

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 23-0007

IN THE MATTER

OF

BARBARA DAVIS-HASSAN

JOINT MOTION TO DISMISS

The parties in the above-captioned matter move that the State Ethics Commission approve the attached Disposition Agreement and dismiss the adjudicatory proceeding of this matter for the reasons set forth below:

1. This adjudicatory proceeding commenced on May 13, 2023, with the filing of an Order to Show Cause alleging that the Respondent Davis-Hassan had violated G.L. c. 268A, §§ 17(c) and 19.
2. The parties now agree to resolve the matter by the terms set forth in the attached Disposition Agreement.
3. This resolution would obviate the need for an adjudicatory hearing and would conserve resources for all involved.
4. The parties further agree that a settlement of this matter would be in the interests of justice and in the best interests of the parties and the Commission.

WHEREFORE, the parties request that the Commission approve the attached disposition agreement in settlement of this matter and dismiss the adjudicatory proceeding.

Respectfully submitted,

Respondent Barbara Davis-Hassan

By her attorney,

/s/ Stephen J. Orlando

Stephen J. Orlando, Esq.

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Dated: August 11, 2023

Petitioner State Ethics Commission

By its attorney,

/s/Candies Pruitt

Candies Pruitt, Staff Counsel

State Ethics Commission

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BARBARA DAVIS-HASSAN

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Barbara Davis-Hassan ("Davis-Hassan") enter into this Disposition Agreement pursuant to Section 3 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 29, 2021, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A, by Davis-Hassan. On December 15, 2022, the Commission concluded its inquiry and found reasonable cause to believe that Davis-Hassan violated G.L. c. 268A, §§ 17 and 19. The Commission and Davis-Hassan now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Davis-Hassan was at all relevant times Chair of the Town of Lanesborough ("Lanesborough") Economic Development Committee ("EDC") and a member of the Lanesborough Planning Board ("Planning Board").
2. The EDC is charged with coordinating economic development proposals

and advising the Lanesborough Select Board on available grants and on the progress of business projects, among other duties.

3. The Planning Board is charged with holding public hearings and making recommendations on proposed zoning amendments.

4. In her private capacity, Davis-Hassan owns and operates Barb Hassan Realty, Inc., a real estate brokerage company representing clients in residential and commercial real estate leasing and sales in Berkshire County.

Representing Durga Property Holdings, Inc.

5. The Berkshire Mall (the "Mall") is located in Lanesborough.

6. The Baker Hill Road District (the "BHRD") was created by an act of the Massachusetts Legislature (the "Legislature") in 1989, in response to a home-rule petition by Lanesborough, in part, to maintain the road referenced in the Act, subsequently named Route 7/Route 8 Connector Road.

7. The BHRD assesses and collects taxes on properties within the district, in part for road maintenance and municipal services, including Lanesborough municipal police and fire services. The BHRD taxes are in addition to the Lanesborough property taxes assessed by the Lanesborough Board of Assessors.

8. In July 2019, Durga Property Holdings, Inc. ("Durga"), an Ohio corporation, purchased the Mall. Durga subsequently owed tax payments to the BHRD.

9. On November 13, 2019, and January 8, 2020, Davis-Hassan appeared before the BHRD on behalf of Durga in connection with Durga's Mall-related tax liabilities and, during at least one of these appearances, asked questions intended to show that the BHRD should be dissolved.

10. Davis-Hassan appeared before the Board of Assessors on January 30, 2020, seeking an abatement of Lanesborough property taxes on behalf of Durga. Durga's abatement application, which Davis-Hassan submitted on its behalf, asserted that the Town had overvalued the Mall by approximately \$15 million.

11. On May 13, and September 23, 2020, Davis-Hassan, on behalf of Durga, sent drafts of a proposed resolution to dissolve the BHRD to the Lanesborough Town Manager, along with a request that the Town Manager forward the resolutions to Lanesborough Town Counsel for review and the Select Board for their signatures. The dissolution of the BHRD was sought by Durga in order to reduce its Mall-related BHRD tax liabilities. In September, 2020, Davis-Hassan communicated to the Town Manager Durga's commitment to pay approximately \$300,000 annually to the Town for five years if the BHRD was dissolved.

12. Davis-Hassan, on behalf of Durga, spoke with a member of the Legislature on or about October 16, 2020, about dissolving the BHRD.

13. In a June 21, 2021 email to the Select Board and others, Davis-Hassan, as "the local representative for the owner of the Berkshire Mall, Durga Property Holdings, Inc.," sought information regarding an application Lanesborough had made for a grant to address water and sewer concerns at the Mall.

Davis-Hassan's Financial Interests in the Lease and/or Sale of the Mall

14. Davis-Hassan, as Barb Hassan Realty, Inc., entered into an exclusive marketing agreement with Durga on December 26, 2019, to lease space in the Mall, and, if the opportunity presented itself, to quote an asking price of \$10 million to sell the Mall.

15. At Planning Board meetings on January 19, February 16, March 15, and

April 20, 2021. Davis-Hassan, as a Planning Board member, discussed and/or voted on a proposal to rezone the Mall to mixed commercial zoning to facilitate “much more vast redevelopment.”

16. The Lanesborough Town Meeting voted to approve the proposal to rezone the Mall on June 8, 2021.

17. The Mall sold for \$8 million on July 29, 2022. Davis-Hassan, as Barb Hassan Realty, Inc., received a \$240,000 commission on the sale.

Davis-Hassan’s Financial Interests in Williamstown Road Property

18. Davis-Hassan, as Barb Hassan Realty, Inc. was the listing agency for a property located on 20 Williamstown Road in Lanesborough at all relevant times.

19. At a February 18, 2020 Planning Board meeting, Davis-Hassan, as a Planning Board member, discussed a proposal by an electric vehicle assembler to allow light manufacturing and mixed commercial use on the Williamstown Road property.

20. The 20 Williamstown Road property sold for \$250,000 on August 27, 2020. Davis-Hassan, as Barb Hassan Realty, Inc., received a \$25,000 commission on the sale.

Conclusions of Law

Section 17(c)

21. Section 17(c) of G.L. c. 268A prohibits a municipal employee from, otherwise than in the proper discharge of her official duties, acting as agent for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

22. As Chair of the EDC and as a Planning Board member, Davis-Hassan is a

Lanesborough municipal employee.

23. The BHRD's decision to assess and collect taxes on the Mall was a particular matter in which Lanesborough had a direct and substantial interest because the tax money BHRD collected from the Mall was used, in part, to pay for Lanesborough police, fire, and other municipal services.

24. The decision whether to dissolve the BHRD was a particular matter in which Lanesborough was a party and had a direct and substantial interest because the BHRD was created in response to a Lanesborough home rule petition, in part, in order to maintain Route 7/Route 8 Connector Road, which is in Lanesborough, and because the Town receives payments from the BHRD for police, fire, and other municipal services.

25. Lanesborough's decisions to assess and collect taxes on the Mall and seek a water and sewer infrastructure grant for the Mall were particular matters in which the Town was a party and had a direct and substantial interest.

26. Davis-Hassan acted as agent for Durga in connection with the BHRD's decision whether to assess and collect taxes on the Mall by repeatedly appearing at BHRD meetings on behalf of Durga regarding the BHRD taxes on the Mall.

27. Davis-Hassan acted as agent for Durga in connection with the BHRD's possible dissolution by appearing at BHRD meetings on behalf of Durga and asking questions intended to show that the BHRD should be dissolved, contacting a member of the Legislature concerning the BHRD's dissolution, and submitting draft resolutions to dissolve the BHRD to the Lanesborough Town Manager.

28. Davis-Hassan acted as agent for Durga in connection with Durga's application to the Board of Assessors for an abatement of Town property taxes on the

Mall by filing Durga's abatement application and by participating in the Board of Assessors meeting concerning that application on Durga's behalf.

29. Davis-Hassan acted as Durga's agent in connection with Lanesborough's application for a water and sewer infrastructure grant for the Mall by making inquiries to the Select Board and others concerning that application as Durga's representative.

30. Acting as agent for Durga in these matters was not in the proper discharge of Davis-Hassan's official duties as Chair of the EDC or as a Planning Board member.

31. Each time Davis-Hassan, while serving as Chair of the EDC, acted as agent for Durga in connection with its BHRD taxes, the dissolution of the BHRD, Durga's application for an abatement of its Lanesborough property taxes, and the water and sewer infrastructure grant for the Mall, all particular matters in which Lanesborough had a direct and substantial interest and/or in which the Town was a party, she violated § 17(c).

Section 19 - The Mall Rezoning

32. Except as otherwise permitted by the section,¹ § 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to her knowledge, she or an immediate family member has a financial interest.

33. The decision whether to rezone the Mall was a particular matter.

34. Davis-Hassan had a financial interest in rezoning the Mall because she had entered into an exclusive marketing agreement with Durga to lease space or to sell the Mall and believed that rezoning would increase the redevelopment potential of the site.

¹ None of the exceptions applies.

35. Davis-Hassan participated as a Planning Board member and municipal employee in the decision whether to rezone the Mall by discussing and voting on a rezoning proposal.

36. At the time of her participation as a Planning Board member, Davis-Hassan knew that, due to her exclusive marketing agreement with Durga, she had a financial interest in the rezoning of the Mall.

37. By participating as a Planning Board member in a proposal to rezone the Mall, while having an exclusive marketing agreement with Durga to lease space in, or to sell the Mall, Davis-Hassan violated § 19.

Section 19 - Williamstown Road Rezoning

38. The decision whether to rezone the 20 Williamstown Road property was a particular matter.

39. Davis-Hassan had a financial interest in rezoning the 20 Williamstown Road property because she was the listing agent for the property.

40. Davis-Hassan participated as a Planning Board member in the decision whether to rezone the 20 Williamstown Road property by discussing a proposal to allow light manufacturing and mixed commercial uses on the property.

41. At the time of her participation, Davis-Hassan knew that, as the listing agent for the property, she had a financial interest in the rezoning of the 20 Williamstown Road property.

42. By participating as a Planning Board member in a proposal to rezone the Williamstown Road property while serving as the listing agent for the property, Davis-Hassan violated § 19.

Disposition

In view of the foregoing violations of G.L. c. 268A by Davis-Hassan, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Davis-Hassan:

- (1) that Davis-Hassan pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$30,000 as a civil penalty for violating G.L. c. 268A, §§ 17(c) and 19; and
- (2) that Davis-Hassan waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

By signing below, Davis-Hassan acknowledges that she has personally read this Disposition Agreement, that it is a public document, and that she agrees to all of the terms and conditions therein.

STATE ETHICS COMMISSION


Barbara Davis-Hassan Date 7/21/2023

David A. Wilson Date
Executive Director