



August 29, 2011

Thomas Pollard
City Attorney, Greensboro
P.O. Box 3136
Greensboro, NC 27402-3136

RE: Gate City Effort to Preclude Councilwoman Nancy Vaughan from Voting on Its Waste Management Proposal Before the Greensboro City Council

Mr. Pollard,

I am writing to you on behalf of my clients, the Greensboro Concerned Citizens for Economic and Environmental Justice, the League of Women Voters Piedmont Triad, and multiple individuals living close to the White Street Landfill, all of whom oppose its re-opening. You recently determined Greensboro City Councilwoman Nancy Vaughan must vote on whether to allow Gate City Waste Services and its partners to operate Phase III of the White Street Landfill. I write to you today in response to Gate City challenging Councilwoman Vaughan's voting on their proposal. We encourage you to affirm your prior conclusion, as it is supported by the applicable authority and consistent with previous opinions from the Greensboro City Attorney's office.

State law establishes a presumption that elected representatives vote on matters taken up by the governing bodies on which they serve. North Carolina General Statute 160A-75 states "no member" of a City Council "shall be excused from voting except upon matters involving consideration of the member's own financial interest." As you note in your August 22, 2011 opinion, the public policy behind requiring Councilpersons to vote unless barred is clear: Greensboro residents elect representatives to tackle the pressing issues facing the city.

This presumption of participation is only overcome in Greensboro in narrow, well-defined circumstances. Section 4.131 of the City Charter requires any elected official "who has financial interest, direct or indirect, in any proposed contract with the city" to "make known that interest and... refrain from voting upon or otherwise participating in the making of such contract or sale." Greensboro's Conflict of Interest Policy precludes elected officials from participating in the award of a contract when the official or "any member of his [or her] immediate family... has a financial or other interest in the firm selected for the award." A July 21, 2011 opinion from Acting Greensboro City Attorney Tom Carruthers noted Councilwoman Vaughan's "husband is on retainer to legally represent Waste Industries," a party likely to (and which did in fact) respond to the third Request for Proposals (RFP) relating to the White Street Landfill. Accordingly, Councilwoman Vaughan was "unable to vote on the **modification and issuance of this third RFP**" due to Waste Industries' likely bid. Her conflict was then, and remains now, exclusive to a proposed contract with the firm of Waste Industries, not the process as a whole.¹

¹ This legal logic is equally applicable to Councilman Zack Matheny's conflict of interest. Councilman Matheny is currently barred from voting on this issue due to financial connections with Gate City. If his conflict with Gate City was eliminated, then, barring other unforeseen and heretofore undocumented conflicts, he would be required to vote on waste management proposals as well.

As the narrow scope of Carruthers's July 21, 2011 opinion implicitly recognizes, the RFP process is fluid, and, since then, has moved forward such that Councilwoman Vaughan no longer has a conflict. On August 16, 2011, the City Council voted to negotiate exclusively with Gate City to operate Phase III of the White Street Landfill. For the first time in three RFP processes there was only one vendor under consideration. Greensboro policy at that point mandated a review of whether Councilwoman Vaughan had a conflict relating to the proposed contract with Gate City. Your investigation concluded she had "no financial interest, direct or indirect, in Gate City." There was nothing, in your words, to "overcome the strong public policy of GS 160A-75" compelling Vaughan to vote.

Gate City does not seriously challenge any of the above information. Most notably, it does not allege Councilwoman Vaughan has any financial or other interest in its company.

Instead, Gate City seeks to drag Councilwoman Vaughan's previous conflict with Waste Industries back into the current consideration of its company. After candidly acknowledging, "we are not familiar with the details of the Vaughan family's relationship with Waste Industries," Gate City goes on to lob theory after theory against the wall in the hopes that one will stick. A review of each theory demonstrates they either do not fall within the scope of Greensboro's conflict policies or are unsupported by the facts.

First, Gate City argues Councilwoman Vaughan would have an interest in thwarting their bid in the hopes that this "would give Waste Industries another opportunity to be selected as the City's contractor." This argument seeks to change the scope of Greensboro's Charter and Conflict of Interest Policy. These policies focus on the "proposed contract with the city" and "the firm selected for the award," respectively, both implicating Gate City alone. The Council has taken tangible steps bearing out its focus, including "direct[ing] that the City Manager enter into negotiations with Gate City" and advertising a public hearing on a "proposal to award a contract to Gate City." There is no proposed contract between Greensboro and Waste Industries. For these reasons, Waste Industries is not implicated by Greensboro conflict policies.

Second, Gate City alleges "Waste Industries has a strong interest in preventing one of its competitors from obtaining additional business and revenues, which will put Gate City and its affiliates in a stronger position to compete on other projects." Gate City puts forward no evidence establishing it is Waste Industries' competitor. In fact, the evidence highlights they are not competitors. Waste Industries operates 38 collection companies, 23 transfer stations, 72 county solid waste and recycling drop off sites, 12 recycling facilities, and 8 landfills serving 1,000,000 municipal, residential, commercial, industrial, and institutional customers. By way of contrast, Gate City was incorporated March 1, 2011, for the sole purpose of bidding on the plan to re-open the White Street Landfill. It operates no other facility at present and has no stated plans to do so in the future.² Once Greensboro entered into contract negotiations with Gate City all competition between it and Waste Industries ended.

Third, Gate City states "we understand that once the contract in question is awarded, the City intends to close its Greensboro transfer station." The equivocal nature of this statement points to the lack of evidence supporting it. The RFP never states what Greensboro will do with its transfer station if the White Street Landfill is re-opened. Our understanding is that such a decision has not yet been definitively made by Greensboro. We understand that one of the many possibilities under consideration if White Street is re-opened involves Greensboro selling the transfer station to another waste services provider.

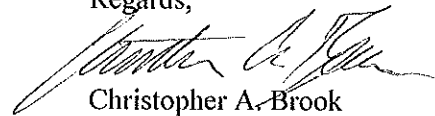
² To satisfy the RFP's experience requirement Gate City has partnered with Houston, Texas based WCA Waste Corporation. While satisfying the requirement, the fact remains that Gate City is the entity that responded to this RFP and it was only Waste Industries' competitor in the context of the RFP's earlier stages.

From its questionable assertion that the transfer station will close, Gate City argues "Waste Industries... may well be forced to pay higher transfer fees" at Republic Service's Guilford County transfer station, "and/or Republic may decide to compete against Waste Industries for these collection contracts." Again, the equivocal nature of these statements points to the lack of evidence supporting them. Contrary to Gate City's speculation, if Greensboro sells the transfer station to another waste management company then the Guilford County transfer station market will not change one iota. Even if Greensboro chose to fully mothball a five year-old transfer station this would not necessarily change waste disposal dynamics in Guilford County. The rates charged by Republic's transfer station are held in check by nearby disposal sites such as High Point's landfill in Guilford County and the Alamance County landfill, both of which are permitted to take Guilford County waste. And, if Gate City is so concerned by such speculative and attenuated potential conflicts, then surely they must be up in arms over Councilman Trudy Wade's participation in RFP votes featuring her first cousin's company, A-1 Sandrock.

Finally, Gate City argues "it seems ill-advised" that Councilwoman Vaughan is required to participate in a process she had been conflicted out of in its previous iterations and stages. This argument does not address the North Carolina presumption of participation. It does not address the scope of the City Charter or Conflict of Interest Policy. While legally unpersuasive, the audacity of what is in essence a Houston-based company advising Greensboro, its elected representatives, and its residents who should not vote on a proposal it stands to make millions off of is impressive.

Fearing it might lose the game Gate City has decided to complain about the rules and the referee. The rules are clear: Councilwoman Vaughan's only conflict relates to Waste Industries. And the referee was right: Councilwoman Vaughan is compelled to vote on this matter of great importance to her constituents. We encourage you to affirm your prior opinion on point.

Regards,



Christopher A. Brook

cc: George House, Esq.
City Manager Rashad Young
Mayor William H. Knight
City Councilwoman T. Dianne Bellamy-Small
City Councilman Jim Kee
City Councilman Zack Matheny
City Councilman Robbie Perkins
City Councilwoman Mary C. Rakestraw
City Councilman Danny Thompson
City Councilwoman Nancy Vaughan
City Councilwoman Trudy Wade