



September 12, 2011

Thomas Pollard  
City Attorney, Greensboro  
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Greensboro, NC 27402-3136

RE: Gate City's Ongoing Effort to Choose the Composition of the Greensboro City Council  
Voting on Its Waste Management Proposal

Mr. Pollard,

I am writing to you again 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. Gate City subsequently challenged this determination, leading you to re-affirm and expound further on your previous conclusion. Gate City has now written to you for a second time attempting to exclude Councilwoman Vaughan. Gate City also now objects for the first time to the previous May 2011 determination that Councilman Zack Matheny is not permitted to vote on its contract proposal. Gate City's most recent effort is driven not by new or persuasive legal theories, but instead by an ongoing desire to dictate who can and cannot vote on a contract that would net their company tens of millions of Greensboro taxpayer dollars. We encourage you to re-affirm the previous determinations from the Greensboro City attorney's office.

In its letter Gate City requests "that you (1) state the City's position with respect to the meaning of the phrase "financial interest" as used in G.S. § 160A-75; (2) describe the facts that are relevant to whether Ms. Vaughan, Mr. Matheny, and Mr. Perkins<sup>1</sup> have a financial interest in the Contract; and (3) make a final determination whether, in light of the law and facts, those Council members either have a conflict or are allowed and required to vote on the Contract award." Gate City goes on to argue your previous analysis "fail[s] to make any attempt to define what the phrase 'financial interest' means and seem[s] to suggest that it can be defined differently on an ad hoc basis in every circumstance." A review of this process reveals you have already provided the analysis sought by Gate City, just not the result they seek.

Your August 31, 2011 letter first establishes conflicts are not considered in a vacuum. Instead, they are weighed against the statutory mandate "that duly elected council members have a right and duty to vote on matters under consideration by the City Council," a reality acknowledged by Gate City. Conflicts are

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<sup>1</sup> Gate City argues the Greensboro City Attorney's office incorrectly determined Councilwoman Vaughan can vote and Councilman Matheny cannot vote on its proposed contract. Though it includes Councilman Perkins in its request, it makes no explicit argument in regards to why he should not vote on the Gate City proposal. Despite this, we highlight below why Councilman Perkins's clearance to participate is consistent with other opinions from the City Attorney's office.

further considered narrowly in regards to the *contract* under consideration, a reality conveniently ignored by Gate City.<sup>2</sup>

Against this background, you lay out the legal architecture for determining whether a conflict exists. You note North Carolina common and statutory law is “very diligent in ensuring that members of local boards do not benefit from contracts approved by a board as evidenced by [North Carolina Supreme Court decisions] Snipes and Kendall” as well as North Carolina General Statutes §§14-234 and 160A-75. On the other hand, North Carolina “courts have found that more remote interests do not” constitute conflicts of interest.

You highlight there is no statutory definition of the “financial interest” requisite to finding a conflict of interest. But, contrary to assertions from Gate City, you then offer a definition of “financial interest” as used in North Carolina General Statute 160A-75. Quoting from County of Lancaster v. Mecklenburg County, 334 N.C. 496, 511, 434 S.E. 2d 604, 614 (1993), you establish “where there is a specific, substantial and readily identifiable financial impact on a member, non participation is required” as there is a financial interest and conflict of interest.

Your analysis then turns to Councilwoman Vaughan’s alleged conflict of interest, applying the definition referenced above to the facts. In the course of doing so you also directly address Gate City’s previous and current central thesis “that Waste Industries potentially will be affected financially by the outcome of the City Council’s consideration of the award of a contract to Gate City, and Ms. Vaughan still should be barred from voting because her husband represents Waste Industries.” In the pivotal passage you note:

It is undisputed that Ms. Vaughan has no financial interest in Gate City or a potential contract between the City and Gate City. The failure to approve a contract with Gate City does not dictate a particular option for the City’s solid waste management services or ensure that Waste Industries will benefit from any future options chosen by the City Council. The connection of such decisions to the financial interest of Waste Industries and Ms. Vaughan is tenuous. The possibility that Waste Industries might retain some competitive advantage if the Council does not approve the contract with Gate City is just too remote an interest to overcome the strong public policy underlying the requirement to vote as set forth in G.S. 160A-75. Similarly, the possibility that Waste Industries might be at a competitive disadvantage with Republic Services, Inc. if the City chooses to close its transfer station is even more remote. These potential financial impacts on Waste Industries do not rise to the level of a specific, substantial and readily identifiable financial impact on Ms. Vaughan. (emphasis added)

The same legal logic was applied to Councilmen Matheny and Perkins by prior Greensboro City Attorney Rita Danish and UNC-CH School of Government Professor Frayda Bluestein. Professor Bluestein notes “Council member Matheny is a salaried employee with bonus possibility of Bell Partners, Inc.” Bell Partners, Inc. and D.H. Griffin Companies are partners in a multi-million dollar redevelopment project in Atlanta, Georgia. D.H. Griffin and David Griffin, Jr. are part owners of the company of D.H. Griffin Companies, as well as “MRR Southern, LLC[ . . . ] a principal partner in Gate City Waste Services.” The connection between Councilman Matheny and Gate City is close and clear. There is a specific,

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<sup>2</sup> As you note, “G.S. 14-234 provides that no officer involved in the making of a contract shall derive a direct benefit *from the contract.*” (emphasis added). Similarly, you highlighted “the City conflict policy provides that no officer shall participate in the award of a *contract* when one of the listed persons has a financial interest in *the firm selected for award.*” (emphasis added)

substantial, and readily identifiable financial impact on Councilman Matheny; that he would be “personally at risk financially if his vote displeases his employer” by voting against Gate City.

By way of contrast, Councilman Perkins is the part owner of Piedmont Triad Commercial Properties, Inc. Piedmont Triad has contracted in the past with Henry Carrison, who “is currently an independent contractor for Mr. Perkins.” Mr. Carrison occasionally performs property sales “for D.H. Griffin Companies among others.” Piedmont Triad receives a portion of the commission for sales realized by Mr. Carrison, or less than \$400 in 2010. Based on this, Professor Bluestein concluded Councilman Perkins’s relationship with Gate City was insubstantial and tenuous, and, therefore, no bar to his voting on a proposed contract with the company.

In short, Ms. Danish, Professor Bluestein, and you have articulated consistent, predictable, and well-grounded legal analysis of conflicts throughout the RFP processes.

On the other hand, Gate City said nothing for months in regards to their current belief that the City Attorney’s office had wrongly excluded Councilman Matheny and wrongly included Councilmen Perkins in consideration of the RFP processes. Only when their multi-million dollar contract was imperiled by Greensboro elected representatives did Gate City make their concerns known.

Similarly, Gate City argued broader competition between it and Waste Industries as well as Waste Industries’ relationship to the City transfer station presented irresolvable conflicts resulting in “the integrity of the City’s decision making process [being] called into question” as recently as two weeks ago. In a breathtakingly fast reversal they now “agree with you that these are not relevant considerations,” falling back to the narrower argument that Council Vaughan would unscrupulously vote against Gate City to throw the award to Waste Industries.<sup>3</sup> The reasons for this reversal are apparent. First, the narrower argument provides a useful tool against Councilwoman Vaughan, while not impacting Councilman Matheny’s potential participation in a Gate City vote. Second, Gate City recognized too late the broad conflict of interest definition they implicitly proposed in their first letter potentially implicates both Councilwoman Vaughan and Councilman Matheny, thus complicating their effort to exclude the former and include the latter.<sup>4</sup> Gate City is chastising “past failure[s] by the City Attorney’s office” for having

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<sup>3</sup> This argument also does not hold up to analysis. The lowest bidder for the Phase III option opted for by the previous four-person majority of the Greensboro City Council was not Gate City, but Advanced Disposal. (It is unclear why the four-person majority selected to negotiate with Gate City, as opposed to Advanced Disposal.) If the City Council were incapable of going forward with Gate City then logic would dictate they would turn to Advanced Disposal, not Waste Industries. However, Councilwoman Trudy Wade has indicated logic would not necessarily govern future options by the City Council. She has instead stated to Councilwoman Vaughan, “If you vote against Gate City we’re going to have a very serious problem picking anyone but Waste Industries because that would be the only way you couldn’t vote on it.” In short, landfill proponents, not Councilwoman Vaughan, would steer the proposal to Waste Industries with the specific stated intent of conflicting her out.

<sup>4</sup> The same day Gate City wrote to you two articles about the conflict of interest discussion appeared in Greensboro conservative weekly *The Rhino Times*. An article entitled *Yet Another Round of Musical Recusal Chairs* argued Councilwoman Vaughan should be excluded from voting because “the city currently gives some of the methane produced by the landfill to the International Textile Group,” a company the Rhino claims was previously represented by Councilwoman Vaughan’s husband. While this argument does not appear in Gate City’s letter, it merits mentioning that the landfill produces methane that the City must dispose of regardless of whether Gate City operates Phase III. As such, this is “too remote an interest to overcome the strong public policy underlying the requirement to vote as set forth in G.S. 160A-75.” Accordingly, methane gas issues should not result in Councilwoman Vaughan’s exclusion should Gate City revert to its previous broader conflict definition.

City Attorney Thomas Pollard

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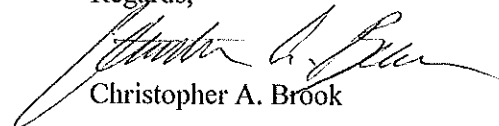
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“resulted in chaos” in this process when they have chaotically adopted whatever legal theory suits them on a particular occasion.

Such audacity might be cause for a smile if its potential broader implication were not so grave. As noted above, Gate City erroneously claims your previous analysis “fail[s] to make any attempt to define what the phrase ‘financial interest’ means and seem[s] to suggest that it can be defined differently on an ad hoc basis in every circumstance.” Chronicling alleged City Attorney’s office “failures,” Gate City implies that previous City Attorney Rita Danish engaged in a results-oriented legal opinion shopping and analysis, manufactures inconsistency by taking legal analysis by then-acting City Attorney Tom Carruthers out of context, and labels legal analysis from Professor Bluestein as “frankly surpris[ing].” If these tactics succeed in dictating who will vote on a proposal that would reap Gate City millions of dollars, how will voters have confidence that their voices will carry the day on matters of great importance to their city? The stakes were already high given the economic and environmental consequences of re-opening the White Street Landfill. Gate City has managed to raise them even further by trying to change the composition of the City Council to produce an outcome favorable to their interests.

The Greensboro City Attorney’s office has consistently articulated North Carolina and Greensboro conflict of interest rules. Your office has predictably applied these rules to the unique circumstances presented by Councilpersons Vaughan, Matheny, and Perkins. Having failed to convince Greensboro voters of the wisdom of their plans, Gate City now seeks to make an end run around them a month before they go to the polls using an ever-evolving array of specious legal arguments. We encourage you to stand by your well-founded analysis and affirm once more your office’s previous conflict determinations.

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