

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



August 10, 2017

VIA ELECTRONIC MAIL

Mr. Brian Kenner
Deputy Mayor for Planning and Economic
Development
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004
brian.kenner@dc.gov

RE: #OOG-0002_6.28.17 Notice of Complaint_DMPED_AO

Dear Mr. Kenner:

The Director of the Office of Open Government (OOG), pursuant to the authority set forth in § 503(a)(4) of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-593 *et seq.* (2017), and 3 DCMR § 10400 *et seq.* (2017), has investigated an Open Meetings Act (OMA) (D.C. Official Code § 2-571 *et seq.* (2017)) complaint¹ regarding the June 20, 2017, meeting of the District of Columbia Housing Authority (DCHA) and the New Communities Initiative (NCI). The meeting occurred at the Excel School, 2501 Martin Luther King Jr. Avenue, SE.

Specifically, Complaint #OOG-0002_6.28.17 (Complaint) alleged the DCHA and personnel representing the office of the Deputy Mayor for Planning and Economic Development (DMPED) violated D.C. Official Code § 2-575(a)(1) by refusing to allow the complainant to attend a meeting. The purpose of the meeting was to gather input from Barry Farm residents regarding their preferences for proposed architectural designs for new residential development under the NCI.

¹ The complainant, D. del Pielago, was barred from attending the June 20, 2007, meeting conducted by the DCHA and the DMPED. The complainant was told that “the meeting is for Barry Farm residents.” The Office of Open Government (OOG) is in receipt of two copies of notice flyers for the meeting: (1) the meeting notice provided by the complainant; and (2) the meeting notice provided by the DMPED. The text of the flyer provided by the complainant does not indicate the meeting is exclusively for Barry Farm residents. The text of the flyer provided by the DMPED states “Barry Farm Residents Only.” The OOG notes the discrepancy of disclosure to the public of the intended audience as pointed out by the complainant, although the OOG finds the NCI meeting is not subject to the OMA.

The OOG has reviewed all records related to the June 20, 2017, event and the legislative history of the NCI, and finds that the NCI is not a public body subject to the requirements of the OMA.

BACKGROUND

The NCI has a more than decade-long history in the District of Columbia (District). Created in 2005, the NCI is a partnership between the DMPED and the DCHA intended to improve the quality of life for residents of four neighborhoods: Northwest One (Ward 6), Barry Farm (Ward 8), Lincoln Heights/Richardson Dwellings (Ward 7), and Park Morton (Ward 1).² NCI revitalization plans for each of the neighborhoods are structured to improve “schools and health services, and create economic opportunities for public and assisted housing residents. The initiative is a partnership between DC government and the private and nonprofit sectors to produce new housing, reduce violent crime, and create a healthy environment for families in some of the city’s most distressed neighborhoods.” (10-A5 DCMR§ 506.5)³

The NCI is managed by the DMPED. Funding is secured through the Housing Production Trust Fund (HPTF). The HPTF is managed by the Housing Production Trust Fund Advisory Board under the Department of Housing and Community Development. In November of 2008, Resolution 17-808 was passed by the Council of the District of Columbia authorizing the issuance of bonds pursuant to the HPTF Act to fund the Barry Farm, Lincoln Heights/Richardson Dwellings, and the Park Morton projects.⁴

The NCI, upon the approval of the District of Columbia Housing Authority Board, chose A&R Development and Preservation of Affordable Housing (POAH) as the “master planning and development team” for the Barry Farm redevelopment project.⁵

² The Council of the District of Columbia approved the Barry Farm Redevelopment Plan in 2006 to build 1,100 units. New Communities Bond Issuance Approval Resolution of 2008, effective December 2, 2008 (Res. 17-873; 55 DCR 12633) (Resolution 17-873).

³ Committee Report Executive Comment on PR17-808, the “New Communities Initiative Bond Issuance Approval Resolution of 2008” at page 4, makes clear that in addition to the building of affordable housing, the NCI contains a “human capital component for each plan focusing on: adult education/employment, health, youth development, and public safety. The NCI Human Capital program offers case management services to assist families to attain self-sufficiency, and provides wellness programs that support education, health education and workforce development. See, <http://dcnewcommunities.org/human-capital-overview/>. Human Capital providers are funded through the NCI Human Capital Grant. (Sense of the Council in Support of a New Communities Initiative Relocation and Return Rights Strategy Resolution of 2016, at page 4).

⁴ Barry Farm/Park Chester/Wade Road and Lincoln Heights/Richardson Dwellings New Communities Initiative Combined Emergency Approval Resolution of 2007, effective July 10, 2007 (Res. 17-0315; 54 DCR 7695), (Committee Report at page 1.) Federal funding is also provided by the Department of Housing and Urban Development via The Choice Planning Grant awarded to the District of Columbia Housing Authority (DCHA).

⁵ The DCHA issued a Request for Qualifications prior to choosing the developers for the project. The DCHA, A&R Development Corporation, and POAH are Applicants of record before the District of Columbia Zoning Commission. (See, ZC 14-02: Setdown Report – Barry Farm First Stage PUD and Related Map Amendment, seeking the approval to demolish Barry Farm and Wade Road Apartments, and to build mixed income residential and retail services.) (March 21, 2014 Memorandum to the District of Columbia Zoning Commission, from Jennifer Steingasser, Deputy Director Development Review & History Preservation.)

DISCUSSION

In response to the Complaint, Deputy Mayor for Planning and Economic Development, Brian T. Kenner, provided: (1) the DCHA/NCI June 20, 2017, meeting flyer; (2) Barry Farm-Phase 1 Design Workshop slide deck presented at the June 20, 2017, meeting; (3) New Communities Initiative Overview brochure; (4) Run of Show for the Barry Farm meeting; (5) summary of the Quality Housing and Work Responsibility Act of 1998.⁶ In response to the OOG’s June 29, 2017, Notification of Complaint, General Counsel for the DMPED, Susan C. Longstreet in a July 21, 2017, email to Director Hughes, clarified that there are no bylaws or enabling statutes setting forth NCI membership or necessity of confirmation of the Council of the District of Columbia for participation by members. Further, “For determinations of meeting attendance, DMPED relies on its managers and senior staff to make project-level determinations based on office practices and meeting-specific needs.... DMPED’s practice is to have the real estate project manager and at least one human capital program manager attend meetings for the community to which they are assigned.” (July 21, 2017 letter to Director Hughes from Ms. Longstreet).

Whether the NCI is a Public Body as Defined by the OMA.

In order to make a determination as to whether there has been a violation of the OMA, the OOG must take a broad view of the statute and the public policy behind it. And where it is unclear by legislation, regulation, Mayoral Order, or bylaws, the OOG must look to the intended purpose, scope, and impact of an entity on District Government operations and/or policy. (*See*, OOG-002_8.31.15 DME Cross-Sector Collaboration Task Force at page 4)⁷.

The OMA defines a “Public body” as “any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose.” (D.C. Official Code § 2-574(3)). Also, there are particular bodies that are excluded from the requirements of the OMA, including a “District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality.)” (D.C. Official Code § 2-574(3)(A)).

In this instance, the purpose and scope of the NCI is clear. The NCI is intended to “[M]eet the needs of lower-income District families and residents by providing critical social support services, decreasing the concentration of poverty and crime, and enhancing access to education, training and employment opportunities.” By investing in “housing and physical infrastructure of the city’s most challenged neighborhoods. It is a comprehensive community development program aimed at lifting people and neighborhoods by addressing social conditions as well as infrastructure.” (Sense of the Council Barry Farms and Lincoln Heights New Communities Emergency Resolution of 2005, effective July 6, 2005 (Res.16-028; 52 DCR 7959)).

⁶ July 13, 2017 email from B. Kenner to T. Hughes acknowledging receipt of complaint and attaching records requested by OOG on June 29, 2017.

⁷ https://www.open-dc.gov/sites/default/files/DME%20Cross-Sector%20Collaboration%20Task%20Force_OOG%20OPINION%20%2810.7.15%29%28OOG-0002_%28Niles%29.pdf

As set forth above, the implementation and management of the NCI is shared by the DMPED and DCHA. Participating developers are chosen through a Request for Qualifications process, with final determination by the HPTF Advisory Board. Neither the legislative record, nor policy and practice of the DMPED and DCHA reflect that the role of the NCI is to advise the DMPED or DCHA. Additionally, there is no evidence to suggest that the NCI makes policy recommendations, and participating developers do not consider, conduct or advise, or take official vote on District Government operations.⁸ (D.C. Official Code § 2-574(1)). The NCI is a legislatively mandated project overseen by two District Government agencies. The NCI, therefore, is not a public body as contemplated by the OMA, and is not obligated to abide by its provisions.

CONCLUSION

The NCI is a legislatively mandated initiative that is managed by the DMPED and DCHA. Participating developers are not chosen by mayoral appointment, Council confirmation or by DMPED or DCHA, but by way of the Request for Qualifications process overseen by the HPTF Advisory Board.⁹ Meetings of the NCI are not subject to the OMA.

Sincerely,



TRACI L. HUGHES, ESQ.
 Director, Office of Open Government
 Board of Ethics and Government Accountability

⁸ D.C. Official Code § 2-574(1) defines a meeting of a public body. Those attending the meetings are there to facilitate resident input, not to take formal action. The Barry Farm Design Meeting Run of Show for the June 2017 meeting indicates it was staffed by DMPED, POAH, and DCHA personnel. The slide deck for the meetings shows only proposed residence designs, and make clear residents were asked to participate in ‘break-out’ sessions to offer input on which residence designs they preferred for the Barry Farm neighborhood.

⁹ The HPTF Advisory Board is a public body as defined by the OMA.