

Newberry Station: Political Contributions vs. Political Realities



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Political contributions and developer-politician interaction are facts of life in the development community. And it makes sense too – developers bring many benefits to communities, such as housing, work space, shopping, and contributions to community amenities, while politicians help marshal the project in a manner they believe will benefit constituents. To be sure, there must be reasonable limits that prevent Chicago-style politics from arising. Virginia has several such laws, including the State and Local Government Conflicts of Interest Act (Va. Code section 2.2-3100, *et seq.*) and various other “conflict of interest” statutes.

One such statute, Virginia Code section 15.2-852, came under scrutiny recently in *Newberry Station Homeowners Association, Inc. v. Board of Supervisors of Fairfax County*. In *Newberry Station*, the HOA challenged the Board’s approval of a rezoning for a Washington Metropolitan Area Transit Authority (WMATA) bus maintenance facility. The HOA claimed that Supervisor Cook should have recused himself, because he received more than \$100 in contributions from the applicant’s agent, and that Supervisors Hudgins and McKay should have recused themselves by virtue of being WMATA directors. Ultimately, the HOA dropped its challenge to Supervisor Cook, and the Virginia Supreme Court upheld the board’s vote, as WMATA is a governmental agency and the supervisors did not receive compensation for their services as directors.

The Supreme Court based its holding, however, on an interpretation of section 15.2-852 that abolished a long-standing distinction between conflicts of interest in Fairfax County. Section 15.2-852 governs disclosures in land use cases in counties that have adopted the Urban County Executive form of government. The statute discusses two types of conflicts of interest. First, the statute definition of “business or financial relationship,” includes gifts and contributions that, collectively or individually exceed \$100, between the Board of Supervisors, Planning Commission or Board of Zoning Appeals and the land use applicant (title owner, contract purchaser, lessees and agents).

By statute, these “relationships” must be disclosed. Second, the statute requires the government member to disclose a “business or financial interest” between the member and the title owner, contract purchaser or lessee of the property, but also to abstain from voting on the matter or “participate in any way” in the case or the hearing.

In *Newberry Station*, the court read these two terms to mean the same thing. Although the court did not discuss the consequences of reading these two terms together, it has caused board members to recuse themselves and defer decisions in land use cases.

Newberry Station: Political Contributions vs. Political Realities (Cont.)

Given the potential consequences for Fairfax County land use cases, it is advisable that property owners, contract purchasers and lessees of property reconsider how and when to make political donations or gifts in Fairfax County. In general, these should be avoided in the 12 months before and up to the date of a hearing. Where donations have already been made, it will be important to assess how much was given to date and whether further direct contact with a supervisor is advisable. Similarly, applicants in Loudoun County should read and understand *Newberry Station* as Loudoun County is subject to a sister statute (Virginia code section 15.2-2287.1) with identical language governing disclosures, recusals and restrictions on participation.

There is some discussion that *Newberry Station* will be addressed in the next session of the General Assembly. However, it remains the law in Virginia for the time being.