

Administration of the  
Frederick County Ethics Law  
October 2021 – September 2022

Report to the  
Frederick County Executive and the  
Frederick County Council



Frederick County Ethics Commission  
September 30, 2022

# **Report on the Administration of the Frederick County Ethics Law**

**October 2021 – September 2022**

This report to the County Executive and the County Council describes the Frederick County Ethics Commission's work to administer the Ethics Law from October 2021 through September 2022. State law requires that this report be provided annually.

## **I. Ethics Commission meetings**

During the reporting period, the Ethics Commission met on January 12, 2022, February 9, 2022, March 9, 2022, March 23, 2022, April 20, 2022, May 11, 2022, June 8, 2022 and September 14, 2022.

Copies of the meeting agendas and the approved minutes for these meetings are included in [Appendix A](#) and [Appendix B](#) of this report, respectively. The Commission's agendas and meeting minutes are also posted online.

## **II. Review of financial disclosure statements**

### **A. Financial Disclosures**

The Commission staff reviewed the financial disclosure statements filed by those County elected and appointed officials, employees and members of boards and commissions who are subject to the Ethics Law's annual filing requirements. (Financial disclosure statements are due in April of each year. The statements provide information for the previous calendar year.) Once the disclosure statements are received, staff reviewed the statements to identify any incomplete questions or answers that may raise questions about potential conflicts of interest. Such exceptions are then provided to the full Commission for review. Financial disclosure statements that are incomplete or raise questions about potential conflicts of interest are identified and the filers of those statements are contacted to obtain the additional information required for the Commission to determine whether there are conflicts of interest or violations of the Ethics Law. When concerns arise about compliance with the Ethics Law, the Commission provides guidance and direction to the official or employee.

During the period covered by this report, the Ethics Commission completed its review of the financial disclosure statements filed in 2021 and found no conflicts of interest. The Commission is in the process of reviewing the financial disclosure statements it received in 2022.

### **B. Advisory Opinions issued**

The Commission received one (1) request for an advisory opinion during the reporting period. Advisory Opinion 22-01 was issued in response to a request from a member of the Planning Commission asking whether the commissioner's consulting business constituted a

conflict of interest with respect to the commissioner's participation in the review and recommendation of the Sugarloaf Treasured Landscape Plan. Based on the representations made by the commissioner, the current law, as well as the Ethics Commission's prior advice in Advisory Opinion 08-01 and its holdings in Ethics Opinion 93-1, the Ethics Commission found that the commissioner's participation in the review of the Sugarloaf Plan generally is not prohibited based on the Commissioner's role as a consultant; however, because the request did not relate to any specific changes that may be considered by the Planning Commission, the Ethics Commission could not provide any prospective assurance that the commissioner would not have a conflict of interest with respect to any particular change that comes before the Planning Commission.

### **C. Action on complaints**

The Ethics Commission received three (3) complaints during the reporting period regarding individuals which the complainant alleged should be registered as lobbyists. The Ethics Commission reviewed each complaint individually.

With respect to the first complaint, the Ethics Commission found that the alleged activity (*i.e.*, appearance before the County Council in a closed session) was exempt from regulations, including registration, pursuant to §1-7.1-8 (B) (2) of the Ethics Law. Accordingly, the Ethics Commission found that the complaint was insufficient to state a violation of the Ethics Law and dismissed the complaint.

The second complaint contained allegations regarding three (3) separate categories of activities of an individual. The first allegation related to an appearance before the County Council in a closed session, which the Ethics Commission dismissed as insufficient to state a violation of the Ethics Law based on §1-7.1-8 (B) (2) of the Ethics Law. The second allegation related to communications by letter from the individual to the Planning Commission. The Ethics Commission found that such communications are not "*in the presence of*" a county official and, therefore, are not covered by the Ethics Law unless part of activities with the express purpose of soliciting others to communicate with county officials. The Ethics Commission found no such purpose. The third category of activities related to virtual appearance by the individual before the Planning Commission. The Commission considered what the meaning of "in the presence" meant with respect to virtual meeting like those held by the Planning Commission in the fall of 2021 and decided to follow the approach used by the State of Maryland Ethics Commission, which does not consider virtual appearances as "*in the presence of*" officials. Accordingly, the Ethics Commission found that the complaint was insufficient to state a violation of the Ethics Law and dismissed the complaint.

The third complaint contained allegations regarding two (2) separate categories of activities of an individual. The first allegation related to an appearance before the County Council in a closed session, which the Ethics Commission dismissed as insufficient to state a violation of the Ethics Law based on §1-7.1-8 (B) (2) of the Ethics Law. The second allegation related to communications by letter from the individual to the Planning Commission. The Ethics Commission found that such communications are not "*in the presence of*" a county official and, therefore, are not covered by the Ethics Law unless part of activities with the express purpose of soliciting others to communicate with county officials.

The Ethics Commission found no such purpose. Accordingly, the Ethics Commission found that the complaint was insufficient to state a violation of the Ethics Law and dismissed the complaint.

There were no other complaints filed during the period covered by this report.

Attachments:

Appendix A – Ethics Commission Agendas

Appendix B – Ethics Commission Meeting Minutes

Appendix C – Advisory Opinion



Appendix A  
Ethics Commission Agendas

# ETHICS COMMISSION

## Public Meeting Agenda for January 12, 2022

Meeting location: Virtual – Teams

Meeting Time: 7:00 PM

Public Call-In Number (audio only): 1 667-217-6643

Meeting ID: 975680366#

### AGENDA:

1. Approval of the minutes from the September 8, 2021 meeting;
2. Approval of schedule of regular meetings for 2022 (see below);
3. Discussion of Commission's Standard Operating Procedures (2016);
4. Vote to conduct an administrative function meeting to discuss three (3) pending ethics complaints and one (1) request for approval of outside employment. \*

\* If Commission votes to conduct an administrative function meeting, the public meeting will be adjourned.

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### Item 2, above:

#### Proposed Schedule – Second Wednesdays of Each Month

January 12 <sup>th</sup>	July 13 <sup>th</sup>
February 9 <sup>th</sup>	August 10 <sup>th</sup>
March 9 <sup>th</sup>	September 14 <sup>th</sup>
April 13 <sup>th</sup>	October 12 <sup>th</sup>
May 11 <sup>th</sup>	November 9 <sup>th</sup>
June 8 <sup>th</sup>	December 14 <sup>th</sup>

### Remaining Annual calendar items:

Month	Item
February/March	Review Financial Disclosure Statement process
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1



## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

*Stephen K. Hess, Chair*

### Public Meeting Agenda for

Wednesday, February 9, 2022 at 7:00 p.m.

Virtual Meeting – via Microsoft Teams

Public Call-In Number (audio only): 1 667-217-6643

Public Meeting ID: 594 689 808#

#### AGENDA:

1. Call to Order / Roll Call
2. Approval of Agenda
3. Approval of the minutes from the January 12, 2022 meeting;
4. Distribution of the County Executive's Public Ethics Report for Period July 1, 2021 through December 31, 2021;
5. Vote to conduct an administrative function meeting to discuss one or more pending ethics complaint.\*

\* If Commission votes to conduct an administrative function meeting, the public meeting will be adjourned.

#### Upcoming 2022 Meeting Dates

March 9 <sup>th</sup>	August 10 <sup>th</sup>
April 20 <sup>th</sup> *	September 14 <sup>th</sup>
May 11 <sup>th</sup>	October 12 <sup>th</sup>
June 8 <sup>th</sup>	November 9 <sup>th</sup>
July 13 <sup>th</sup>	December 14 <sup>th</sup>

\* Third Wednesday in April

#### Remaining Annual calendar items:

Month	Item
March	Review Financial Disclosure Statement process
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1



**FREDERICK COUNTY GOVERNMENT**

**FREDERICK COUNTY ETHICS COMMISSION**  
Office of the County Attorney

*Stephen K. Hess, Chair*

**Public Meeting Agenda for**

**Wednesday, March 9, 2022 at 7:00 p.m.**

**Virtual Meeting – via Microsoft Teams**

**Public Call-In Number (audio only): 1 667-217-6643**

**Public Meeting ID: 879 387 641#**

**AGENDA:**

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approval of the minutes from the February 9, 2022 meeting.
4. Review Financial Disclosure Statement process for 2021 Statements (due in April 2022).
5. Discussion of State-required changes to the County’s Ethics Law as well as other possible recommendations to the County Executive for amendment of the County’s Ethics Law.
6. Vote to conduct an administrative function meeting to discuss a request for an advisory opinion and the status of pending complaints.\*

\* If Commission votes to conduct an administrative function meeting, the public meeting will be adjourned.

**Upcoming 2022 Meeting Dates**

March 9 <sup>th</sup>	August 10 <sup>th</sup>
April 20 <sup>th</sup> *	September 14 <sup>th</sup>
May 11 <sup>th</sup>	October 12 <sup>th</sup>
June 8 <sup>th</sup>	November 9 <sup>th</sup>
July 13 <sup>th</sup>	December 14 <sup>th</sup>
* Third Wednesday in April	

**Remaining Annual calendar items:**

Month	Item
March	Review Financial Disclosure Statement process
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1



## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

*Stephen K. Hess, Chair*

### Public Meeting Agenda for

Wednesday, March 23, 2022, at 3:30 p.m.

Virtual Meeting – via Microsoft Teams

Public Call-In Number (audio only): 1 667-217-6643

Public Meeting ID: 898 284 735#

#### AGENDA:

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Recommend change to Section 1-7.1-7 of the Ethics Law. (See attached.)
4. Recommend change to Review Financial Disclosure Statement process for 2021 Statements (due in April 2022) due to change in Wage and Salary Grade and Past Experience.

#### Upcoming 2022 Meeting Dates

April 20 <sup>th</sup> *	September 14 <sup>th</sup>
May 11 <sup>th</sup>	October 12 <sup>th</sup>
June 8 <sup>th</sup>	November 9 <sup>th</sup>
July 13 <sup>th</sup>	December 14 <sup>th</sup>
August 10 <sup>th</sup>	
* Third Wednesday in April	

#### Remaining Annual calendar items:

Month	Item
March	Review Financial Disclosure Statement process
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1

## ATTACHMENT

### § 1-7.1-7. FINANCIAL DISCLOSURE; EMPLOYEES AND APPOINTED OFFICIALS.

(A) This section only applies to the following appointed officials and employees:

(1) Officials and employees. All employees who are classified on the Frederick County Government wage and salary plan at grade 16 and above unless exempted by the Commission.

[(a) All employees who are classified on the Frederick County Government pay schedule at grade 14 or above and who are not covered by Section 1-7.1-6(A)(1) or by the state ethics statute;

(b) Board of License Commissioners and Inspectors; and

(c) All construction managers and inspectors.]

(2) Members of the following boards and commissions.\*

[(a) Affordable Housing Council.]

(a) Advisory Plumbing Board.

(b) Agricultural Preservation Advisory Board.

[(c) Board of Appeals, Building Code.]

(c) Agricultural Reconciliation Committee.

(d) Board of Gaming Appeals.

[(e) Business Development Advisory Council.]

(e) Deferred Compensation Committee.

(f) Electrical Board

[(f)](g) Ethics Commission.

[(g) Insurance Committee.]

(h) Historic Preservation Commission.

[(h)](i) Interagency Internal Audit Authority.

[(i) Public Library Board.]

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Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

\*\*\* - indicates existing law unaffected by bill.

(j) OPEB Trust Investment Committee.

[(j)](k) Retirement Plan Committee.

[(k) Small Business Revolving Loan Fund Review Committee.]

[(l) Solid Waste Advisory Committee.]

[(m) Technology Council of Frederick County.]

\* Members who are required to file financial disclosure statements under other ethics laws are not required to file financial disclosure statements under this chapter.

(B) A statement filed under this section shall be filed with the Commission under oath or affirmation.

(C) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by the County, including the name of the donor of the gift and the approximate retail value at the time of receipt.

(D) An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.





## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

*Stephen K. Hess, Chair*

### Public Meeting Agenda for

Wednesday, April 20, 2022, at 7:00 p.m.

Meeting location: Winchester Room, 2<sup>nd</sup> Floor, Winchester Hall

#### AGENDA:

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approve Minutes of the March 9, 2022 Meeting and the March 23, 2022 Meeting.
4. Vote to conduct an administrative function meeting to discuss a pending request for an advisory opinion.

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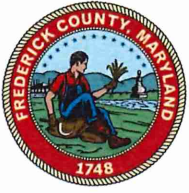
#### Upcoming 2022 Meeting Dates

May 11 <sup>th</sup>	September 14 <sup>th</sup>
June 8 <sup>th</sup>	October 12 <sup>th</sup>
July 13 <sup>th</sup>	November 9 <sup>th</sup>
August 10 <sup>th</sup>	December 14 <sup>th</sup>
* Third Wednesday in April	

#### Remaining Annual calendar items:

Month	Item
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1





## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

*Stephen K. Hess, Chair*

### Public Meeting Agenda for

Wednesday, May 11, 2022, at 7:00 p.m.

Meeting location: Winchester Room, 2<sup>nd</sup> Floor, Winchester Hall

#### AGENDA:

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approve Minutes of the April 20, 2022 Meeting.
4. Vote to conduct an administrative function meeting to discuss a one or more pending complaints.

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#### Upcoming 2022 Meeting Dates

June 8 <sup>th</sup>	October 12 <sup>th</sup>
July 13 <sup>th</sup>	November 9 <sup>th</sup>
August 10 <sup>th</sup>	December 14 <sup>th</sup>
September 14 <sup>th</sup>	

#### Remaining Annual calendar items:

Month	Item
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1



## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

*Stephen K. Hess, Chair*

### Public Meeting Agenda for

Wednesday, June 8, 2022, at 7:00 p.m.

Meeting location: Winchester Room, 2<sup>nd</sup> Floor, Winchester Hall

#### AGENDA:

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approve Minutes of the May 11, 2022 Meeting.
4. Update on 2021 Financial Disclosure Statements
5. Vote to conduct an administrative function meeting to discuss a pending complaint.

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#### Upcoming 2022 Meeting Dates

July 13 <sup>th</sup>	October 12 <sup>th</sup>
August 10 <sup>th</sup>	November 9 <sup>th</sup>
September 14 <sup>th</sup>	December 14 <sup>th</sup>

#### Remaining Annual calendar items:

Month	Item
July	Elect Chair and Vice-Chair
August/September	Begin work on annual report to the County Executive and County Council
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1



## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

*Stephen K. Hess, Chair*

### Public Meeting Agenda for

Wednesday, September 14, 2022, at 7:00 p.m.

**Meeting location: Winchester Room, 2<sup>nd</sup> Floor, Winchester Hall**

#### **AGENDA:**

1. Call to Order / Roll Call.
2. Election of Chair and Vice-Chair;
3. Approval of the minutes from the June 8, 2022 meeting;
4. Acceptance of Report pursuant to Section 5-861 of Maryland Public Ethics Law;
5. Discussion of Commission's Annual Report to the County Executive and County Council and Annual Certification; and
6. Update on Review of Financial Disclosure Statements.

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#### **Upcoming 2022 Meeting Dates**

October 12 <sup>th</sup>
November 9 <sup>th</sup>
December 14 <sup>th</sup>

#### **Remaining Annual calendar items:**

Month	Item
September	Chair to sign the annual certification to the State Ethics Commission
October	Annual report and annual certification due by October 1

Appendix B  
Ethics Commission Minutes



Jan H. Gardner  
County Executive

## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

Stephen K. Hess, Chair

### Minutes of the Public Meeting of the Frederick County Ethics Commission

Wednesday, January 12, 2022  
7:00 P.M.

**Present:**

Stephen K. Hess (Chair)  
Rev. Douglas P. Jones (Vice-Chair)  
Rev. Stephen Larsen  
Deborah L. Lundahl  
James A. Stanker  
Mr. Michael G. Bunitsky

**Alternate:**

Ms. Ysela Bravo

**Absent:**

Anna Johnson-Winegar

**Secretary:** Andrew J. Ford, Assistant County Attorney

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The Frederick County Ethics Commission meeting was called to order at 7:03 p.m. on January 12, 2021. The meeting was held virtually via Microsoft Teams.

**Approval of Agenda.** Ms. Lundahl made a motion to approve the Agenda. Rev. Jones seconded the motion, which was approved unanimously.

**Approval of Minutes of September 8, 2021.** The draft minutes of the September 8, 2021, public meeting were e-mailed to the members before the meeting. Ms. Lundahl made a motion to approve the draft minutes. Rev. Jones seconded the motion, which was approved unanimously.

**Approval of schedule of regular meetings for 2022.** The Commission discussed the proposed schedule of meetings for the remainder of 2022. While the commissioners were amendable to keeping the meetings on the second Wednesday of each month, Rev. Jones noted that the April meeting would fall during Holy Week, potentially affecting attendance of two members. It was proposed that the April meeting would be held on the 20<sup>th</sup> instead. Rev. Larsen made a motion to approve the proposed meeting schedule with that change. Rev. Jones seconded the motion, which was approved unanimously.

February 9th  
March 9<sup>th</sup>  
April 20<sup>th</sup>  
May 11<sup>th</sup>  
June 8<sup>th</sup>

July 13<sup>th</sup>  
August 10<sup>th</sup>  
September 14<sup>th</sup>  
October 12<sup>th</sup>  
November 9<sup>th</sup>  
December 14<sup>th</sup>

**Discussion of Commission's Standard Operating Procedures (2016)**. Andrew Ford, counsel to the Commission, discussed the need to review and revise the Commission's Standard Operating Procedures. Both Rev. Larsen and Mr. Bunitsky volunteered to be members of the working group. Other members participation in the group is to be determined. Motion to create the working group was made by Rev. Larsen and seconded by Mr. Bunitsky. The motion was approved unanimously.

**Administrative Function**. The Commission recently received three (3) ethics complaints, and one (1) request for approval of an outside employment. The Commission discussed whether it should conduct an administrative function meeting to discuss these matters. Mr. Buntisky made a motion to hold an administrative function meeting. Mr. Stanker seconded the motion, which was approved unanimously.

Required information regarding the administrative function meeting – The Commission ended the Microsoft Teams meeting and after a break, convened an administrative function meeting via Microsoft Teams. The Commission began its administrative function meeting at approximately 7:20 on January 12, 2022, via Teams.

Present for the meeting were Commissioners Hess (Chair), Jones (Vice-Chair), Larsen, Lundahl, Stanker, Bunitsky and Alternate. Ms. Bravo. Mr. Ford was also in attendance.

The Commission discussed the three (3) recently received complaints and authorized Mr. Ford to proceed with the preliminary inquiry into the allegations made and report back to the Commission. The outside employment request was approved.

There being no other business before the Commission, the Ethics Commission adjourned its meeting at approximately 7:10 p.m.

/s/

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Andrew J. Ford  
Assistant County Attorney





**FREDERICK COUNTY GOVERNMENT**

**FREDERICK COUNTY ETHICS COMMISSION**  
Office of the County Attorney

*Stephen K. Hess, Chair*

**Minutes of the Public Meeting of the  
Frederick County Ethics Commission**

**Wednesday, February 9, 2022  
7:00 P.M.**

**Present:**

Stephen K. Hess (Chair)  
Rev. Douglas P. Jones (Vice-Chair)  
Anna Johnson-Winegar  
Rev. Stephen Larsen  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky

**Absent:**

James A. Stanker  
Ms. Ysela Bravo (Alternate)

**Also in Attendance**

Andrew J. Ford, Assistant County Attorney

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The Frederick County Ethics Commission meeting was called to order at 7:04 p.m. on February 9, 2021. The meeting was held virtually via Microsoft Teams.

1. Approval of Agenda
2. Approval of the minutes from the January 12, 2022 meeting;
3. Distribution of the County Executive's Public Ethics Report for Period July 1, 2021 through December 31, 2021;
4. Vote to conduct an administrative function meeting to discuss one or more pending ethics complaint.\*

\* If Commission votes to conduct an administrative function meeting, the public meeting will be adjourned.

Approval of Agenda. Mr. Bunitsky made a motion to approve the Agenda. Ms. Lundahl seconded the motion, which was approved unanimously.

Approval of Minutes of January 12, 2022. The draft minutes of the January 12, 2022, public meeting were e-mailed to the members before the meeting. Rev. Jones made a motion to approve the draft minutes. Mr. Bunitsky seconded the motion, which was approved unanimously.

Distribution of the County Executive's Public Ethics Report for Period July 1, 2021 through December 31, 2022. The Commissioners agreed by consensus to accept the report from the Chief Administrative Officer.

Administrative Function. The Commission recently received three (3) ethics complaints. The Commission discussed whether it should conduct an administrative function meeting to discuss these matters. Rev. Jones made a motion to hold an administrative function meeting. Mr. Bunitsky seconded the motion, which was approved unanimously.

Required information regarding the administrative function meeting – The Commission ended the Microsoft Teams meeting and after a break, convened an administrative function meeting via Microsoft Teams. The Commission began its administrative function meeting at approximately 7:12 on February 9, 2022, via Teams.

Present for the meeting were Commissioners Hess (Chair), Jones (Vice-Chair), Larsen, Lundahl, Bunitsky, and Winegar. Mr. Ford was also in attendance.

The Commission discussed the ethics complaints and authorized Mr. Ford to further investigate the allegations.

There being no other business before the Commission, upon motion by Rev. Jones, seconded by Ms. Lundahl, the Ethics Commission adjourned its meeting at approximately 7:59 p.m.

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/s/  
Andrew J. Ford  
Assistant County Attorney





**FREDERICK COUNTY GOVERNMENT**

**FREDERICK COUNTY ETHICS COMMISSION**  
Office of the County Attorney

*Stephen K. Hess, Chair*

**Minutes of the Public Meeting of the  
Frederick County Ethics Commission**

**Wednesday, March 9, 2022  
7:00 P.M.**

**Present:**

Rev. Douglas P. Jones (Vice-Chair)  
Anna Johnson-Winegar  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky  
James A. Stanker

**Absent:**

Rev. Stephen Larsen  
Stephen K. Hess (Chair)  
Ms. Ysela Bravo (Alternate)

**Also in Attendance**

Andrew J. Ford, Assistant County Attorney

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The Frederick County Ethics Commission meeting was called to order at 7:01 p.m. on March 9, 2022. The meeting was held virtually via Microsoft Teams.

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approval of the minutes from the February 9, 2022 meeting.
4. Review Financial Disclosure Statement process for 2021 Statements (due in April 2022).
5. Discussion of State-required changes to the County's Ethics Law as well as other possible recommendations to the County Executive for amendment of the County's Ethics Law.
6. Vote to conduct an administrative function meeting to discuss a request for an advisory opinion and the status of pending complaints.

Approval of Agenda. Commissioner Lundahl made a motion to approve the Agenda. Commissioner Stanker seconded the motion, which was approved with Commissioner Stanker abstaining.

Approval of Minutes of February 9, 2022. The draft minutes of the February 9, 2022, public meeting were e-mailed to the members before the meeting. Commissioner Johnson-

Winegar made a motion to approve the draft minutes. Commissioner Lundahl seconded the motion, which was approved unanimously.

Review of Financial Disclosure Statement process for 2021 Statements (due in April 2022):

Mr. Ford reviewed the process for upcoming Financial Disclosure Statements for 2021. Statements will be distributed in April. Mr. Ford notified the Commission that due to a change in Human Resource's classification plan the language of Section 1-7.1-7 (1)(a) of the Ethics Law would inadvertently require a substantial number of employees to complete a Financial Disclosure Statement for the first time. Such employees are not typically be at a level that such Statements are necessary or warranted. The Commission considered reducing the number of required disclosure statements based on the changes in the classification plan as well as the contemplated changes to the Ethics Law; however, because of the absence of some members of the Commission, the Commission decided to schedule another meeting before the end of March to further consider such a change.

Ethics Law Changes: The Commission discussed proposed changes to the Ethics Law required by the State Ethics Commission as well as changes based on the revised compensation plan. No recommendation was necessary given the changes are required by State law and regulation. With respect to the issue of changes to Section 1-7.1-7 (*i.e.*, appropriate minimum grade for requiring Financial Disclosure Statements and list of boards and commissions), the Commission decided to postpone this until the next meeting.

Administrative Function: The Commission recently a request for an advisory opinion. Commissioner Bunitsky made a motion to hold an administrative function meeting. Commissioner Lundahl seconded the motion, which was approved unanimously.

Required information regarding the administrative function meeting – The Commission ended the Microsoft Teams meeting and after a short break to reconnect via Teams convened an administrative function meeting via Microsoft Teams. Present for the meeting were Commissioners Jones (Vice-Chair), Stanker, Lundahl, Bunitsky, and Johnson-Winegar. Mr. Ford was also in attendance.

The Commission discussed the request for an advisory opinion and requested Mr. Ford to gather additional information for the Commission's consideration.

There being no other business before the Commission, upon motion by Commissioner Lundahl, seconded by Commissioner Stanker, the Ethics Commission adjourned its administrative function meeting at approximately 8:07 p.m.

\_\_\_\_\_  
/s/  
Andrew J. Ford  
Assistant County Attorney



**FREDERICK COUNTY GOVERNMENT**

**FREDERICK COUNTY ETHICS COMMISSION**  
Office of the County Attorney

*Stephen K. Hess, Chair*

**Minutes of the Public Meeting of the  
Frederick County Ethics Commission**

**Wednesday, March 23, 2022  
3:30 P.M.**

**Present:**

Stephen K. Hess (Chair)  
Rev. Douglas P. Jones (Vice-Chair)  
Anna Johnson-Winegar  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky  
Rev. Stephen Larsen

**Absent**

James A. Stanker  
Ms. Ysela Bravo (Alternate)

**Also in Attendance**

Andrew J. Ford, Assistant County Attorney  
Kimberly Long

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The Frederick County Ethics Commission meeting was called to order at 3:31 p.m. on March 23, 2022. The meeting was held virtually via Microsoft Teams.

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Recommend change to Section 1-7.1-7 of the Ethics Law. (See attached.)
4. Recommend change to Review Financial Disclosure Statement process for 2021 Statements (due in April 2022) due to change in Wage and Salary Grade and Past Experience.

Approval of Agenda. Commissioner Bunitsky made a motion to approve the Agenda. Commissioner Lundahl seconded the motion, which was approved unanimously.

Ethics Law Changes: The Commission discussed proposed changes to Section 1-7.1-7 of the Ethics Law. Discussion was had as to the nature of work of employees at different grades and need for completion of financial disclosure statements by such employees. Motion was made by Commissioner Bunitsky to recommend change to Section 1-7.1-7 as set forth in the attachment to the meeting's Agenda. Motion was seconded by Commissioner Jones and was approved unanimously.

Review of Financial Disclosure Statement process for 2021 Statements (due in April 2022): The Commission discussed reducing the number of employees subject to completing the financial disclosure statement for calendar year 2021 due to change in compensation plan grades as well as contemplated changes to the Ethic Law. Commissioner Jones asked whether statements could be requested later in the year if, for example, the change to Section 1-7.1-7 did not pass the County Council. Mr. Ford indicated that statements could be required at a later date. Commissioners unanimously consented with directing staff to proceed at this time with only those employees at Grade 16 and above and those members on the updated list of boards and commissioners as set forth in the revision to Section 1-7.1-7, attached to the Agenda.

\_\_\_\_\_/s/\_\_\_\_\_  
Andrew J. Ford  
Assistant County Attorney



**FREDERICK COUNTY GOVERNMENT**

**FREDERICK COUNTY ETHICS COMMISSION**  
Office of the County Attorney

*Stephen K. Hess, Chair*

**Minutes of the Public Meeting of the  
Frederick County Ethics Commission**

**Wednesday, April 20, 2022  
7:00 P.M.**

**Present:**

Stephen K. Hess (Chair)  
Anna Johnson-Winegar  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky  
James A. Stanker  
Rev. Stephen Larsen

**Absent:**

Rev. Douglas P. Jones (Vice-Chair)  
Ysela Bravo (Alternate)

**Also in Attendance**

Andrew J. Ford, Assistant County Attorney

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The Frederick County Ethics Commission meeting was called to order at 7:00 p.m. on April 20, 2022.

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approve Minutes of the March 9, 2022 Meeting and the March 23, 2022 Meeting.
4. Vote to conduct an administrative function meeting to discuss a pending request for an advisory opinion.

Approval of Agenda. Commissioner Larsen made a motion to approve the Agenda. Commissioner Stanker seconded the motion, which was approved unanimously.

Approval of Minutes of March 9, 2022 and March 23, 2022 Meetings. The draft minutes of the March 9<sup>th</sup> and March 23<sup>rd</sup> public meeting were e-mailed to the members before the meeting. Commissioner Bunitsky made a motion to approve the March 9, 2022 draft minutes. Commissioner Larsen seconded the motion, which was approved unanimously. Commissioner Winegar made a motion to approve the March 23, 2022 draft minutes. Commissioner Bunitsky seconded the motion, which was approved unanimously.

Administrative Function: The Commission recently a request for an advisory opinion. Commissioner Stanker made a motion to hold an administrative function meeting. Commissioner Bunitsky seconded the motion, which was approved unanimously.

Required information regarding the administrative function meeting – Present for the meeting were Commissioners Hess, Johnson-Winegar, Lundahl, Bunitsky, Stanker and Larsen. Mr. Ford, Ms. Kathy Mitchell, Ms. Kim Brandt were also in attendance.

The Commission members discussed the request for an advisory opinion and how the Ethics Law and other laws apply to the specific action referenced in the opinion request. The members directed that an advisory opinion be prepared.

There being no other business before the Commission, upon motion by Commissioner Johnson-Winegar, seconded by Commissioner Stanker, the Ethics Commission adjourned its administrative function meeting at approximately 7:48 p.m.

\_\_\_\_\_/s/  
Andrew J. Ford  
Assistant County Attorney



Jan H. Gardner  
County Executive

## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

Stephen K. Hess, Chair

### Minutes of the Public Meeting of the Frederick County Ethics Commission CORRECTED

Wednesday, May 11, 2022  
7:00 P.M.

#### Present:

Rev. Douglas P. Jones (Vice-Chair)  
Anna Johnson-Winegar  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky  
James A. Stanker  
Rev. Stephen Larsen

#### Absent:

Stephen K. Hess (Chair)

#### Also in Attendance

Andrew J. Ford, Assistant County Attorney

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The Frederick County Ethics Commission meeting was called to order at 7:00 p.m. on May 11, 2022.

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approve Minutes of the April 20, 2022 Meeting.
4. Vote to conduct an administrative function meeting to discuss a pending request for an advisory opinion.

Approval of Agenda. Commissioner Stanker made a motion to approve the Agenda. Commissioner Bunitsky seconded the motion, which was approved unanimously.

Approval of Minutes of April 20, 2022 Meeting. The draft minutes of the April 20, 2022, public meeting were e-mailed to the members before the meeting. Commissioner Winegar made a motion to approve the draft minutes. Commissioner Stanker seconded the motion, which was approved unanimously.



Administrative Function: Commissioner Larsen made a motion to hold an administrative function meeting to discuss two (2) pending complaints. Commissioner Bunitsky seconded the motion, which was approved unanimously.

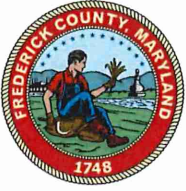
Required information regarding the administrative function meeting. Present for the meeting were Commissioners Jones, Johnson-Winegar, Lundahl, Bunitsky, Stanker and Larsen. Mr. Ford, was also in attendance.

The Commission discussed whether the facts alleged in each of two (2) complaints, if true, would constitute a violation of the Ethics Law by the individuals named in the complaints. By consensus, the members agreed that the facts alleged in each complaint did not state a violation of the Ethics Law. The members asked Mr. Ford to draft the necessary dismissal notices.

There being no other business before the Commission, upon motion by Commissioner Winegar, seconded by Commissioner Bunitsky, the Ethics Commission adjourned its administrative function meeting at approximately 7:35 p.m.

\_\_\_\_\_/s/  
Andrew J. Ford  
Assistant County Attorney





Jan H. Gardner  
County Executive

## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

Stephen K. Hess, Chair

### Minutes of the Public Meeting of the Frederick County Ethics Commission

Wednesday, June 8, 2022  
7:00 P.M.

#### Present:

Stephen K. Hess (Chair)  
Rev. Douglas P. Jones (Vice-Chair)  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky

#### Absent:

Anna Johnson-Winegar  
James A. Stanker  
Rev. Stephen Larsen

#### Also in Attendance

Andrew J. Ford, Assistant County Attorney

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The Frederick County Ethics Commission meeting was called to order at 7:02 p.m. on June 8, 2022.

1. Call to Order / Roll Call.
2. Approval of Agenda.
3. Approve Minutes of the May 11, 2022, Meeting.
4. Update on 2021 Financial Disclosure Statements.
5. Vote to conduct an administrative function meeting to discuss a pending request for an advisory opinion.

Approval of Agenda. Commissioner Jones made a motion to approve the agenda. Commissioner Bunitsky seconded the motion, which was approved unanimously.

Approval of Minutes of May 11, 2022, Meeting. The draft minutes of the May 11, 2022, public meeting were e-mailed to the members before the meeting. Commissioner Jones made a motion to approve the draft minutes. Commissioner Lundahl seconded the motion, which was approved unanimously.

Update on 2021 Financial Disclosure Statements. Mr. Ford provided an update on the status of the review of financial disclosure statement exception reports.

Administrative Function: Commissioner Jones made a motion to hold an administrative function meeting to discuss one (1) pending complaints. Commissioner Bunitsky seconded the motion, which was approved unanimously.

Required information regarding the administrative function meeting. Present for the meeting were Commissioners Hess, Jones, Lundahl, and Bunitsky. Mr. Ford was also in attendance.

The Commission discussed whether the facts alleged in the complaint, if true, would constitute a violation of the Ethics Law by the individual named in the complaint. By consensus, the members agreed that the facts alleged in each complaint did not state a violation of the Ethics Law. The members asked Mr. Ford to draft the necessary dismissal notice.

Upon motion by Commissioner Jones, seconded by Commissioner Lundahl and approved unanimously, the Ethics Commission adjourned its administrative function meeting at approximately 7:25 p.m. There being no other business before the Commission, Commissioner Lundahl made a motion to adjourn the meeting, which was seconded by Commissioner Bunitsky and approved unanimously. The meeting was adjourned at 7:25.

/s/  
\_\_\_\_\_  
Andrew J. Ford  
Secretary



Jan H. Gardner  
County Executive

## FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION  
Office of the County Attorney

Stephen K. Hess, Chair

### Minutes of the Public Meeting of the Frederick County Ethics Commission

Wednesday, September 14, 2022  
7:00 P.M.

#### Present:

Stephen K. Hess (Chair)  
Rev. Douglas P. Jones (Vice-Chair)  
Deborah L. Lundahl  
Mr. Michael G. Bunitsky  
Rev. Stephen Larsen

#### Absent:

James A. Stanker  
Anna Johnson-Winegar

#### Also in Attendance

Andrew J. Ford, Secretary

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The Frederick County Ethics Commission meeting was called to order 7:00 p.m. on September 14, 2022.

1. Call to Order / Roll Call.
2. Election of Chair and Vice-Chair;
3. Approval of the minutes from the June 8, 2022;
4. Acceptance of Report pursuant to Section 5-861 of Maryland Public Ethics Law;
5. Discussion of Commission's Annual Report to the County Executive and County Council and Annual Certification; and
6. Update on Review of Financial Disclosure Statements.

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**1. Approval of Agenda.** Commissioner Hess called the meeting to order. Commissioner Bunitsky made a motion to approve the agenda. Commissioner Jones seconded the motion, which was approved unanimously.

**2. Election of Chair and Vice-Chair.** Commissioner Lundahl nominated Rev. Jones to be Vice-Chair. Commissioner Larsen seconded the motion, which was approved

unanimously. Commissioner Lundahl nominated Mr. Hess to be Chair. Commissioner Jones seconded the motion, which was approved unanimously.

3. Approval of Minutes of June 8, 2022, Meeting. The draft minutes of the June 8, 2022, public meeting were e-mailed to the members before the meeting. Commissioner Jones made a motion to approve the draft minutes. Commissioner Bunitsky seconded the motion, which was approved unanimously.

4. Acceptance of Report pursuant to Section 5-861 of Maryland Public Ethics. The Report was e-mailed to the members before the meeting. By consensus, the members accepted the Report.

5. Discussion of Commission's Annual Report to the County Executive and County Council and Annual Certification. The draft Annual Report, without copies of past agendas and minutes, was e-mailed to members before the meeting. Commissioner Larsen moved to approve the draft Annual Report with such changes and completions as the Chair or Vice-Chair deemed appropriate with advice of counsel and authorized either the Chair or Vice-Chair to sign and transmit the Annual Report to the County Executive and the County Council. Commissioner Lundahl seconded the motion, which was approved unanimously.

The draft annual Certification was e-mailed to the members before the meeting. Mr. Ford indicated that the Office of the County Attorney would work with the Chair to finalize and transmit the Certification to the State of Maryland Ethics Commission.

6. Update on 2021 Financial Disclosure Statements. Mr. Ford provided an update on the status of the review of financial disclosure statements as prepared by the staff at the Office of the County Attorney. Commissioners requested that staff provide at the next meeting copies of any financial disclosure statement noted as exceptions. In addition, at the meeting the Commissioners reviewed the financial disclosure statements of the elected officials, division heads and member of certain boards and commissions.

There being no other business before the Commission, Commissioner Bunitsky made a motion to adjourn the meeting, which was seconded by Commissioner Larsen and approved unanimously. The meeting was adjourned at 8:01.

\_\_\_\_\_/s/  
Andrew J. Ford  
Secretary

Appendix C  
Advisory Opinion



## Advisory Opinion 22-01

May 17, 2022

On February 25, 2022, the Ethics Commission received a letter from a member of the Planning Commission asking whether the Commissioner's consulting business constituted a conflict of interest with respect to the Commissioner's participation in the review and recommendation of the Sugarloaf Treasured Landscape Plan (the "Sugarloaf Plan"). Under the terms and representations detailed below, we do not believe that it would.

### I. Background

The Commissioner's request came because of a complaint made against the Commissioner by a member of the public alleging that the Commissioner has a conflict of interest because of prior work as a consultant involving a developer with significant holdings within the Sugarloaf Plan area (the "Developer"). The complaint was addressed not to the Ethics Commission but to members of the Office of the County Attorney and the Frederick County Council. Thereafter, the individual who made this complaint (the "Complainant") was informed of the proper procedures and requirements for the filing of an ethics complaint with the Ethics Commission, but no complaint was ever received. The Ethics Commission reviewed the representations made by the Commissioner in addressing the allegations made in the complaint.

The Sugarloaf Plan being considered by the Planning Commission is the culmination of a multi-year process. The Planning Commission's current role began in 2021. From the Sugarloaf Plan's First Draft:

The Sugarloaf Treasured Landscape Management Plan is a long-range planning document that exists within the context of a broader planning initiative known as Livable Frederick. With the adoption of the Livable Frederick Master Plan in September 2019, Frederick County created a new framework for making strategic decisions about the County's future. The Livable Frederick Comprehensive Plan serves as an umbrella under which a multitude of plans, policies, studies, and regulations are continuously emerging and evolving. The Sugarloaf Treasured Landscape Management Plan is one such document.

Sugarloaf Plan, First Draft, July 2021, p.1

The initial timeline for review and recommendation of the Sugarloaf Plan by the Planning Commission as set forth on the website of the Division of Planning and Permitting (the "Division") was as follows:

July 30, 2021 - The Livable Frederick Planning and Design Office announced that the [Sugarloaf Treasured Landscape Management Plan First Draft \(PDF\)](#) was available for public review. The Plan seeks to maintain rural character and scenic attributes, protect environmental resources, and enhance landscape quality in the Sugarloaf Mountain area. This "large area plan" begins to put



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**May 17, 2022**

into action the Livable Frederick Master Plan, Frederick County’s guiding policy document for how and where the county will grow, conserve, and preserve.

August 17, 2021 & August 19, 2021 - The draft of the Sugarloaf Treasured Landscape Management Plan was introduced to the public at two virtual open houses from 6:30 PM – 8:30 PM. After a brief presentation, staff invited members of the public to offer their feedback and ask questions.

September 15, 2021, October 20, 2021, November 10, 2021, November 17, 2021, December 8, 2021, January 19, 2022, February 9, 2022, February 16, 2022, and March 2, 2022 - The Planning Commission held workshops and a public hearing to review the Staff Draft of The Sugarloaf Treasured Landscape Management Plan and develop the plan that will ultimately be recommended by the Planning Commission to the County Council for adoption.

<https://www.frederickcountymd.gov/8046/Sugarloaf-Area-Plan>

In early March 2022, the Planning Commission voted to submit the March 2022 draft of the Sugarloaf Plan to the State of Maryland for a required 60-day review. Based on the Commissioner’s belief that she did not have a conflict of interest, the Commissioner did not refrain from participation in the March meeting. According to the Division’s website, the Planning Commission may make additional changes to the March 2022 draft Plan after a public hearing on May 18, 2022, prior to formally transmitting their Recommended Sugarloaf Treasured Landscape Management Plan to the County Council.

**II. Procedures**

Under Section §1-7.1-4(c) of the Frederick County Ethics Law, the Ethics Commission is required to develop procedures and policies for advisory opinion requests and to publish such opinions. Pursuant to the Ethics Commission’s Standard Operating Procedures (August 2016), the Ethics Commission issues advisory opinions to provide guidance on compliance with the requirements of the Ethics Law. Advisory Opinions are issued in advance of an action and provide guidance on how to comply with the Ethics Law. This differs from a Commission decision on a complaint, which looks at conduct that has already occurred and determines whether there has been a violation of the Ethics Law. When the Commission makes a decision on the request, it issues an Advisory Opinion.

In this instance, because actions have been taken by the Commissioner at various stages in the review of the Sugarloaf Plan but no formal complaint has been received, the Ethics Commission limited its review to the Commissioner’s request as it may relate to any future actions with respect to the Sugarloaf Plan.

**III. Representations of Commissioner**

The Commissioner made the following representations (the “Representations”) in the letter to the Ethics Commission<sup>1</sup>:

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<sup>1</sup> The Representations have been paraphrased to maintain confidentiality of the requestor.



**Advisory Opinion 22-01**  
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- A. Commissioner has never been a consultant for or an employee of the Developer, its owner or its affiliates.
- B. Commissioner is the owner of a consulting company and a sub-consultant for another consulting company in Columbia, Md. As a sub-consultant, Commissioner provides due diligence work for lenders and financial institutions which includes review of construction cost, environmental conditions, plans and specifications and construction monitoring when a developer requests funding for their loans. Commissioner has no contact with the Developer or its owner. In Commissioner's LinkedIn profile (referenced by the Complainant), Commissioner does not and has not ever listed Developer as one of Commissioner's clients as the Complainant alleged.
- C. The projects are listed [on the LinkedIn profile] under Lending Institutions Reviews or Monitoring Projects because the lending institutions are the clients. Commissioner's work is to inform the lenders whether a project is viable or a request for funding is reasonable. By the time a lender sends a request for review or monitoring, those projects have been approved by the Planning Commission sometimes for years and permits are [already] issued.
- D. Commissioner has recused himself from several of the Developer's projects listed by the Complainant because although Commissioner is not employed by the Developer, Commissioner had been engaged by the other consulting firm to review or monitor these specific construction projects which were already under way and, therefore, Commissioner believed it was a conflict to vote on any revisions or new site plans for said projects. As noted, before, almost all of these projects had previously received site plan, concept plan or subdivision approvals prior to Commissioner's appointment to the Planning Commission and/or were coming back for updates, revisions, or additional approvals.
- E. Commissioner has not been engaged by or discussed with anyone any future development plans for properties in the Sugarloaf area boundary as proposed recently by the Planning Commission which include properties along I-270 and up north to the Monocacy.

**IV. Ethics Law**

Section 1-7.1-5(c) of the Ethics Law states:

*(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.*

*(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:*

*(a) A business entity in which the official or employee has a **direct financial interest** of which the official or employee may reasonably be expected to know;*

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(b) *A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;*

(c) *A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;*

(d) *If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;*

(e) *An entity, doing business with the County, in which **a direct financial interest** is owned by another entity in which the official or employee has **a direct financial interest**, if the official or employee may be reasonably expected to know of both direct financial interests;*  
or

(f) *A business entity that:*

(i) *The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value and*

(ii) *As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.*

(3) *A person who is disqualified from participating under subparagraphs (1) or (2) of this paragraph shall disclose the nature and circumstances of the conflict and may participate or act if:*

(a) *The disqualification leaves a body with less than a quorum capable of acting;*

(b) *The disqualified official or employee is required by law to act; or*

(c) *The disqualified official or employee is the only person authorized to act.*

(4) *The prohibitions of subparagraphs (1) and (2) of this paragraph do not apply if participation is allowed by regulation or opinion of the Commission.*

(Emphasis added.)

## V. Discussion

Based on the Representations, Section 1-7.1-5 of the Ethics Law does not apply to Commissioner's role as a consultant. A decision whether to participate in any given matter should be made on a case-by-case basis. In the event the Commissioner were to have a direct financial interest with the Developer regarding property within the Sugarloaf area boundary, and a discussion or vote came before the Planning Commission that would have an impact on a limited number of properties, including one or more owned by the Developer, then the Commissioner should identify the nature of the potential conflict on the record and recuse themselves from any discussion or vote on the matter. Anything less than a direct financial interest does not, in and of itself, create a conflict of interest.

Under an earlier version of the County's Ethics Law, a County official was not permitted to act on behalf of the County in any matter that would result in a direct financial impact, *as distinguished from an impact on the public generally*, on the official or a close family member. (Emphasis added.) While the italicized language does not appear in the current version of the Ethics Law, the Ethics Commission believes that the interpretations found in prior opinions of this Ethics Commission remain instructive to the interpretation of the phrase "*direct financial interest*" in the current law.

In Advisory Opinion 08-01, the Ethics Commission found that

## Advisory Opinion 22-01

May 17, 2022

. . .where a discussion or vote would have an impact on a limited number of properties, one or more of which is owned by a close relative of the Planning Commission member (as defined in Section 1-7.1-4(A)), the Ethics Commission recommends that the Planning Commission member identify the nature of the potential conflict on the record and then recuse herself from any discussion or vote on that matter.

Similarly, in Ethics Opinion 93-1, which approved the following standard for determining whether a conflict of interest exists: “*The more people a particular action affects, the less likely it is to constitute ‘a direct financial impact, as distinguished from the public generally.’*” However, as also noted in Ethics Opinion 93-1, the determination that there has been no violation of participation prohibitions is not the end of the inquiry. Attached to that Opinion was a memorandum containing advice given by the County Attorney to a Commissioner. The County Attorney’s advice was as follows:

Your decision on whether to participate in a particular matter does not end with the mandatory provisions of the Ethics Ordinance. You should also consider whether your participation in a particular matter would cause an appearance of impropriety. You should also keep in mind that your duty to participate where not disqualified is equally as strong as your duty not to participate where disqualified.

Advisory Opinion 93-1, Attached Memo, at p. 3.

The Ethics Commission cannot provide a blanket approval for any future vote by the Commissioner relating to the Sugarloaf plan. To the extent the Planning Commission may consider additional changes to the Sugarloaf Plan, the Commissioner should keep the above advice in mind.

### Conclusion

For the reasons discussed above and based on the Representations, the Ethics Commission finds that the Commissioner’s participation in the review of the Sugarloaf Plan generally is not prohibited based on the Commissioner’s role as a consultant; however, because the request did not relate to any specific changes that may be considered by the Planning Commission, the Ethics Commission cannot provide any prospective assurance that the Commissioner would not have a conflict of interest with respect to any particular change that comes before the Planning Commission.

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/s/  
Stephen K. Hess, Chair