

**Conflict of Interest:
Public Officials Serving on Corporate Boards
Or Serving as Corporate Officers**

CITY OF CAMBRIDGE ETHICS COMMISSION

**ADVISORY OPINION
OPINION NO. 01-2013**

DATED: January 23, 2013

The Ethics Commission for the City of Cambridge received a request for an opinion as to whether it is a conflict of interest for a sitting city council member to also serve as the President of Sailwinds Park, Inc. which corporation is the applicant for a state grant, which grant application required a letter of support from the City of Cambridge.

On October 9, 2012, the City Council voted 4-1 not to have the city formally make application for \$750,000.00 in grant funding being offered by the State of Maryland, for revitalization of the Route 50/Maryland Avenue Gateway into the City. Subsequent to said vote, the application was submitted by Sailwinds Park, Inc. listed as the applicant. Commissioner Gage Thomas at this time served as the President of Sailwinds Park, Inc. Sailwinds Park, Inc. then requested a letter of support for the grant from the City Council. On October 17, 2012, the City Council voted 4 in favor, 0 against, with 1 abstention, to approve a resolution and letter of support for Sailwinds Park, Inc.'s grant application. Commissioner Thomas took the proper steps and disclosed his conflict, exited the council chamber, and did not participate in the discussion or vote on the issue.

To adequately and thoroughly address this issue, requires an inquiry and discussion into the purposes of Sailwinds Park, Inc. and the subject grant application.

As set forth in the grant application, if the funds are awarded to Sailwinds Park, Inc., they will be used to acquire and improve certain parcels of real estate along the Route 50 corridor in an effort to create a more welcoming entrance or gateway to the city, and specifically, to augment the success of the development of the 11-acre Cambridge Port property, known as Sailwinds Park. The port property is owned by the State of Maryland, which has awarded the development rights to the property to J.G. Parks Co., which company is in the process of completing its development plans.

There are several entities who are actively involved in the waterfront area known as Sailwinds Park and Sailwinds East.

1. **The Mayor's Waterfront Advisory Group.** Related to the Sailwinds Park development project, is a waterfront review/advisory group comprised of 24 members from the local community. This committee is charged with providing local input to the Parks Development Company. The committee has no approval authority for the final plan. That authority rests solely with the State of Maryland, the owner of the property. The objectives of the group are to insure that the project is consistent with the Waterfront 20/20 plan, and its priorities as previously adopted by City Council, and that the community's interest and desires are incorporated to the extent possible within the final development. City officials who are members are Mayor Stanley and Commissioner Thomas. Anne Roane (City Planner) and Natalie Chabot (Economic Development Director) also serve on this board. This board has met approximately 3-4 times within the past year.
2. **Sailwinds Management Board.** In August, 2001, the City created a Sailwinds Management Board, consisting of five members, one to be appointed by each of the City Commissioners. One city official was to serve as a non-voting liaison member. This Management Board was charged with the responsibility of managing and maintaining the Governor's Hall festival hall and grounds, which is used for community and entertainment events. It appears that this management board was replaced with 501(c)(3) non-stock corporation in 2005, known as "Sailwinds of Cambridge, Inc."
3. **Sailwinds of Cambridge, Inc.** Sailwinds of Cambridge, Inc. is a Maryland Non-Stock Corporation, formed on December 28, 2005, which appears to have 501(c)(3) designation. Its stated purpose is to develop and provide entertainment, educational, cultural and recreational activities to benefit Cambridge, Maryland. Its primary function is the day-to-day management of Governor's Hall at Sailwinds Park. Its corporate organizer and current resident agent is: Carlton Stanley. The corporation's address is listed as 200 Byrn Street, Cambridge, Maryland 21613. The Mayor serves as the non-voting liaison between this entity and the City.
4. **Sailwinds Park, Inc.** Sailwinds Park, Inc. was formed on October 20, 1992. The corporate charter was forfeited, and revived by Articles of Revival filed on March 17, 2005. The corporation is presently active and in good standing. The purpose is to assist in the planning and development of the waterfront in the area from the Route 50 Choptank River Bridge to Governor's Hall at Sailwinds Park. This group meets monthly. Commissioner Gage Thomas is the only city official that serves on its Board of Directors. Until recently, he was serving as its President. Other members of the board include: Frank Narr, Randall Hiers, Addie Eckardt, Amanda Fenstermaker-Director of Tourism, Jerome Stanley, Linda Henry, Vernon Phillips and Chad Malkus.

5. **Sailwinds Development Project Work Group.** This body is an information organization of State, County and City representatives designated by their respective jurisdictions to work closely with the J. G. Parks Company, to assist in the development and coordination of the proposed development. No elected representatives serve on this group. The only city representatives are Anne Roane (City Planner) and Natalie Chabot (Director of Economic Development).

It is the understanding of the Ethics Commission that the facilities at Governor's Hall at Sailwinds Park will be displaced and relocated as part of the development by the Parks Company.

With regard to the specific question posed to the Ethics Commission, the potential for conflicts of interest surrounding the development of the Sailwinds property dictates the following: If Commissioner Thomas were to have continued to serve as President of Sailwinds Park, Inc., or as a director on its board of directors, then he would be precluded from participating on any other city committee or commission or in City Council matters related to the Sailwinds property and/or the proposed development project, until such time as Sailwinds Park, Inc. and the City are formally notified that Sailwinds Park, Inc. was not awarded the grant.

As the Ethics Commission has recently been notified that Commissioner Thomas has resigned his position as President and member of the Board of Sailwinds Park, Inc., and assuming that this information is accurate, he no longer is faced with a conflict of interest which would result in his having to choose between his position as a member of City Council or as President and board member of Sailwinds Park, Inc. While his resignation makes this particular issue moot as to his corporate involvement, it is necessary to issue an advisory opinion in order to provide guidance to other officials and employees who may be in similar positions, either presently or in the future.

The myriad of entities set forth above, which are involved with, or will be impacted by, the Sailwinds development, creates the potential for future conflicts of interests which can only be avoided by a clear delineation as to each official's and employee's involvement on any of the above boards or committees. Any municipal official or employee serving on any corporate board, or serving as a corporate officer, of an entity involved with the Sailwinds development project, should be precluded from participating on any city committee or commission or in City Council matters related to the Sailwinds property, and/or the proposed development project for Sailwinds Park, now being undertaken by the J. G. Parks Corporation.

The above-stated opinion is based upon the following statutory language:

Section 13-2(c) of the City Code provides: "No public officer or employee shall be employed or be engaged in any business or professional activity with commercial enterprises conducting business with the city when such person is, by virtue of his city employment, in a position to influence the acceptance and consummation of such

business or provide significant information not generally made available to other similar commercial enterprises.”

Section 4(i)41 of the City’s Ethics Code provides:

Use of prestige of office.

1. An official or employee subject to this section may not intentionally use the prestige of office or public position for the private gain of that official or employee or a qualified relative or the private gain of another.

By serving as a member of the Board of Directors and/or President of Sailwinds, Inc., which corporation has a pending grant application, or which is awarded a grant application with the assistance the City, Commissioner Thomas would have been placed in a position of possibly using information obtained in his capacity of City Commissioner to benefit that other corporate entity, including the providing of information not generally made available to other similar commercial enterprises.

We do not find that Mr. Thomas’s position on the Board and as an officer of Sailwinds Park, Inc., nor his involvement in the grant application, of itself, created a conflict of interest. Commissioner Thomas correctly made the disclosure of his position public and recused himself from the discussion and vote as to the City’s letter of support for the grant application submitted by Sailwinds Park, Inc.

However, it is the potential for an actual conflict to occur, to which this Ethics Commission, nor any other public agency, would have the ability to monitor or even determine if it had occurred, which creates the real potential for abuse. Because Sailwinds Park, Inc., is a non-public entity, its meetings are not subject to the open meetings act, nor are its minutes accessible by the public. Therefore, there would be no way to determine if the city official provided information to that corporation, which information was not generally made available to other commercial enterprises. The corporation on whose Board the official serves, would be given an unfair advantage, based upon information provided to it by the official, which the corporation could potential use to its advantage. This is the type of activity prohibited by Section 13-2(c) of the City Code.

If a city official is serving as an officer or board member of a corporation, and that corporation makes a decision to conduct business with the city, either directly or indirectly (such as seeking formal city support for a grant), that official has two choices: (1) he/she may remain an officer or board member of the corporation and remove himself/herself from all discussions and participation at the city level related to the subject matter common between the corporation and the city (in this case, the development of Sailwinds park and surrounding area); or (2) resign his/her position as a corporate officer and board member, and continue to fully participate as a municipal official on all discussions and formal action as a city official.

This absence of public oversight and the inability to monitor information being provided by an official to a private corporation requires the adoption of the opinion set forth above.

Issued this 23RD day of JANUARY, 2013.

A handwritten signature in black ink, appearing to read "Stephen Rideout", written over a horizontal line.

Stephen Rideout
Chairperson
Ethics Commission, City of Cambridge