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CITY OF LAUREL, MARYLAND

ETHICS COMMISSION

May 13, 2008

The Honorable Mayor, Craig A. Moe
8103 Sandy Spring Road
Laurel, Maryland 20707

The Honorable Michael B. Sarich
8103 Sandy Spring Road
Laurel, Maryland 20707

CASE NUMBER EC-2008-01

IN THE MATTER OF A COMPLAINT AGAINST COUNCILMAN MICHAEL SARICH

A Final Hearing of the Laurel Ethics Commission was held on April 30, 2008 at 7:00 p.m. pursuant to Section 2-59(d) of the Laurel Code concerning a complaint dated October 17, 2007 regarding Councilman Michael Sarich.

COMMISSION MEMBERS PRESENT: Commissioners Hester (Chairman), McEvoy (Vice Chairman), Collins, Dahms, Fisher and Cunningham (alternate) were present and voting except for Ms. Cunningham, who participated in the hearing but did not vote since all of the regular Commissioners were present.

VIOLATIONS CONSIDERED: The complaint referenced email solicitation by Councilman Sarich of financial support for the "Sing for King" event from Somera Capital Management ("Somera"), a developer with business then before the Council. Mr. Sarich was notified by letter dated November 13, 2007, that possible violations of Sections 2-62(a), 2-62(f), 2-64 and 2-67 of the Laurel Code were under review.

WITNESSES: The following witnesses appeared and testified:

1. Mayor Craig Moe
2. Joseph Murchison
3. Robert Manzi, Esq.
4. Thomas Falatko

5. Councilman Michael Sarich

CASE HISTORY: City Solicitor Robert Manzi, Counsel to the Ethics Commission, recused himself from the case from the beginning. Suellen M. Ferguson, Esq., was appointed as Special Counsel to handle the matter. A Preliminary Hearing was held on January 29, 2008 at which Councilman Sarich appeared. The Ethics Commission found reasonable grounds existed to believe that one or more violations of the Ethics Ordinance had occurred, and that the process would move to the Final Hearing.

PRELIMINARY MATTERS: On the night of the hearing, Andrea Leahy-FucHECK, Esq., Steven DeSmet, Esq. and Jack B. Gohn, Esq. entered their appearance as attorneys for Councilman Sarich and filed four motions. These were taken up at the beginning of the hearing. A determination on the Motion to Dismiss was deferred until the end of the hearing. The Motion to Disqualify Ethics Commission Member Collins, Motion to Disqualify Ethics Special Counsel and/or For Other Relief, and Motion to Preclude Introduction of Evidence were denied.

FINDINGS OF FACT: On October 11, 2007, Councilman Sarich wrote an email to Tom Falatko of Somera, a developer with matters then pending before the Laurel City Council. Specifically, Somera was engaged in renovating the Laurel Mall, a \$300,000,000.00 project. To proceed with this project, various zoning decisions by the Laurel City Council in support of Somera's plan were required. The email solicited Mr. Falatko to make a financial contribution to an event known as "Sing for King", a tribute to the Reverend Martin Luther King.

Mayor Moe learned of the emails through a City staff person. He was concerned about a possible ethics violation, and forwarded the information to the Laurel Ethics Commission for review. His letter was marked as Exhibit 1.

The "Sing for King" event was a project sponsored by the Laurel Clergy Association and organized by Mr. Joseph Murchison. While the Laurel Clergy Association is a non-profit organization, it is not tax exempt per Internal Revenue Service requirements. As a result, all donations were routed through Our Savior Lutheran Church, which does have the tax exempt status.

Mr. Murchison stated that he requested names and contact information of various developers as likely contributors to the event from Councilman Sarich. He did not intend for Councilman Sarich to make the contact and in fact did not want him to. Mr. Murchison felt that a contact with Somera soliciting donations for "Sing for King" by Councilman Sarich was inappropriate, as they had matters before the City Council. Mr. Murchison said he was not familiar with the details of the Ethics Code, and that this conclusion was based on his personal view of the matter.

Mr. Falatko was concerned about the email solicitation, as the timing, with pending business before the Council, was unusual in his experience. He stated that the approval of the Laurel project, which is the largest that his company is handling, was critical, and that he was concerned about acting properly. As a result, he spoke with Robert Manzi, the City's attorney, about how to respond to the solicitation. Mr. Manzi indicated that Somera's involvement in the event based upon the Councilman's solicitation would not be appropriate at that time due to the pending matters before the Council. Mr. Falatko also conferred with his own attorney, Edward Gibbs, who agreed.

Mr. Falatko responded to Councilman Sarich by email on October 12, 2007, indicating that he had conferred with Robert Manzi, and that he did not want to “have any private interaction with members of the City Council” at that point due to the Overlay Application before the Council. Councilman Sarich responded in an email dated October 14. This email questions Mr. Manzi’s advice, and refers to the fact, among other things, that negative connotations could be ascribed to the decision not to contribute. The emails were entered into evidence as Exhibit 2. Mr. Falatko stated that the October 14 email made him feel sick to his stomach.

Robert Manzi, Esq., testified that he had been approached about the solicitation by Councilman Sarich to Somera during a meeting with Mr. Falatko. He stated that a solicitation and contribution at that time were inappropriate, as Somera had an ongoing zoning case before the Council. He also recommended to Mr. Falatko that he contact his own attorney, Edward Gibbs, for further advice. Councilman Sarich testified that he did not mean to make Mr. Falatko feel uncomfortable and that he was intending to be helpful. He agreed that the wording of his October 14 email was not the best, but that he was not trying to pressure Mr. Falatko. He stated he disagreed with Mr. Manzi’s advice, based on the exception for charitable contributions in Section 2-68 of the Laurel Code, and felt that the solicitation was appropriate. He had strong feelings in support of the Sing for King event, had publicly supported it, and allowed his name to be associated with it. He felt support of the event was part of being a good Council member and benefited the community. He pointed out that he did not receive any funds and would not receive any funds as a result of the solicitation, and that he has voted in favor of the Somera project. These votes were made after the complaint was filed. The Commission finds that this email, regardless of the intent by Mr. Sarich, was threatening and was taken that way by Mr. Falatko.

CONCLUSIONS OF LAW

The original notice to Councilman Sarich referenced several possible violations of the Ethics Code. For the following reasons, the Commission finds that Councilman Sarich’s actions do not constitute a violation of the Ethics Code.

Section 2-62(a) prohibits participation by a Councilman in any matter that would have a direct financial impact on him. There was no proof of that in this case.

Section 2-62(f) does prohibit solicitation by a Councilman of any gift or service greater than Twenty-five Dollars (\$25.00) in a calendar year from any person who is negotiating a contract with the city or is regulated by a city body. Councilman Sarich did not state an amount of funds that he was requesting Somera to donate, requesting that they provide “a bit of help with the funding”. While it may be possible to assume that the amount requested would be in excess of the \$25.00 amount, a de minimus amount, there is also the issue of the exemptions allowed under Section 2-68. This section allows a Councilman to solicit gifts on behalf of a non-profit organization, provided that the gift is not given with the purpose of influencing official action or non-action, and the gift does not inure to the personal benefit of the official and related persons or for profit company. There is no exception to this exemption that references soliciting an individual or entity with matters currently before the Council. There is no requirement that a Council member cease solicitations on behalf of a not for profit when the individual or entity solicited has current matters before the Council.

Section 2-64 refers to use of prestige to advance a private interest. Interest is defined in the Code as financial interest. No effect on the financial interest of Councilman Sarich was presented.

Section 2-67 refers to granting special considerations, treatment or advantage to any citizen beyond that available to any other in the same circumstances. The Commission determined that this was not the appropriate section to use in this circumstance.

Commission member Dahms moved that there were no violations of the Ethics Code and that the case should be dismissed. The motion was approved with five voting yes.

James Hester, Chair of the Ethics Commission, stated after the vote that while the Commission was unable to find a specific violation, the activity engaged in by Councilman Sarich is as close to the line as possible. The City Solicitor provided good advice about the appropriateness of soliciting those with current matters before the Council. Further, Councilman Sarich's email was threatening, and this type of pressure should be prohibited by the Ethics Code. No one on the Commission took Councilman Sarich's email as anything but threatening, no matter what he may have meant. No City official should be behaving in this manner. Mr. Sarich should think and reflect on his actions. It was difficult for the Commission to find no violation, as what Councilman Sarich did was not right and the Commission does not want this to happen again. The Commission intends to propose revisions to the Ethics Ordinance to the Mayor and City Council to prohibit such activities in the future.

City of Laurel Ethics Commission

James Hester, Chairman

cc:

Mr. Fred Smalls, Council President
Mr. Michael R. Leszcz, Council President pro tem
Ms Gayle Snyder, Councilmen
Ms Jan Robison, Council
Ms Suellen M. Ferguson, Special Counsel
Mrs. Kristie M. Mills, City Administrator
Mr. James Hestor, Ethics Commission Chair
Mr. Vincent McEvoy, Ethics Commission Vice Chair
Ms Marlene Collins, Ethics Commissioner
Mr. Kenneth Dahms, Ethics Commissioner
Ms Valerie Cunningham, Ethics Commissioner (Alternate)
Mr. Joseph Fisher, Ethics Commissioner