, the first and only substantive meeting involving the Museum, CSA and Commissioner Boos occurred on October 29, 2018. At that meeting the Museum and CSA discussed the framework for a boat brokerage relationship between the Museum

and CSA that could potentially result in the Museum paying a commission to CSA of 10% on Museum boats both marketed and sold by CSA and a 5% commission on Museum boats marketed by CSA but sold by a third party. At this meeting Commissioner Boos announced to both the Museum and CSA that he would be completely excluded from this economic relationship between the Museum and CSA if it came to fruition. Specifically, all documents entered into evidence and all witnesses who testified stated that Commissioner Boos explained that because Museum matters have the potential of coming before the Town Commissioners, he would have a conflict of interest and it would be unethical if he was to benefit economically from a business relationship between the Museum and CSA. For this reason, Commissioner Boos made clear that he would not receive any commissions from CSA for Museum boat brokerage business, and he would be excluded from handling any Museum boat brokerage transactions that passed through CSA if the Museum and CSA entered into an economic relationship.

15. On November 5, 2018, the Museum and CSA executed a Memorandum of Understanding (the "M.O.U.") [R-4] establishing an economic relationship between the Museum and CSA whereby the Museum would pay a commission to CSA of 10% on Museum boats both marketed and sold by CSA and a 5% commission on Museum boats marketed by CSA but sold by a third party. Based upon the evidence presented, we find that the M.O.U. was drafted without any involvement from Commissioner Boos. We further find that Commissioner Boos, the Museum, and CSA all understood at the time of execution of the M.O.U. that Commissioner Boos would be excluded both economically and transactionally from the economic relationship formed between the Museum and CSA by the M.O.U.

16. On November 21, 2018, Commissioner Boos sent an email to the principal of CSA, Curtis Stokes, memorializing his exclusion from participation in the economic relationship between CSA and the Museum. [R-5].

17. At the Town Commissioners' meeting on December 13, 2018, the Town Commissioners discussed the fact that the design work for the New Town Office had reached the point where it had been determined that location of the New Town Office on the Fremont Street Property would likely require twenty-one (21) parking spaces, but the anticipated design could only accommodate fourteen (14) or fifteen (15) spaces on the Fremont Street Property. Thereafter, the Town Commissioners engaged in a discussion acknowledging that the Town's consultant had concluded that the Town Code's minimum parking standards were excessive and served as an impediment to efficient use of land resources within the Town. [C-15, § VI, Parking Regulations]. Following that discussion, Commissioner Boos made a motion to direct the Town Manager to draft a text amendment to revise the parking requirements in the Town Code to reduce those parking requirements to two and one-half (2 ½) spaces per one thousand square feet from the current specification of one (1) space per three hundred (300) square feet. This motion passed by a 5 to 0 vote of the Town Commissioners (the "Town Parking Requirement Amendment"). While this vote would have general application within the Town, it also favored the Town Commissioners' prior decision to locate the New Town Office on the Fremont Street Property because it solved the parking impediment to constructing the New Town Office on the Fremont Street Property.

18. On December 21, 2018 Commissioner Boos emailed to Town Clerk/Manager Jean Weisman a letter addressed to the Ethics Commission requesting an advisory opinion regarding a potential conflict of interest that might exist for him in his role as Town Commissioner with

respect to future interactions on behalf of the Town with the Museum as a result of the M.O.U. between the Museum and CSA [R-6]. On January 17, 2019 the Commission issued an advisory opinion to Commissioner Boos [R-7].²

19. At the Town Commissioners meeting on January 10, 2019, during public discussion, written and verbal comments were submitted informing the Town Commissioners that some citizens favored the Town Skateboard Park to the Fremont Street Property for the location of the New Town Office. Additionally, a number of citizens stated that the Town Commissioners should recuse themselves from voting on the parking ordinance as a result of a conflict of interest involving relationships with the Museum. Thereafter, Commissioner Boos introduced Ordinance No. 499 to change the parking requirements in the Town Code. While no vote of the Commissioners was taken, Commissioner Boos' action constituted a required procedural step in the process toward amending the Town's parking requirements.

20. At the Town Commissioners meeting on February 13, 2019, during public comment, the Town Skateboard Park Feasibility Issue was discussed including comments from President Greenaway of the Museum supporting the Fremont Street Property as the location for the New Town Office. Commissioner Bibb made a motion to commission a feasibility study for the Town Skateboard Park that was seconded by Commissioner Harrod. The motion failed by a vote of 2 to 2 with Commissioner Boos again voting in opposition.

21. SMAC offered evidence into the record indicating that in 2018 the Museum reported total sales of donated boats of \$781,702.00 and expenses of \$156,670.00. Apparently in response to this evidence, a witness from both the Museum and from CSA testified that from

² We did not consider the advisory opinion when adopting our findings of fact or conclusions of law.

execution of the M.O.U. through the date of the hearing, the total commissions received by CSA from the Museum amount to \$36,796.00. Curtis Stokes testified that this represented approximately 1% of CSA's annual revenues. Both Mr. Stokes and Commissioner Boos testified that Commissioner Boos has not handled any transactions for CSA involving Museum boats and that Commissioner Boos has not received any commissions from CSA relating to the boat brokerage transactions between the Museum and CSA giving rise to the \$36,796.00 that has been received by CSA from the Museum to date.

22. According to the testimony of Mr. Breimhurst and Mr. Rollow, in its settlement proposal conveyed by email from Mr. Rollow to Commissioner Boos dated October 3, 2019 (the "Settlement Proposal") [R-8], SMAC offered to suspend the Circuit Court Proceeding if Commissioner Boos would change his vote on the Town Skateboard Park Feasibility Issue. Further, the Settlement Proposal provided that regardless of the outcome of the feasibility study, if the study was commensurate with a 2017 study on the Boundary Lane Property and completed in a timely fashion, upon completion of the study SMAC would agree to discontinue the Circuit Court Proceeding.

23. According to the testimony of Mr. Breimhurst, in its Settlement Proposal, SMAC was not looking for impartiality from Commissioner Boos; its objective was for him to vote the way SMAC wanted him to vote.

Conclusions

A. Application of § 22-5(A)

1. We first consider these Findings of Fact as applied to § 22-5(A). Before doing so, we shall explain our general interpretation of this provision, which provides as follows:

No Town official, Town inspector or Town employee shall:

- A. Participate on behalf of the Town in any matter which would, to their knowledge, have a direct financial impact, as distinguished from the public generally, on them, their spouse or dependent child, or a business entity with which they are affiliated.

2. Clearly, any vote by Commissioner Boos on any matter that would directly result in a financial benefit to him or to CSA would pose a conflict under this provision. For example, if the Town Commissioners were voting on whether to award a boat brokerage contract directly between the Town and CSA, that would pose a conflict. However, that has not occurred. Instead, SMAC argues that we should infer that the Museum was offering the proverbial “quid pro quo” of the boat brokerage relationship with CSA in exchange for Commissioner Boos’ votes in favor of locating the New Town Office on the Fremont Street Property in order to preserve the availability of the Town Skateboard Park for a proposed property swap with the Museum.

3. We decline to make the factual inferences suggested by SMAC and conclude that use of the phrase “direct financial impact” in § 22-5(A) means precisely that and should not be extended to encompass speculative indirect impacts as proffered by SMAC. That being said, we conclude from the evidence that none of Commissioner Boos’ votes or actions at issue had either a direct or indirect financial impact on him or CSA. Additionally, we conclude from the evidence that the Museum would have entered into the M.O.U. with CSA regardless of how Commissioner Boos voted on any issues that came before the Town Commissioners relating to the location of the New Town Office. Further, we conclude from the evidence that Commissioner Boos would have voted, and will continue to vote, in favor of locating the New Town Office on the Fremont Street Property regardless of whether there is any economic relationship between the Museum and CSA. Notably, Commissioner Boos voted at least twice in favor of locating the New Town Office on the

Fremont Street Property before there was any suggestion of an economic relationship between the Museum and CSA.

B. Application of § 22-5(D)

1. We now turn to application of our Findings of Fact to § 22-5(D), which provides as follows:

No Town official, Town inspector or Town employee shall:

D. Hold any outside employment relationship that would impair their impartiality or independence of judgment.

2. Compared to § 22-5(A), § 22-5(D) is broader and could potentially pose a conflict of interest as a result of an indirect financial benefit. However, we also interpret this section to vest greater discretion in the Commission because the standard more subjectively requires us to determine whether Commissioner Boos' employment relationship with CSA impaired his impartiality or independence of judgment on the votes raised by SMAC. We found Commissioner Boos to be credible and sincere when he testified that he prioritizes his role as a Town Commissioner significantly above his incidental employment relationship with CSA. Moreover, when the prospect of an economic relationship between the Museum and CSA arose, Commissioner Boos demonstrated that his priority is to serve as a Town Commissioner by swiftly removing any possibility that a boat brokerage relationship between the Museum and CSA could impair his impartiality or independence of judgment. Specifically, Commissioner Boos promptly advised both parties that he would have no involvement economically or even procedurally in any transactions between the Museum and CSA. Because Commissioner Boos' employment relationship with CSA is solely based upon commissions that are tied to specific boat brokerage transactions, Commissioner Boos is able to insulate himself from transactions with CSA's clients if he chooses to do so. Here, that is precisely what he has done. Consequently, we find that

Commissioner Boos' employment relationship with CSA did not impair his impartiality or independence of judgment.

For all of the foregoing reasons, we conclude that based upon our Findings of Fact set forth above as applied to §§ 22-5(A) and (D) of the Public Ethics Ordinance of the Town of St. Michaels, that none of the votes or actions taken by Commissioner Boos that have been raised by SMAC in this proceeding created an impermissible conflict of interest.

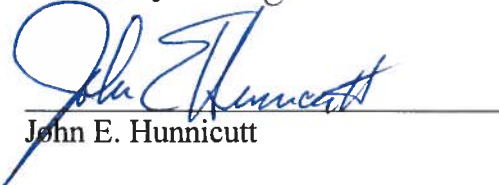
In closing and in the best interest of the Town of St. Michaels, we are compelled to observe that the gravamen of the complaint was evidently more about influencing a Town policy outcome than a public ethics transgression under the Ethics Ordinance.

Dated: April 8, 2020

ST. MICHAELS ETHICS COMMISSION


Sidney Davenport-Trond, Chair


Peter Hartjens


John E. Hunnicutt