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Roy Goldberg
Writer's Direct Line: (202) 218-0007

Our File Number: 01ZY-103259

February 23, 2005

VIA MESSENGER

District of Columbia Board of Zoning
Adjustment
c/o District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

D.C. BOARD OF ZONING ADJUSTMENT
2005 FEB 23 PM 3:54

Re: Case Number 17288 (Hearing Date March 15, 2005)
Appeal of Eastern Trans-Waste of Maryland, Inc.
1315 First Street, S.E. (Square 703, Lot 54)
Decision of Department of Consumer and Regulatory Affairs

Dear Sir or Madam:

Enclosed please find an original plus twenty copies of a letter dated today, on behalf of appellant Eastern Trans-Waste of Maryland, Inc., which seeks recusal and/or disqualification of Zoning Commission Chairperson Carol J. Mitten from participating in this appeal as the Commission's designated member of the Board of Zoning Adjustment, or otherwise.

Sincerely,

Roy Goldberg

Roy Goldberg

SHEPPARD MULLIN RICHTER & HAMPTON LLP
Counsel for Appellant Eastern Trans-Waste of
Maryland, Inc.

W02-DC:9RGG1\100024864.1

Enclosures

BZA
Case No. 17288
Exhibit No. 19

Board of Zoning Adjustment
District of Columbia
CASE NO. 17288
EXHIBIT NO. 19

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District of Columbia Board of Zoning
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441 4th Street, N.W., Suite 210
Washington, D.C. 20001

RECEIVED
D.C. ZONING COMMISSION
2005 FEB 23 PM 3:34

Re: Case Number 17288 (Hearing Date March 15, 2005)
Appeal of Eastern Trans-Waste of Maryland, Inc.
1315 First Street, S.E. (Square 703, Lot 54)
Decision of Department of Consumer and Regulatory Affairs

Dear Sir or Madam:

Appellant Eastern Trans-Waste of Maryland, Inc. ("Appellant" or "ETW") respectfully moves for the recusal of Zoning Commission Chairperson Carol J. Mitten from participating in this appeal as the Zoning Commission-designated member of the Board, or otherwise. The primary basis for this request is that fact that in Ms. Mitten's capacity as Director of the District of Columbia Office of Property Management, she currently is intricately involved with the District's efforts to acquire the same parcel of real property that is at issue in this appeal: 1315 First Street, S.E. (Square 703, Lot 54). This position creates an untenable conflict-of-interest which precludes Ms. Mitten from being able to serve as a member of the Board that considers and rules on the instant appeal.[1] Attached hereto is a letter from Ms. Mitten to the Applicant's affiliate dated February 3, 2005. The letter, written in Ms. Mitten's capacity as Director of the Office of Property Management, states, *inter alia*, that the District of Columbia "may be interested in acquiring" the property at 1315 First Street, S.E., and seeks to arrange for the District's "appraiser and environmental consultant to visit" the property.

To "insulate the administrative process and its decision makers from prejudice and bias, it has generally been recognized that the same rules requiring the recusal of judicial officers are applicable to administrative officers who act in an adjudicative or quasi-judicial capacity." *Morrison v. District of Columbia Bd. of Zoning Adjustment,* 422 A.2d 347, 349 (D.C. App.

[1]Recusal also is warranted because the Zoning Commission, of which Ms. Mitten is the Chair, recently promulgated a final rulemaking for the Capitol Gateway Overlay zoning amendments which impacted the property at issue in this case and may be relevant to the outcome. 52 D.C. Reg. 63 (Jan. 5, 2005).

1980); 4 B. Mezines, J. Stein, & J. Gruff, Administrative Law s 36.02 (1) at 36-7 (1977) ("hearing examiners and agency members performing quasi-judicial functions are held to the same standards regarding bias, prejudice, and interest as are courtroom judges"). "In the absence of a statute providing otherwise, a judge must recuse himself when his alleged bias arises from a source outside the "four corners of the court-room." *Morrison* at 349-50 (citations omitted).

If Ms. Mitten were to participate in this appeal as the Zoning Commission's designated member of the Board, she would operate under a clear conflict-of-interest because she would be involved in a quasi-judicial appeal regarding the identical piece of property that she is attempting to acquire on behalf of the agency division for which she is the director. Indeed, it is difficult to imagine a more clear-cut example of presumed bias and conflict-of-interest. Among other things, the outcome of this appeal may impact the value of the property, because the changes sought in the construction permit application would enhance the physical structure. It also would increase the efficiency and profitability of the facility. Therefore, the Office of Property Management – which is interested in attempting to acquire the property through eminent domain or otherwise for a use other than a solid waste transfer facility – has an interest in ensuring that the instant appeal is denied. Accordingly, under no circumstances should the Director of the Office of Property Management, *i.e.,* Ms. Mitten, be allowed to participate in this case.

Appellant requests that Ms. Mitten voluntarily recuse herself from this case. If she is unwilling to do so, the Appellant respectfully requests that the Board issue an order that disqualifies Ms. Mitten from participating in this appeal.

Sincerely,

Roy Goldberg

SHEPPARD MULLIN RICHTER & HAMPTON LLP
Counsel for Appellant Eastern Trans-Waste of
Maryland, Inc.

W02-DC:9RGG1\100024864.1

Enclosure

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PROPERTY MANAGEMENT

Carol J. Mitten
Director

February 3, 2005

WSI Acquisition Company
PO Box 136
Hopewell, PA 16650-0136

Re: 1315 1st Street, SE, Square 703, Lot 54

Dear Mr. Sir or Madame:

The District of Columbia ("District") may be interested in acquiring your property at 1315 1st Street, SE, (Square 703, Lot 54) for the purpose of constructing a publicly-owned stadium complex. This notice is intended to inform you of the anticipated process that the District will undertake.

The District's Office of Property Management (OPM) will begin by initiating an environmental assessment and appraisal of your property. In order to ensure that OPM's appraisal is as reliable as possible, we hope you will allow us to arrange a convenient time for the appraiser and environmental consultant to visit your property. To establish a time for a site visit, please contact Mr. Joseph Wolfe, Project Manager, at (202) 724-4150.

The District's Chief Financial Officer (CFO) is currently re-estimating the acquisition and infrastructure costs for a stadium complex on a site that includes your property. Depending on the results of the CFO's re-estimate for land acquisition and infrastructure costs, which by law must be completed by May 15, 2005, the District may decide to proceed with the acquisition of your property. In the event that the District elects to proceed, OPM will share the results of its property appraisal with you and make an offer to purchase your property.

If the District acquires your property and you or your tenant (if any) is displaced for the project, you or your tenant (if any) may be eligible for relocation assistance. This is not a notice to vacate the premises. If the District elects to proceed with the acquisition of your property, you will receive formal notice of your eligibility for relocation assistance. If you move or are evicted before receiving such notice, you may not receive any assistance.

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If you have any questions about the appraisal process or relocation assistance, please contact Mr. Wolfe at (202) 724-4150. I look forward to continuing this dialogue in future correspondence.

Sincerely,

Carol J. Mitten

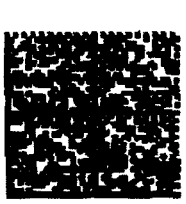
Carol J. Mitten
Director

441 4th Street, NW, Washington, DC 20001 · (202) 724-4400 · (Fax) (202) 727-9877

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CE OF PROPERTY MANAGEMENT
441 4th Street, N.W.
Washington, D.C. 20001

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