



# Department of Veterans Affairs Office of Inspector General

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## Administrative Investigation Appearance of a Conflict of Interest Fayetteville VA Medical Center Fayetteville, NC

**Redacted**



**DEPARTMENT OF VETERANS AFFAIRS**  
**Office of Inspector General**  
**Washington, DC 20420**

**TO:** Deputy Under Secretary for Health for Operations and Management  
Office of General Counsel

**SUBJECT:** Administrative Investigation, Appearance of a Conflict of Interest,  
Fayetteville VA Medical Center, Fayetteville, NC  
(2012-03002-IQ-0012)

### **Summary**

We substantiated that a Fayetteville Healthcare Center Project Manager improperly participated as a member of a Market Survey Team (MST)—a select group of Government and contractor employees tasked with evaluating property sites for the Fayetteville VA Medical Center’s new healthcare center—when she evaluated, rated, and ranked five properties owned by her extended family members. Although we found no actual conflict of interest, we found that the Project Manager created the appearance of a conflict of interest when she participated as an MST member after realizing properties to be reviewed were family-owned. As a VA employee and licensed Professional Engineer (PE), she knew that her participation on the MST may be a conflict of interest, or perceived as one, and should have recused herself from the site selection process as soon as she realized a family connection to the properties the team was tasked to evaluate and uttered the words, “I’m so uncomfortable here” and “I really shouldn’t be here. Oh my God, I shouldn’t be here.” Although she was not the final selecting official, she was intimately involved in the process, discussed the sites with team members, and was in a position to influence the team. She was involved in a process that ultimately resulted in VA purchasing about 35 acres of land for about \$4.25 million from the Gillis family, a well-established family in the Fayetteville area.

We also found that Mr. Daniel Hoffmann, Director of the Veterans Integrated Service Network (VISN) 6; Ms. Elizabeth Goolsby, Director of the Fayetteville VA Medical Center; Mr. James Galkowski, former Associate Director of Operations; and Ms. Jessica Kaplan, Director of Real Property Services, failed to properly discharge the duties of their positions when they individually learned of the possible conflict of interest and took insufficient action. They failed to confer with an agency ethics official to get a timely opinion prior to or after they learned of the Project Manager’s relationship to property owners and whether the Project Manager should or should not have participated in this

matter; whether her participation tainted the process; whether there was a potential liability as a result of her involvement in the selection of a multi-million dollar purchase of a family member's property by VA; and, whether it would directly and predictably increase the value of properties and/or businesses owned by her or her close family.

Further, we found many discrepancies within the records associated with the solicitation and purchase of this property. The solicitation required only fee title property owners or their duly authorized representatives to submit expressions of interest, and representatives were required to provide written evidence that they were authorized to represent the owner and any compensation they received. Mr. David Ali, President of Impala Builders, LLC, responded to the solicitation with a letter stating he had an option to purchase agreement for this submitted property. However, we found that the property owner's signature on the document was dated a day before the document was even created, and Mr. Ali did not sign it. Without both signatures, this was not a valid binding agreement. We also found that Mr. Ali submitted the property for consideration under Impala Builders, LLC, but VA later optioned to purchase the land from TCA Properties, LLC. Moreover, a year after the market survey and selection of the property, there were still questions about proper ownership of the property and complications in purchasing this land, due to the "tiered-ownership group" of the property.

## **Introduction**

The VA Office of Inspector General Administrative Investigations Division investigated an allegation that the Project Manager, a Gillis family member, engaged in a conflict of interest when she participated on the MST that evaluated plots of land owned by Gillis family members and recommended the site location for the Fayetteville VA Medical Center's new healthcare center. We also investigated whether VA Management failed to properly discharge the duties of their positions when they learned of the potential conflict of interest and did not seek advice from an agency ethics official to determine whether the Project Manager should participate in this particular matter. To assess these allegations, we interviewed the Project Manager, Ms. Kaplan, Mr. Galkowski, Ms. Goolsby, Mr. Hoffman, and other VA employees. We also reviewed VA email, personnel, telephone, market survey, healthcare center site selection, and land plot deed records. Further, we reviewed the Office of Regional Counsel's limited subsequent inquiry into the matter, and we reviewed Federal laws, regulations, VA policy, and other relevant documents.

## **Background**

Personnel records reflected that the Project Manager was appointed to VA as the Fayetteville VA Medical Center Assistant Chief of Facility Management Services (FMS). She was later promoted to the position of Project Manager and given oversight for the

construction of the new healthcare center. The Project Manager told us that since being employed at VA, she completed the required annual ethics training.

The Project Manager told us that she was a licensed PE certified through the NC Board of Examiners for Engineers and Surveyors and the NC Board confirmed that she held a current PE license. She said that she married her spouse in 2001 and that the Gillis family was an extremely large group with many branches of the family involved in farming in the Fayetteville area. She said that the Gillis family owned large plots of land, as the King of England gave a Gillis relative a land grant many generations ago, and Gillis family members purchased other land over the years.

A May 14, 2010, solicitation posted on the Federal Business Opportunities (FedBizOpps) website stated that VA sought geographical sites for a new healthcare center to be located in Fayetteville, NC. (The solicitation was reposted on May 27, 2010) Proposal documents for the project, VA-101-10-RP-0091, reflected that the project aimed to relocate outpatient services to a “leased build-to-suit” healthcare center in the vicinity of Fayetteville, NC, and that the new center would relieve the “current space shortage” at the existing medical center. The project would consolidate primary and specialty care clinics and assist the medical center to accommodate the projected outpatient workload. The two-step lease process for a term of 20 years used in the project is discussed further in VA OIG report, *Review of Management of Healthcare Center Leases*, dated October 22, 2013. On May 16 and May 18, 2010, VA posted a newspaper advertisement soliciting sites for the healthcare center in the *Fayetteville Observer* newspaper with responses due no later than June 11, 2010. The FedBizOpps posting, as well as the newspaper advertisement, stated that brokers and/or agents could represent the site owner but that sites submitted by broker/agents must be accompanied by written evidence that they were authorized to represent the ownership of the site.

The Project Manager told us that on the paperwork listing interested landowners who responded to FedBizOpps or the newspaper advertisements was a plot of land she identified as belonging to Mr. William J. Gillis—hereafter referred to as Mr. Will Gillis. The Project Manager told us, and the document listing interested landowners reflected that Mr. Joseph Gillis submitted four plots of land for consideration for the site selection. The Project Manager described her relationship to Mr. Joseph Gillis as “probably third, fourth, [or] fifth cousins,” but because the relationship was so extended, she could not be certain. She said that her family had a closer familial relationship to Mr. Will Gillis. She also said that an immediate Gillis family relative gifted land to a member of her family.

A *Fayetteville Observer* news article, dated June 4, 2012, titled: *Raeford Road Development Expected to Grow in Wake of Hospitals*, stated that VA “was building a \$120 million outpatient center in Cumberland County” and “there’s plenty of land for sale.” It stated that the hospitals were “likely to be a catalyst for more development... housing projects for 2011-2016 show plans for more than 4,000 new homes...businesses are following the people.” The article also stated that Mr. Will Gillis owned “about 260

acres along Raeford Road and Old Raeford Road, including where the VA is building its outpatient center.” In a February 20, 2013, email to the VISN 6 Public Affairs Officer, a *Fayetteville Observer* staff writer asked VA for specific documentation concerning the procurement of the Gillis property for VA’s new healthcare center. He wrote, “[The Project Manager] did not recuse herself from the matter, and provided scores for the land she thought was most suited. Even though you say her scores would not have swung the site selection, it seems her position as the assistant chief engineer could have swayed other committee members.” We found no response from VA to this staff writer’s request.

## Results

### **Issue: Whether the Project Manager Engaged in a Conflict of Interest and VA Management Failed to Properly Discharge their Duties**

Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall put forth an honest effort in the performance of their duties and shall avoid any actions creating the appearance they are violating the law or ethical standards. 5 CFR § 2635.101(b)(5) and (14). It further states that an employee shall not use his public office for private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. *Id.*, at § 2635.702.

Federal regulations further state that an employee is prohibited by criminal statute, 18 USC § 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial. Participation may be substantial even though it is not determinative of the outcome of a particular matter. Personal and substantial participation may occur when an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter. 5 CFR § 2635.402(b). It also states that unless the employee is authorized to participate in the particular matter by virtue of a waiver or described exemption, an employee shall disqualify himself from participating in a particular matter and that disqualification is accomplished by not participating in the particular matter. It provided an example of an employee being disqualified from a particular matter, because annexation of land bordering the employee’s property would directly and predictably increase the value of the employee’s property. *Id.*, at 2635.402(c).

North Carolina’s General Statutes for Engineering and Land Surveying rules of professional conduct, Section 89C-20, state every person licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land surveying. The North Carolina Administrative Code

states that the Rules of Professional Conduct in this Rule are adopted in accordance with 89C-20 and are binding upon every person holding a certificate of licensure as a PE and on all business entities authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the provisions of Chapter 89C of the General Statutes are charged with having knowledge of the Board Rules, including the Rules of Professional Conduct, and are deemed to be familiar with their provisions and to understand them. Further, a licensee shall avoid conflicts of interest and shall inform the employer or client, and any reviewing agency, of any business association, interests, or circumstances which could influence judgment or the quality of services. 21 NCAC 56.0701(a) and (e).

The National Society of Professional Engineers® (NSPE) website states that the NSPE has been the profession's most respected voice on the practice of ethical engineering. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity, and the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct. The NSPE Code of Ethics states that an engineer must disclose all known conflicts of interest that could influence or appear to influence their judgment or the quality of their services. NSPE Code of Ethics, Section II.4. In one review, the NSPE Ethics Review Board said that “at a minimum, the presence of a family relationship could easily create an appearance of a conflict of interest and for that reason, full, candid, and open disclosure to the employer and to the client is essential to ensure that there are no unmet expectations or misunderstandings involved.” NSPE Board of Ethical Review, Case No. 09-7, dated February 18, 2010.

Ms. Goolsby told us that she provided the names of individuals for the MST, after an individual with Real Property Services requested that persons within certain positions comprise the team. Email records reflected that on June 3, 2010, members of the MST were notified that they would be participants. Market Survey records reflected that the original team consisted of a former VISN Capital Asset Manager; a former Chief of FMS; Ms. Joyce Alexander-Hines, Medical Center Associate Director; a Health Systems Specialist; Ms. Jessica Kaplan, the Project Manager, VA Central Office Real Property Service; three contractor employees representing ISI Professional Services and Toland-Mizell Architects/Applied Engineering Solutions. MST voting records reflected and Ms. Kaplan told us that although the team consisted of eight participants, only four were voting members, the former Capital Asset Manager, Ms. Alexander-Hines, the Health Systems Specialist, and the former Chief of FMS. She said that she and the contractor employees participated to view the sites to lend their professional opinions, but they did not score the plots of land.

The Project Manager told us, and email records reflected, that on the same day the names for the MST were announced, the former Chief of FMS asked the Project Manager to replace her on the team since she (the former Chief of FMS) would “be at project [management] boot camp” on the dates planned for the site visits. The Project Manager said that the former Capital Asset Manager then confirmed with the Project Manager that she was available to attend in lieu of the former Chief of FMS. Ms. Goolsby told us, “[The former Chief of FMS] was supposed to be on the site selection team...she was unable to be there...[the Project Manager] was the engineer, the only one that was left. So that’s why she replaced [the former Chief of FMS] on the team.”

The Project Manager told us that prior to being appointed as an MST member she did not have any involvement with the site selection project. She said, “I knew about it. We knew it was coming up, being part of engineering, but it was through whatever the former Chief of FMS wanted to tell me.” She said that she did not “really [have] any” discussions with her husband about the project prior to interested parties responding to the advertisement except that VA was going to build a new healthcare center. She also said that “prior to being involved” in the project her only discussions about the healthcare center with other Gillis family members were limited to saying VA was going to build it. The Project Manager told us that she “may have” asked family if they saw the newspaper advertisement soliciting sites for the healthcare center and that she “may have mentioned it to [her] husband...a general conversation...if the ad was out, it’s public knowledge.” The Project Manager told us that she did not tell her extended family about the healthcare center so that they would have prior knowledge of it or to submit Gillis properties for consideration. She said that she did not know the names associated with specific properties until she became an MST member.

The Market Survey/Site Visit Report reflected that the MST toured 16 sites over 2 days, from July 21-22, 2010. Ms. Kaplan told us that the team gathered at an off-site location the morning of July 21 to travel together to their first site. Ms. Kaplan and the Project Manager told us, and market survey records reflected, that prior to touring the properties, members of the MST signed confidentiality certificates, which certified that they would not disclose information relating to the site selection proceedings. However, the members were not asked to sign a conflict of interest certificate. The former Chief of FMS told us that in the past when she served on site selection committees, she signed both confidentiality and conflict of interest certificates. Conflict of interest forms we found used for previous market surveys associated with VA solicitations stated:

I certify that I am not aware of any matter which might reduce my ability to participate on the above referenced matter, proceed in any activities in an objective and unbiased manner, or which might place me in a position of conflict, real or apparent, between my responsibilities as a member of the team and other interests. In making this certification, I have considered all my stocks, bonds, other financial interests, and employment arrangements

past, present, or under consideration and, to the extent known by me, all the financial interests and employment arrangements of my spouse, my minor children, and other members of my immediate household...

Ms. Kaplan told us that she did not provide the MST a conflict of interest form, since it “wasn’t a part of our process” but that it was “definitely a practice” they needed to implement. She said that given the wording of “real or apparent” in a conflict of interest certification, she was “not sure [the Project Manager] could have signed it” had she been given one. She further said that “if we had that process in place and we were doing those forms, it would have brought a different level of scrutiny on my end.”

Ms. Goolsby told us that conflict of interest forms were “usually a part of the selection process” and that when she participated in the past “there was a conflict of interest form that was signed and became a part of the package that the lead person puts together.” She said that there should have been a “signed conflict of interest form before they even got started on this.” She further said that “if the process had been followed the way it was intended, where a conflict of interest statement is the very first thing that’s done...we probably wouldn’t be having this conversation.”

The Project Manager told us that when the group entered the van she was given the day’s itinerary which had “the descriptions of the land and everything else” and that she recognized several properties the team was scheduled to visit belonged to the Gillis family. She said, “I went through the land and I saw Joseph’s name in there. That clued me to go in and look further.” She said, “I saw...Gillis properties listed on there. I immediately told them that there were Gillis properties in there.” She further said that Ms. Kaplan asked the Project Manager about her relationship to the Gillis property owners, and the Project Manager said that she told Ms. Kaplan, “Joseph, I don’t know. He’s several generations down. I think he’s probably third, fourth, fifth cousins.” The Project Manager said she told Ms. Kaplan that the closest relation was Mr. Will Gillis and that his father was related to her husband’s grandfather. The Project Manager said that Ms. Kaplan asked her, “Will you gain anything? Will you benefit financially from this?” The Project Manager said that she told her “no.”

The Project Manager told us that everyone on the MST received the packet and saw the Gillis name associated with properties that they were scheduled to visit. Further, the Project Manager said that her conversation regarding her family relation to the Gillis properties was addressed “more” to the former Capital Asset Manager and Ms. Kaplan but that the entire team overheard the conversation as she was seated in the back of the van and the former Capital Asset Manager and Ms. Kaplan were seated up front.

Ms. Kaplan told us that the Project Manager disclosed her family relationship to the team, and she said that the Project Manager was “forthcoming” and said, “I married into the Gillis family.” Ms. Alexander-Hines told us that when the Project Manager recognized Mr. Will Gillis’ plot of land, the Project Manager said to her, “I don’t think I need to be

here.” Ms. Alexander-Hines said that she asked the Project Manager if this was her family, and the Project Manager said they were her husband’s family. She said that the Project Manager then said, “I really shouldn’t be here...Oh my God. I shouldn’t be here.” Ms. Alexander-Hines told us that she told the Project Manager that if she wanted to continue she needed to “make sure” she was “going to be fair.” She said that the Project Manager responded, “I’m so uncomfortable here.” Ms. Alexander-Hines told us that she did not know whether anyone on the committee or anyone involved in the site selection process discussed the potential conflict of interest with a designated ethics official or Office of General Counsel. She said, “At the time, I didn’t even think about even saying anything to anyone...I just said you’ve got to be careful...got to be fair.” The Project Manager told us, “Hindsight being 20/20 now...I would have [run] out of the van.” She said that she “should have backed out” but at the time, she “thought by telling [she] made it open and honest.”

Ms. Kaplan told us that during the survey at each plot of land the MST questioned and discussed factors relating to the ranking criteria and then the voting members of the team independently ranked the surveyed sites using guidelines based on physical attributes of the land. Ms. Alexander-Hines told us the MST discussed the positive and negative attributes of the land, rated them independently, but did not discuss rankings of the sites.

The Project Manager told us that Mr. Joseph Gillis showed the MST the first three sites he submitted for consideration. She said that they exchanged pleasantries when they first saw one another, “but that was about it.” The Expression of Interest reflected Mr. Joseph Gillis’ fourth and final site was submitted on the day of the site survey. The Project Manager told us that the team viewed the fourth property after Mr. Joseph Gillis told the MST that he had an additional plot of land that he did not submit for consideration and asked if they were interested in viewing it. Ms. Kaplan told us that it was not unusual for landowners to submit properties after the submission deadline and that “we have the discretion to increase competition if we think it’s viable.” The Project Manager told us that Mr. Joseph Gillis was present at the properties he submitted for consideration while the MST evaluated them.

Mr. Hoffman told us that after we interviewed him, he contacted the Office of Regional Counsel to ask them to review the Project Manager’s involvement in the site selection. Their report of their interview with the Project Manager reflected that the Project Manager told them that the MST would not pick the property but merely rate the properties. She also told them that another group of individuals would pick the property after they reviewed the assessments provided by the MST. Although the Project Manager told us that she did not “socialize” with the extended Gillis family, the Regional Counsel report reflected that in their interview of the Project Manager, she told them that she saw Mr. Will Gillis often, as they attended the same church and the same extended family functions. She also told Regional Counsel that her husband was a second or third cousin to Mr. Will Gillis, but she told us that her family had a closer familial relationship to him.

However, Mr. Galkowski told us that the Project Manager told him that Mr. Will Gillis was not a blood relative to her or her husband.

The Project Manager also told Regional Counsel that her immediate family would not receive “any financial gain” from the sale of Mr. Will Gillis’ property. Regional Counsel concluded that the Project Manager was open about the Gillis family owning some of the properties they rated and her participation did not violate ethics laws or regulations. However, Regional Counsel did not address whether her participation created an appearance of violating the law or ethical standards. They also did not ask the Project Manager about her, her husband’s, or close family member’s properties or her or her husband’s business partnerships with other Gillis family members to determine whether their property values would directly and predictably increase or business partnerships would flourish as a result of her being on the MST and her involvement in the ultimate purchase of a Gillis family property.

The Project Manager gave us additional information about her relationship to the Gillis family. She said that a member of her family was gifted land by immediate Gillis family relatives, which her family currently uses. Further, she said that Gillis family relatives provided other support to her immediate family in the past.

When asked about Gillis family businesses in the area, she told us that her husband was a part-owner, alongside his father and brother, of Dixie Land Farms, a business that rented land in multiple counties to farm. She said that although the business still existed, it no longer operated as a farm but was now a produce farm and stand, Gillis Hill Road Produce, operated by her brother-in-law. Although she said that Gillis Hill Road Produce was “owned” by her brother-in-law, a North Carolina agricultural association website listed the Project Manager, along with her husband, her brother-in-law, and his wife, under the “Growers Listing” for Cumberland County for Gillis Hill Road Produce.

The Project Manager told us that on the second and final day of surveying properties the MST stopped at the Gillis Hill Road Produce on the way to their next destination. She said, “We drove by. I told them it was there. We stopped.” Ms. Alexander-Hines told us that the Project Manager’s husband was present at the produce stand when the group stopped and that the Project Manager introduced Ms. Alexander-Hines to him. She said that the Project Manager did not tell them that her husband was a part-owner of the farm or that her brother-in-law owned the produce stand. Ms. Alexander-Hines told us, “I thought [her husband] just worked there with the family or something.”

MST rating and ranking records reflected that the voting members of the MST ranked Mr. Will Gillis’ plot of land second overall. The Market Survey/Site Visit Report reflected, and Ms. Kaplan told us, that Mr. Hoffman, Ms. Goolsby, and the former Capital Asset Manager then continued the process with a visit to each of the top three scored sites. Ms. Kaplan and Mr. Hoffman both told us that after visiting the three sites their most preferred site was the second ranked plot of land, based on the geographical

preferences. The report reflected that “VISN management unanimously decided to place site #2 (Hwy 401 & Raeford Rd) as the top rated site and that the [REDACTED] (b)(3) [REDACTED] ) was lowered to second.” The report further reflected the rank change was due to:

The area surrounding the intersection of Highway 401 & Raeford Road [was] the fastest growing area in Fayetteville and reflects the neighborhood characteristics that VA feels will enhance their delivery of service for the next 20 years. Geographically, it is in close proximity to a large veteran population and is very accessible to other Veteran groups within Cumberland County and high veteran populations in adjacent Harnett, Johnston and Sampson counties. In addition, with the completion of the Fayetteville Outer Loop, this location will be quickly accessed by major highways from all surrounding areas.

The former Chief of FMS told us that, from her experience, leadership never picked any property other than “the top-recommended property,” and she thought their selecting the number two property “was very unusual.”

The former Chief of FMS, who was also the Project Manager’s then supervisor, told us that she (the former Chief of FMS) was familiar with the Gillis Family based on genealogy research she did in 1989 for Fayetteville’s bicentennial celebration of the ratification of the constitution in North Carolina. She said that the Project Manager told her the “whole Gillis genealogy” and that Mr. Will Gillis was her husband’s cousin. She further said that the Project Manager told her that Mr. Will Gillis was “buying every piece of land adjacent to his that he could get his hands on” and that the Gillis family were now more involved with developing land, “selling off a fair amount of their land for developments.” She said that the property owned by the Project Manager and her husband was “very near” the property selected for the healthcare center and that she was not aware that Gillis properties were submitted for consideration until she read about it in the newspaper. She further said:

This whole matter has been very disconcerting to me, very upsetting, you know, from an ethical point of view. I’m a professional engineer. I have to take an oath before my registration, which I’ve been registered since 1988, to basically protect the public, ensure that business practices are followed correctly...with her being involved in the selection and the sorting out of the properties and presentation of the properties it just honestly looks like a major ethics violation to me...in my opinion, [the Project Manager] should have recused herself and said I can’t participate because of family connection.

The former Chief of FMS told us that at a later date a special project manager position was created to manage this project. She said that typically, this type position would be

handled out of FMS, but Mr. Galkowski told her that the position would report directly to him or to the medical center director. She further said that she was left out of the hiring effort and that Mr. Galkowski later told her that he selected the Project Manager for the position. The former Chief of FMS said that she expressed her concerns about the Project Manager being promoted into this position, and it might be a conflict of interest giving her oversight of the project being built on land purchased from the Gillis family.

#### *Discrepancies Found in Documents Associated with the Property Purchase*

The property the Project Manager identified as belonging to Mr. Will Gillis was listed on the Expressions of Interest as being submitted for consideration by Mr. David Ali, President of Impala Builders, LLC. In reviewing records associated with the solicitation and purchase of this property, we found many discrepancies. For example, the solicitation required only fee title property owners or their duly authorized representatives to submit expressions of interest and that the representatives must provide written evidence that they were authorized to represent the owner and any compensation they received from the owner. Mr. Ali responded to the solicitation with a letter stating he had an option to purchase agreement for the property he submitted. However, the agreement was dated May 28, 2010, yet it reflected that Mr. Will Gillis signed and dated it 1 day before the agreement was even written. Further, the agreement did not contain Mr. Ali's signature, and without both signatures, this was not a valid binding agreement at the time Mr. Ali submitted it for consideration. It also did not reflect whether he was being compensated or what price he agreed to pay for the property.

In several July 25, 2011, letters a VA contracting officer sent to other property owners who submitted expressions of interest, he told them that their offers were not selected and that the successful offeror was TCA Properties, LLC; however, TCA Properties, LLC, did not submit an expression of interest in response to VA's solicitation. Further, VA's Office of Construction & Facilities Management (CFM) issued a document in July 2011 reflecting that there were problems in purchasing this property. It stated, "Due to complications in negotiations with the tiered-ownership group of the top-ranked site, VA is looking into the possibility of opening negotiations with the 2nd ranked site."

Two other documents reflected that Mr. Ali and Mr. Will Gillis made an effort to address the issues. The first was an August 1, 2011, letter in which Mr. Ali told the VA contracting officer that he (Mr. Ali) was confirming that he was the sole authorizing official who could bind contracts for TCA Properties, LLC; however, he made no mention of Impala Builders, LLC, the corporation used to submit the property for consideration. In a second letter, dated August 5, 2011, Mr. Will Gillis' attorney sent Mr. Ali a title insurance commitment and copies of documents for Mr. Ali to review concerning the sale of the land "Pursuant to the Assignable Option to Purchase Real Estate between TCA Properties, LLC, and Mr. William John Gillis." This option to purchase the property was dated over a year after the solicitation for expressions of interest, and it was with TCA Properties, LLC, and not Mr. Ali or Impala Builders, LLC.

In an email dated August 10, 2011, a leasing contract specialist told Ms. Kaplan, the former Capital Asset Manager, a realty specialist, and others that the deed to the selected property reflected that it was owned “in Fee Simple by the Trustees of Fayetteville Technical Community College” and not Mr. Will Gillis. The email also said, “The Assignable Option is from TCA Properties, LLC, to The Department of Veterans Affairs. The Option refers to TCA as the Owner of Record, yet the Deed is not in TCA’s name. Nor is it in the name of Mr. William J. Gillis.” The contract specialist said that to proceed, VA needed a copy of a “deed transferring ownership to TCA Properties, LLC, so that they have the authority to Option the Property to the VA.” The contract specialist told us that he received no update on this issue from the VA contracting officer, who is no longer with VA.

The State of North Carolina, City of Fayetteville, records reflected that VA purchased 35.414 acres of land from a seller listed as TCA Properties, LLC, at a cost of \$120,000.00 per acre for a total purchase price of \$4,249,680.00. On June 24, 2013, there was a groundbreaking ceremony at the healthcare center site, and Mr. Galkowski told us that the Project Manager and her husband both attended the groundbreaking ceremony.

#### *VA Management Failed to Properly Discharge Their Duties*

Federal regulations state where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a) but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. 5 CFR § 2635.502(d) VA policy states that the public interest requires the maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public and that when such standards are not met, it is essential that prompt and just corrective action be taken. VA policy is to maintain standards of conduct and efficiency that will promote the best interests of the service. VA Handbook 5021/3, Part I, Chapter 1, Paragraph 3(a) (June 1, 2005)

Ms. Kaplan told us that during the time period of the MST process she was a Realty Specialist for Real Property Services and acted as the Project Manager for the healthcare center site selection. She said that in that role she worked with VISN 6 employees to manage the process of relocating outpatient services from the Fayetteville VA Medical Center to a leased build-to-suit healthcare center in the vicinity of Fayetteville and that she oversaw the entire process beginning with the initial projected delineated area through the market survey. She said that as the Project Manager she was involved in the market survey to ensure “that things were running smoothly” but that she was not a voting member of the team. She also said that her responsibilities included making sure “that everybody votes, everything is reasonable, everyone’s kind of towing the line. No

one's talking to all the offerors, that kind of process is adhered to." She said that as the Project Manager during the site survey she was the ranking member of the group.

Ms. Kaplan told us on the first day of the survey the Project Manager was "forthcoming" about her family relationship to two owners who submitted land plots for consideration. She said that at the beginning of the day the Project Manager said, "I'm a Gillis. I married into the Gillis family...and there's a lot of, you know, properties owned by the family, cousins and such in Fayetteville. They're a really big name here." Ms. Kaplan told us she did not recall what she asked the Project Manager regarding her relation to the landowners, except that the Project Manager said "cousins and things." Ms. Kaplan said, "I guess I should have delved...asked more questions...done a lot more" concerning the Project Manager's participation on the MST.

After the Project Manager declared her family relationship to the landowners, Ms. Kaplan told us she "thinks" she called the Office of General Counsel (OGC) to discuss the information that the Project Manager provided. She recalled the advice she received was that since the Project Manager "made her potential conflict known to us" that Ms. Kaplan should "monitor it through the survey and see if, you know, if she's scoring, [and see] if her scores are coming up in a favorable way on those sites." Later, Ms. Kaplan told us she was "90 percent sure she called" but could not recall whether she called OGC or whether she called her supervisor. Ms. Kaplan's phone records reflected she only made two outgoing telephone calls within the estimated time of when she said she called OGC. One was a 1-minute call to Raleigh, NC, at 8:15 a.m. and the other a 2-minute call to another VA phone number at 8:27 a.m. Records reflected that neither of these telephone numbers or any calls placed during either days of the market survey matched numbers associated with the individuals she told us she was 90 percent sure of calling.

Mr. Galkowski told us that he was placed into his position shortly after the July 2010 market survey and that shortly thereafter, "there was at least one employee that began to verbalize to other employees, who verbalized to me, or shared with me that the site that was selected was owned by a Gillis." He said that he did an investigation of "some of the rumors or allegations that were raised." Although he could not recall an exact timeframe when he conducted his inquiry, which consisted of questioning the Project Manager as to her involvement on the site selection, he told us it would have been a month or two after the site selection was officially announced. Further, Mr. Galkowski said, "when I say the word investigation, I say that loosely. It was just kind of asking some questions. So you know, what's going on here? Why are people talking? What are people saying?"

Mr. Galkowski said that because the Project Manager was a subordinate employee of his, he "sought her out to get some information" to find out her involvement in the site selection process. He said that the Project Manager told him that one of the sites visited by the MST "was a site owned by a Gillis that had no blood relation to her or her husband" and that there was "no direct relation to [the Project Manager], her husband, or that they were aware of, by blood or by birth." Mr. Galkowski paraphrased the Project

Manager's explanation to him as "the landowner is Mr. Gillis. But [...] there is no relationship to me or my husband...not a blood relative, or by birth relative." Mr. Galkowski told us that "there is no relationship to [the Project Manager] and Mr. William Gillis, the property owner." He further said that he was not aware that there were additional sites being considered owned by a Gillis family member and did not ask the Project Manager if she was related to any other offerors. He described his discussion with the Project Manager as a "15, 20, 30" minute interview and that he relayed what he learned in this interview to Ms. Goolsby.

Although Mr. Galkowski told us that he completed VA required ethics training, he said that he did not contact an ethics official or OGC regarding the allegations but that "the allegation of an employee potentially having a conflict of interest...caused me to question [the Project Manager] directly myself." He said that he did not refer the matter, as his "assumption" was that "the chairman of the selection committee would have been the one that would have more perfect knowledge than myself of the entire selection process. So I did not myself take this to OGC or to an ethics official." He said that the chairman "would be following along those processes, policies, directives, and looking for any of these concerns of confidentiality and such."

Ms. Goolsby told us that she was hired as Director of the Fayetteville VA Medical Center in July 2010, and she was involved in viewing the top three sites for a recommendation of which was the best site for the new healthcare center. She said that she "did not know who owned" any of the properties "at any point prior" to the assessment. She further said that she learned of a Gillis-owned property being involved when the final site selection was announced. She later told us that "after the fact" Mr. Galkowski "mentioned that some of the properties were Gillis properties."

Ms. Goolsby said, "I did not, once I learned about it after the fact, I did not see [having the Project Manager on the MST as] a conflict. Now if [the Project Manager] had been the only person involved then yes that would have, after the fact, have been an issue." Ms. Goolsby told us that "because [the Project Manager's] numbers are one set of six or seven people who also put the numbers in and then they're aggregated together. If she were the only person on it, then I would say, yes, it's a conflict of interest." Ms. Goolsby said, "If there were only two people on it, I'd say, that might be a problem," but there were a handful of members on the MST with each person independently scored each site that "no one person would have been the decider." Ms. Goolsby also said that the MST did not "even really make a recommendation. All they do is turn in their assessment sheet." However, when asked about the lack of a conflict of interest certification being signed by members of the MST, Ms. Goolsby told us that although the process may have been handled differently had a conflict of interest form been used prior to the MST evaluating the properties, "that's not what happened...And we proceeded forward...you can look at things in hindsight, which is what's going on, and say, well you could of,

you should of, you may have. And maybe, maybe it would of, could have been, should have been handled differently.”

Ms. Goolsby told us that she did not seek an OGC opinion because when she learned about the potential appearance of a conflict of interest the process was ongoing and “it was already at Central Office at Real Properties and they were making those decisions as to what would occur next.” To the contrary, we found email records reflecting that she discussed allegations made concerning the Project Manager’s potential conflict of interest with Regional Counsel in late 2012. This was over 2 years after the Project Manager participated on the MST, after newspaper articles and blog posts discussed an alleged conflict of interest, and she received an email that alleged the same misconduct, which she referred to OIG.

Mr. Hoffman told us that he entered his position of VISN 6 Network Director in May 2000 and that he was involved in the initial planning and final recommending processes for the healthcare center. He said that he learned about the Project Manager’s family connection to the landowners after he initially surveyed the three recommended land plots and that once he learned of a possible appearance of a conflict of interest “it was a judgment on balance. You know, did we actually feel there was a real conflict of interest that could affect site selection?...Because the appearance had already been, it was already done and gone. She was already on the team...and so the appearance to me started to become immaterial.” He also said that he was unsure if a designated ethics official or OGC was contacted regarding the Project Manager’s potential conflict of interest. He said that after he learned of the family connection between the Project Manager and the property owner he did not personally contact OGC or seek other guidance because:

The process had proceeded so far down the line. And it seemed as if, well it was obvious there was an appearance of conflict of interest. But in my mind, given that the process had proceeded to this level already, my sense was, okay clearly there’s an appearance...if we were totally copasetic on this stuff we would have done things differently. But what is the real impact of her being on that site selection team? And was the process contaminated because of it? My sense was there were enough people on this committee that rated and ranked the various options to get to the three that were available for final, that it seemed from a decision making view, and the attributes that I was interested in, that we were still okay...I certainly didn’t see this as a deal breaker, in and of itself.

Mr. Hoffman told us that he was “not sure” if he knew there were federal regulations regarding the appearance of a conflict of interest. He said, “I’m not sure that I was fully aware that appearance is a legal issue. To me it was more a public relations issue.” He also said that if OGC was contacted they would have removed the Project Manager from the MST, which would have made the entire process “a lot cleaner.” He further said that

if he was aware of the family connection prior to the market survey, he would not have put her on the MST if it was going to be “an uncomfortable position for her to be in.”

## Conclusion

VA posted newspaper advertisements and a solicitation in May 2010 for interested parties to submit parcels of land to be evaluated for a new VA Fayetteville healthcare center, with a response due date of June 11, 2010. We found many discrepancies within the records associated with the solicitation and purchase of this property. The solicitation required only fee title property owners or their duly authorized representatives to submit expressions of interest, and the representatives were required to provide written evidence that they were authorized to represent the owner and any compensation they received. Mr. Ali responded to the solicitation with a letter stating he had an option to purchase agreement for this property. However, the agreement reflected Mr. Will Gillis signed it a day before the document was created and Mr. Ali did not sign the agreement. Without both signatures, this was not a binding agreement. We further found that Mr. Ali submitted the property for consideration under Impala Builders, LLC, but VA later optioned to purchase the land from TCA Properties, LLC. Moreover, a year after the market survey and selection of the property, there were questions about proper ownership of the property, and contract records reflected there were complications in purchasing this land, due to the “tiered-ownership group” of the property. Another document reflected a second option agreement between Mr. Will Gillis and TCA Properties, LLC, to purchase the property, but there was not a subsequent agreement between Mr. Ali or Impala Builders, LLC, and Mr. Will Gillis. This second agreement was dated over a year after the expressions of interest response due date.

We substantiated that the Project Manager engaged in the appearance of a conflict of interest when she improperly participated as a member of the MST when she evaluated and rated and ranked five properties owned by her extended family members. Although this did not rise to the level of a criminal conflict of interest, it clearly met the criteria set forth under Federal ethics regulations for an appearance of a conflict of interest, as well as possibly an appearance of her misusing her office for the private gain of relatives, after realizing properties to be reviewed were family-owned. As a VA employee, who has taken annual ethics training, and a licensed PE, who is bound by North Carolina’s rules of professional conduct, she knew that her participation on the MST may be a conflict of interest, or an appearance of, and should have recused herself from the site selection process as soon as she realized a family connection to the properties and voiced a concern with being on the team tasked to evaluate them. Further, her discussions with other members of the MST about both the positive and negative attributes of each property carried a great deal of weight, given she was the only professionally licensed engineer on the team.

The Gillis family is sizable, close-knit, and well-known in the Fayetteville area, and they own a great deal of land that they are developing. Although the Project Manager tried to minimize her relationship to the Gillis family, she told us that a member of her family was gifted land by immediate Gillis family relatives, which her family currently uses; Gillis family relatives provided other support to her immediate family in the past; she knew Mr. Joseph Gillis, who she described as a distant cousin, well enough to exchange pleasantries while a member of the MST; and she told Regional Counsel that she saw Mr. Will Gillis often, attending the same church and family functions. Further, she and her family currently use land gifted to a member of her family by immediate Gillis family relatives, and her husband is a co-owner of a business with his father and brother that rented land to farm and now operate a produce farm stand—Gillis Hill Road Produce. Further, on the last day of the market survey, the Project Manager and the MST stopped at Gillis Hill Road Produce, where she introduced one team member to her husband. Although the Project Manager was not the final selecting official, she rated and ranked the properties, was intimately involved in the process, and in a position to unduly influence the team.

We also substantiated that Ms. Kaplan, Mr. Galkowski, Ms. Goolsby, and Mr. Hoffmann failed to properly discharge the duties of their positions when they individually learned of the possible conflict of interest or appearance of and took insufficient or no action.

Ms. Kaplan, as the project manager and ranking member of the MST, had a responsibility to ensure that the process of selecting a property was done free from even the appearance of a conflict of interest. She told us that after she learned that the Project Manager was related, through marriage, to owners of properties the MST was scheduled to tour, evaluate, rate, and rank, she was 90 percent sure she called OGC for an ethics opinion. In fact, we checked her telephone records, and we found no evidence that she made that call. By her own admission, she said that she should have done more concerning this particular matter and that if the Project Manager was required to sign a conflict of interest certification, she was not sure the Project Manager could have participated as a member of the MST.

Mr. Galkowski told us that after he heard there were rumors and allegations that the property selected for the healthcare center was owned by member of the Gillis family, he questioned the Project Manager about her involvement with the site selection. He said that she told him that neither she nor her husband had a blood or birth relation to the owner of the property selected, which is contrary to what she told us and OGC. He also said that he was not aware that any other sites being considered were owned by a Gillis family member, and he did not ask the Project Manager whether she was related to any other offerors. He said that he did not contact an ethics official or OGC regarding this particular matter, as he assumed that “the chairman of the selection committee” would have more knowledge of the entire selection process,” and take any necessary action. He

limited his inquiry to a short discussion with the Project Manager and relayed what he learned from her to Ms. Goolsby.

At the time Ms. Goolsby viewed the top three sites to recommend which was the best for the new healthcare center, she was not aware of who owned each property. However, she later learned that the selected property was owned by a Gillis family member when the final selection was announced and when Mr. Galkowski later told her that some of the properties belonged to the Gillis family. She failed to recognize that having the Project Manager on the MST created at a minimum an appearance of a conflict of interest, and rather than seek an immediate ethics opinion through OGC to determine if this was problematic and the process was then tainted, she instead dismissed it, saying the decision was made and already at VA Central Office. Over 2 years later, there continued to be allegations surfacing alleging improprieties in the process and purchase of a Gillis property. Had she immediately inquired further and contacted OGC, she may have learned that there were issues related to the solicitation and purchase of the property and that the Project Manager should have recused herself from the MST. At that point, it would be a minimal cost to VA to redo the solicitation and market survey.

Mr. Hoffman learned about the Project Manager's family connection to the selected property after he initially surveyed the three recommended land plots, but once he learned of a possible appearance of a conflict of interest, he took a dismissive posture, deeming it "immaterial." He said that even though there was an obvious appearance of a conflict of interest, he did not seek an opinion from OGC, because the process was "so far down the line" and he did not see it as "a deal breaker, in and of itself." However, he said that had he initially contacted OGC, they would have removed the Project Manager from the MST, which would have made the entire process "a lot cleaner" and that had he known about the Project Manager's family connection prior to the market survey, he would not have put her on the MST if it was going to make her uncomfortable. After we interviewed Mr. Hoffman, he later reached out to the Office of Regional Counsel to discuss the Project Manager's involvement in the site selection; however, his action should have taken place as soon as he learned of the potential conflict of interest.

**Recommendation 1.** We recommend that the Deputy Under Secretary for Health for Operations and Management (DUSHOM) confer with the Offices of Human Resources (OHR) and General Counsel (OGC) to determine the appropriate administrative action to take, if any, against the Project Manager.

**Recommendation 2.** We recommend that the DUSHOM confer with OHR and OGC to determine the appropriate administrative action to take, if any, against Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, and Ms. Kaplan.

**Recommendation 3.** We recommend that the DUSHOM ensure Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, Ms. Kaplan, and the Project Manager take refresher ethics training directly related to the matters described in this report.

**Recommendation 4.** We recommend that OGC review this entire matter from start to end, to include but not limited to, the solicitation of interested property owners, the MST evaluation of properties, property ownership and purchase, and the Project Manager being the project manager with oversight of the construction of the leased healthcare center and determine the appropriate corrective action, if any, to take.

## Comments

The Deputy Under Secretary for Health for Operations and Management and the Deputy General Counsel for Legal Policy were responsive. Their comments are in Appendix A and B respectively. We will follow up to ensure that recommendations are fully implemented.



JAMES J. O'NEILL  
Assistant Inspector General for  
Investigations

## DUSHOM Comments

**Department of  
Veterans Affairs**

**Memorandum**

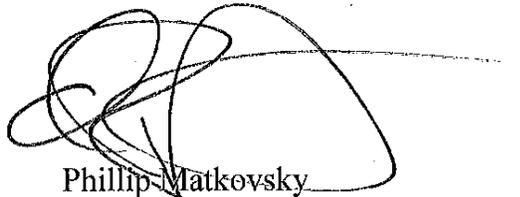
**Date:** December 18, 2014

**From:** Deputy Under Secretary for Health for Operations and Management (10N)

**Subject:** **Administrative Investigation, Appearance of a Conflict of Interest, Fayetteville VA Medical Center, Fayetteville, NC**

**To:** Assistant Inspector General for Investigations

1. I have reviewed the findings and recommendations contained in the above captioned Administrative Investigation report.
2. We will confer with the appropriate parties to determine appropriate action as detailed in the attached report.



Phillip Matkovsky

## **DUSHOM Comments to Office of Inspector General's Report**

The following DUSHOM's comments are submitted in response to the recommendations in the Office of Inspector General's Report:

### **OIG Recommendation(s)**

**Recommendation 1.** We recommend that the DUSHOM confer with OHR and OGC to determine the appropriate administrative action to take, if any, against the Project Manager.

**Comment:** Following receipt and review of the evidence, the Office of the DUSHOM will confer with the VHA Office of Workforce Management and, if needed, OHR, OGC, and other agency bodies to determine the appropriate administrative action.

**Target Completion Date:** 90 days from the publication of the OIG report. Following receipt and review of the evidence, an appropriate administrative action will be initiated.

**Recommendation 2.** We recommend that the DUSHOM confer with OHR and OGC to determine the appropriate administrative action to take, if any, against Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, and Ms. Kaplan.

**Comment:** Following receipt and review of the evidence, the DUSHOM will confer with the VHA Office of Workforce Management and, if needed, OHR, OGC, and other agency bodies to determine the appropriate administrative action.

**Target Completion Date:** 90 days from the publication of the OIG report. Following receipt and review of the evidence, an appropriate administrative action will be initiated.

**Recommendation 3.** We recommend that the DUSHOM ensure Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, Ms. Kaplan, and the Project Manager take refresher ethics training directly related to the matters described in this report.

**Comment:** Following receipt and review of the evidence, the Office of the DUSHOM will ensure Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, Ms. Kaplan, and [the Project Manager] take refresher ethics training directly related to the matters described in the report.

**Target Completion Date:** 90 days from the publication of the OIG report. Following receipt and review of the evidence, an appropriate administrative action will be initiated.

## OGC Comments

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** January 21, 2015

**From:** Deputy General Counsel for Legal Policy (022)

**Subject:** **Administrative Investigation, Appearance of a Conflict of Interest, Fayetteville VA Medical Center, Fayetteville, NC**

**To:** Assistant Inspector General for Investigations

See pages 24–25.

## **OGC's Comments to Office of Inspector General's Report**

The following OGC's comments are submitted in response to the recommendation in the Office of Inspector General's Report:

### **OIG Recommendation(s)**

**Recommendation 1.** We recommend that the DUSHOM confer with OHR and OGC to determine the appropriate administrative action to take, if any, against the Project Manager.

**OGC Comments:** OGC received and reviewed the report of investigation and exhibits and will review proposed actions as appropriate.

**Recommendation 2.** We recommend that the DUSHOM confer with OHR and OGC to determine the appropriate administrative action to take, if any, against Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, and Ms. Kaplan.

**OGC Comments:** OGC received and reviewed the report of investigation and exhibits and will review proposed actions as appropriate.

**Recommendation 3.** We recommend that the DUSHOM ensure Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, Ms. Kaplan, and the Project Manager take refresher ethics training directly related to the matters described in this report.

**OGC Comments:** OGC will provide refresher ethics training to [the Project Manager], Mr. Hoffman, Ms. Goolsby, Mr. Galkowski, and Ms. Kaplan as recommended in the OIG report.

**Recommendation 4.** We recommend that OGC review this entire matter from start to end, to include but not limited to, the solicitation of interested property owners, the MST evaluation of properties, property ownership and purchase, and the Project Manager being the project manager with oversight of the construction of the leased healthcare center and determine the appropriate corrective action, if any, to take.

**OGC Comments:** OGC received and fully reviewed all material provided by OIG and has identified no appropriate corrective action. We will review any proposed actions submitted for our review.

## OIG Contact and Staff Acknowledgments

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OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Leanne Shelly William Tully

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