

February 20, 2018

Commissioners, Zoning Board
441 4th Street, NW, Suite 200S
Office of the Zoning Commission for the District of Columbia
Washington, D.C. 20001

Re: "The Bard" Development (Zoning Commission Case # 17-21)

Dear Commissioners:

I represent members of United Neighbors of Southwest (UNSW). UNSW is an unincorporated group of homeowners whose properties are proximate to 501 I Street SW. UNSW members are working collaboratively to ensure that "The Bard", a mixed use development proposed as a "joint development between Erkiletian Development Company and The Shakespeare Theatre Company, LLC" is in compliance with controlling zoning and other laws and regulations. "The Bard's" proposal is Zoning Commission Case # 17-21.

After reviewing the documents available, we are concerned that Erkiletian Development Company (Erkiletian) may be improperly benefiting from, and taking advantage of, its relationship with The Shakespeare Theatre Company ("STC") to advance Erkiletian's pecuniary interests. In addition, it appears that STC and Erkiletian may have provided contradictory information in official filings in the course of their attempts to promote "The Bard" and gain approval from the District of Columbia for a development that appears to primarily consist of a high-density rental apartment building. Moreover, Erkiletian appears to be jeopardizing STC's IRC §501(c)(3) tax exempt status through its public promotion of The Bard as a joint project with STC, while at the same time STC is not reporting any joint venture agreement or ownership interest vested in the project. STC's tax exempt status could be threatened if its board members were and are using the nonprofit for their own personal benefit to promote "The Bard" project.

My clients have repeatedly sought clarification from Erkiletian and STC on these matters but have not received satisfactory response. Attached you will find an inquiry sent to the District of Columbia Attorney General asking whether his office might shed a clearer light on these issues, which may potentially be of interest also to the DC Zoning Commission in its considerations of "The Bard" project.

Thank you very much for your attention to this matter. Please let me know if you have any questions or require additional information.

Sincerely yours,

JACKSON & CAMPBELL, P.C.


Nancy Ortmeier Kuhn

Enclosures: As stated.

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ZONING COMMISSION
District of Columbia
CASE NO.17-21
EXHIBIT NO.16

February 16, 2018

VIA FIRST CLASS MAIL

Hon. Karl Racine, Attorney General
Office of the Attorney General for the District of Columbia
441 – 4th St. NW
Washington, D.C. 20001

Re: “The Bard” Development

Dear Attorney General Racine:

I represent members of United Neighbors of Southwest (UNSW). UNSW is an unincorporated group of homeowners whose properties are proximate to 501 I Street SW. UNSW members are working collaboratively to ensure that “The Bard”, a mixed use development proposed as a “joint development between Erkiletian Development Company and The Shakespeare Theatre Company, LLC” is in compliance with controlling zoning and other laws and regulations.

After reviewing the documents available, we are concerned that Erkiletian Development Company (Erkiletian) may be improperly benefiting from, and taking advantage of, its relationship with The Shakespeare Theatre Company (“STC”) to advance Erkiletian's pecuniary interests. In addition, it appears that STC and Erkiletian may have provided contradictory information in official filings in the course of their attempts to promote “The Bard” and gain approval from the District of Columbia for a development that appears to primarily consist of a high-density rental apartment building. Moreover, Erkiletian appears to be jeopardizing STC's IRC §501(c)(3) tax exempt status through its public promotion of The Bard as a joint project with STC, while at the same time STC is not reporting any joint venture agreement or ownership interest vested in the project. There is no acknowledgment of this relationship by STC in its Forms 990 signed under penalties of perjury (Ex. 1¹), nor is there any reference to a joint project in STC's financial statements. (Ex. 2) As discussed below, failure to report these types of joint projects between a nonprofit organization and a for-profit entity is in violation of the inurement rules of §501(c)(3) when there are overlapping board members on Erkiletian's board of directors and STC's board of directors/trustees, as is the situation here.

The property at issue, Square 498, Lot 52, is located at the intersection of 6th Street SW and I Street SW at the address 501 I Street SW (“Eye Street Property”). A limited liability

¹ Exhibit 1 is the 2015/16 fiscal year tax return. Prior year returns are available upon request and are identical with regard to the items discussed herein.

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company named "As You Like It, LLC" is the owner of record of this property. (Ex. 3) The "Governors" of "As You Like It, LLC" are Stefanie Erkiletian and Holly Gray, the President of Erkiletian and a former CFO of Erkiletian Development, respectively, as reflected in public records. (Ex. 4) While the zoning application represents that STC is part of the joint development, and STC appears to be using it as a fund raising tactic (Ex. 5), there is no indication that STC has any joint interest in this development. STC's Form 990 returns filed with the Internal Revenue Service do not disclose any information regarding this project. (Ex. 1) STC does not report any joint ventures, does not report any real estate ownership interest in Southwest D.C., and does not report any affiliations with a for-profit development company that shares two of its board members. The Form 990 does report that Ms. Erkiletian is a board member on the STC Board of Directors. As indicated above, she is also a principal of Erkiletian Development Company and a co-owner of "As You Like It, LLC". Also, Robert Falb is the Vice Chairman of the STC Board as reported on the Form 990, and by information and belief is also a board member of Erkiletian Development. (Ex. 6) There is no indication on STC's Forms 990, from 2011 through 2016, that it has any interest or relationship with Erkiletian Development that would enable Erkiletian to market the proposed development as "The Bard" and as a "joint development between Erkiletian Development Company and the Shakespeare Theatre Company".

In a joint venture or joint project of any kind between a for-profit corporation and a non-profit organization, in particular one recognized as a public charity under IRC §501(c)(3), great care must be taken to ensure that the for-profit entity is not gaining a private benefit from the relationship. In this situation, since Ms. Erkiletian and Mr. Falb are Board members of both STC and Erkiletian Development, the test would be the more stringent inurement test as to any transactions involving Erkiletian Development. A §501(c)(3) public charity is specifically prohibited from any of its net income inuring to the benefit of a "disqualified person" which includes board members and entities closely connected to those board members. In this situation, Erkiletian Development and As You Like It, LLC, could also be within the definition of "disqualified person" assuming Ms. Erkiletian or another board member is a greater than 35% owner of either entity.

The Forms 990 filed by STC from 2011 through its most recent return filed for the 2015/2016 fiscal year (Ex. 1), report nothing on the return that reflects any interest or joint venture with Erkiletian Development. The real estate ownership reported by STC for all years was unchanged. Additionally, STC responded "No" when asked the following on page 4 of the Form 990: "28. Was the organization a party to a business transaction with one of the following parties...a current or former officer, director, trustee or key employee." With the response as "no", there was no disclosure relating to "The Bard" and the apparent joint project with Erkiletian on Schedule L of the Form 990. The zoning documents and applications with the District of Columbia seeking approval of this project, indicating that STC is jointly involved, are

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not consistent with STC's Forms 990. Thus, we are requesting your assistance in determining the true motivations behind this project, and ensuring that there is no personal benefit or inurement to any of the individuals or for-profit parties involved. STC's tax exempt status could be threatened if its board members were and are using the nonprofit for their own personal benefit to promote "The Bard" project.

The "Neighborhood Cooperation Agreement" ("NCA") (Ex. 8) is an agreement between the Southwest Neighborhood Assembly (SWNA) and STC in which SWNA agreed to withdraw its Historic Preservation application for the Eye Street Property in exchange for STC paying SWNA \$60,000. It was represented to SWNA that STC could not make use of the existing building on the property and so pressured SWNA to give up its attempts to designate the property as historic. STC also represented to SWNA that a substantial portion of the Eye Street Property would be used for STC's benefit. The NCA also states that STC is a "contract purchaser" of the property. As indicated in STC's Forms 990 and STC's financial statements, STC does not report anything that could be interpreted as referencing the apparent contract between STC and a for-profit corporation with which it shares two board members. Moreover, payment of the funds pursuant to the NCA was made not by STC but by As You Like It, whose governors are the current president of Erkiletian and a former CFO of Erkiletian. (Ex. 9) In 2016, the DC Office of Tax and Revenue listed As You Like It LLC Erkiletian Development as the owner with an Erkiletian Development Company address in Alexandria, VA. (Ex. 10) In 2018, the DC Office of Tax and Revenue listed As You Like It LLC 6 Degrees Fahrenheit LLC as the owner with an Erkiletian Development Company address in Arlington. (Ex. 11)

My client continues to challenge the zoning variances, and other permits requested by Erkiletian, for the Eye Street Property and respectfully requests that your office conduct an inquiry into the potentially false representations being made by both Erkiletian and STC in connection with "The Bard" development. My clients have repeatedly sought clarification from Erkiletian and STC on these matters but have not received satisfactory responses.

Thank you very much for your attention to this matter. Please let me know if you have any questions or require additional information.

Sincerely yours,

JACKSON & CAMPBELL, P.C.


Nancy Ortmeier Kuhn

Enclosures: As stated.

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EXHIBITS

1. STC Form 990
2. STC Financial Statement
3. Property Detail: 501 I St. SW
4. DC Department of Consumer and Regulatory Affairs and biographical information for
Governors of As You Like It, LLC
5. "The Bard" fundraising flyer for STC
6. STC and Erkiletian Board member: Robert Falb bio
7. Zoning Application
8. Neighborhood Cooperation Agreement between STC and SWNA
9. Copy of check from As You Like It to SWNA
10. OTR Property Detail, 2015/2016
11. OTR Property Detail, 2017/2018