

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Phillip J. Hammond  
Complainant,

Administrative Hearing  
No. 19-032

v.

Nicole Smith-McDermott  
Respondent.

Re: Appeal from ANC 7B Resolution  
on Qualifications of Commissioner  
for ANC SMD 7B04

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on May 29, 2019 pursuant to an appeal under D.C. Official Code § 1-309.06(f)(3) from a resolution issued by Advisory Neighborhood Commission (“ANC”) 7B that found that no vacancy existed in the office of Advisory Neighborhood Commissioner for Single Member District (“SMD”) 7B04, which is currently held by Ms. Nicole Smith-McDermott (“the Resolution”). The appeal was brought by Mr. Phillip Hammond, a qualified elector, who claims that the Resolution declaring no vacancy is defective because Commissioner Smith-McDermott was not a resident of the Ward or SMD from which she sought election at the time she filed her Declaration of Candidacy to run for the office during the 2018 November General Election, and because she does not currently reside in the SMD. Board Chairman D. Michael Bennett and Board Members Dionna Lewis and Michael Gill presided over the hearing; Chairman Bennett and Member Lewis were physically present at the hearing, and Member Gill participated via teleconference. Mr. Hammond appeared before the Board *pro se*, and Commissioner Smith-McDermott participated *pro se* via teleconference.

## **Statement of Facts**

On July 11, 2018, Commissioner Smith-McDermott filed a Declaration of Candidacy (“the Declaration”) to run for the office of Advisory Neighborhood Commissioner in ANC SMD 7B04. In the Declaration, Commissioner Smith-McDermott indicated that she lived at 3525 Highwood Drive, SE, Washington, D.C., an address within ANC SMD 7B04, and that she has lived there since July of 2012. On that same date, Commissioner Smith-McDermott filed a change of address with the Board, changing her address from 59 Hawthorne Court, NE #59, Washington, D.C. - an address that is not located within ANC SMD 7B04 - to 3525 Highwood Drive, SE. On August 1, 2018, Commissioner Smith-McDermott filed a nominating petition in support of her candidacy with the Board.

On November 6, 2018, Commissioner Smith-McDermott was elected to the office of Advisory Neighborhood Commissioner in ANC SMD 7B04, garnering 524 votes. Mr. Hammond, who opposed her in the contest, garnered 421 votes.

On November 14, 2018, Mr. Hammond sent email correspondence to the Office of the General Counsel indicating that “it was brought to [his] attention [Commissioner Smith-McDermott] was not a registered voter in the Ward or [SMD] from which [she] sort (sic) nomination at the time she filed the ‘Declaration of Candidacy’.” He further stated that “based upon [Board] records, [Commissioner Smith-McDermott] has not been a registered voter in [SMD] 7B04 [from] 2014 to 2018. Several neighbors who live near the house where she claims to reside have indicated that she doesn’t live there, and are aware of others residing at this address she used when she declared her candidacy.” In that same email, Mr. Hammond requested that the OGC “conduct a review of Commissioner Smith-McDermott’s documents, and a hearing be set asap, to resolve this protest.” In support of his request, Mr. Hammond submitted the results of an internet search, conducted on

November 8, 2018, that he believed indicated that Commissioner Smith-McDermott does not reside within SMD 7B04.

On December 14, 2018, Mrs. Karen Brooks, the Board's Registrar of Voters ("the Registrar") commenced an investigation into the claims Mr. Hammond raised regarding Commissioner Smith-McDermott's residency. On that same date, the Registrar sent Commissioner Smith-McDermott a letter notifying her of Mr. Hammond's challenge to her residency, and giving her 30 days to respond to the claims raised in the challenge. On January 10, 2019, Commissioner Smith-McDermott responded to the Registrar's request by providing her D.C. Department of Motor Vehicles ("DMV") identification card (issue date July 9, 2012), an affidavit of residency dated January 5, 2018 and executed under penalty of perjury, and a notice of personnel action from her employment with the D.C. government dated April 2, 2018, all of which list her residence address as 3525 Highwood Drive SE.

On January 18, 2019, the Registrar sent correspondence to both Mr. Hammond and Commissioner Smith-McDermott indicating that "Mr. Hammond's challenge to [Commissioner Smith-McDermott's] voter registration has failed" because "a challenge based upon a change of residence is impermissible." The correspondence further stated that "no changes to [Commissioner Smith-McDermott's] voter registration will be made." The Registrar forwarded her determination to the Chairperson of ANC 7B so that it could hold a vacancy hearing pursuant to 1-309.06(f)(2) to determine whether a vacancy existed in ANC SMD 7B04.

On April 4, 2019, ANC 7B held a special meeting regarding the matter. Thereafter, the ANC issued the Resolution, which expressed its finding that no vacancy existed in SMD 7B04 because Commissioner Smith-McDermott "has provided to [the Board] documents to certify her residency on January 5, 2019[,] ... and [the Board] determined in a letter signed by [the Registrar] dated

January 18, 2019 [that] ‘the law clearly states, a challenge based upon a change of residence is impermissible. For the foregoing reasons, Mr. Hammond’s challenge to [Commissioner Smith-McDermott] has failed.’” On April 26, 2019, the ANC transmitted the Resolution to the Board.

The OGC scheduled a pre-hearing conference in this matter on May 24, 2019. Mr. Hammond was unable to attend the pre-hearing. Commissioner Smith-McDermott was in attendance, and the pre-hearing proceeded *ex parte*. Commissioner Smith-McDermott submitted the same evidence regarding her residency that she had previously submitted, as well as a bank statement covering transactions from July 10, 2018 through August 9, 2018, and a utility bill dated May 18, 2019, both of which list her residence address as 3525 Highwood Drive SE.

On May 29, 2019, during its regular monthly Board meeting, the Board held a hearing on Mr. Hammond’s appeal from the Resolution. During the hearing, Mr. Hammond submitted additional evidence regarding Commissioner Smith-McDermott’s residency to the Board, which included:

- 1) A statement given by Mr. Hammond during the ANC 7B special meeting in which he asserted that an individual named Mr. Lester Cameron was the actual resident at 3525 Highwood Drive SE during Commissioner Smith-McDermott’s qualifying period of residency, and that Mr. Cameron only moved from that residence on March 30, 2019;
- 2) a list of voters residing in ANC SMD 7B04 that included Mr. Cameron as a registered voter at 3525 Highwood Drive SE;
- 3) a letter and oral testimony from Ms. Jacquelyn Cannon, Vice-President of the Penn Branch Citizens Civic Association, in which she asserted that Mr. Cameron had rented the property at 3525 Highwood Drive SE for over 20 years, but in March 2019 had been “given a few weeks to vacate the property,” and that several residents could attest that Commissioner Smith-McDermott did not reside at 3525 Highwood Drive SE during the required 60 days prior to the election. Ms. Cannon’s letter was accompanied by:
  - a. a notarized letter from Mr. Charlie Boyd to the Penn Branch Citizens Civic Association. (According to his letter, Mr. Boyd lives four houses down from 3525 Highwood Drive SE.) In the letter, Mr. Boyd expressed concern about Commissioner Smith-McDermott’s residency claim, and asserted that Mr. Cameron moved from 3525 Highwood Drive SE on March 31, 2019; and

- b. an email from Mr. Kenneth Milner, a neighbor residing at 3520 Highwood Drive SE since 2008, that indicates that Mr. Cameron “was the only person who lived at [3525 Highwood Drive SE] for at least the last ten years.”
- 4) a photograph that purports to show Mr. Cameron moving from 3525 Highwood Drive, SE on March 30, 2019; and
- 5) tax records purporting to show that Commissioner Smith-McDermott claims a Homestead deduction at 4011 Clay Place NE, while a Mrs. Adele Smith (Commissioner Smith-McDermott’s mother) claims the deduction for the 3525 Highwood Drive SE property.

In response to the evidence presented by Mr. Hammond, Commissioner Smith-McDermott testified that 3525 Highwood Drive SE has been her primary residence since her father purchased the property sometime in 1987 or 1989. She also stated that, although she moved away from there to attend college from 2003 to 2008, she returned and re-claimed the property as her primary residence in 2008, and has resided there for the majority of the time since then. Under questioning regarding whether she considered 3525 Highwood Drive SE to be her primary residence, Commissioner Smith-McDermott acknowledged that while she did co-reside at both 3525 Highwood Drive SE and a property located at 59 Hawthorne Court NE #59 for a time up until some point in 2018, she resided at 59 Hawthorne Court NE #59 for less than fifty percent of that time.

Commissioner Smith-McDermott testified that Mr. Lester Cameron – whom she referred to as a “family friend,” and her “mom’s friend” - did live at 3525 Highwood Drive SE for approximately ten years, but that he lived there along with Commissioner Smith-McDermott, her mother, and her brother. She further testified that Mr. Cameron “transitioned out of Highwood Drive [in] February or March [] of 2019.”

Commissioner Smith-McDermott further testified that the homestead exemption Mr. Hammond referred to was assigned to a property at 4011 Clay Place NE in error.

## Analysis

Pursuant to D.C. Official Code § 1-309.05(a)(1),

No person shall be a member of an Advisory Neighborhood Commission unless he:

(A) Is a registered qualified elector actually residing in the single-member district from which he was elected;

(B) Has been residing in such district continuously for the 60 days immediately preceding the day on which he files the nominating petitions as a candidate as such a member[.]

Therefore, in order for an Advisory Neighborhood Commissioner to properly hold that office in a particular ANC SMD, the Commissioner must, among other things, actually reside in the ANC SMD, and must have resided in that ANC SMD since the 60<sup>th</sup> day before the day they filed their nominating petition as a candidate for that office. In Commissioner Smith-McDermott's case, because she filed her nominating petition on August 1, 2018, she was required to have resided in ANC SMD 7B04 since June 2, 2018.

Mr. Hammond alleges that Commissioner Smith-McDermott is not qualified to hold the office of Advisory Neighborhood Commissioner in ANC SMD 7B04 because she did not reside in that SMD for the requisite period of time prior to seeking ballot access as a candidate for that office in the November 2018 General Election, and because she does not currently reside there. Because Mr. Hammond is challenging Commissioner Smith-McDermott's qualifications to hold the office of Advisory Neighborhood Commissioner in ANC SMD 7B04 on residency grounds, he bears the affirmative duty of establishing the truth of his assertion.<sup>1</sup> Mr. Hammond has not met this burden.

The primary evidence that Commissioner Smith-McDermott proffered in support of her residency at 3525 Highwood Drive SE included her DMV-issued identification card, an affidavit

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<sup>1</sup> 3 DCMR 424.1 ("The party who asserts the claim bears the affirmative duty of establishing the truth of the assertion.").

of residency dated January 5, 2018 and executed under penalty of perjury, a notice of personnel action from her employment with the D.C. government dated April 2, 2018, a bank statement covering transactions from July 10, 2018 through August 9, 2018, and a utility bill dated May 18, 2019, all of which list her residence address as 3525 Highwood Drive SE. Mr. Hammond did not present any evidence that negated the legitimacy of the documentary evidence Commissioner Smith-McDermott produced.

In response to the claims regarding Mr. Lester Cameron, Commissioner Smith-McDermott testified that he did, in fact, reside at 3525 Highwood Drive SE, along with herself and other family members. She also testified that Mr. Cameron moved from that address in March of 2019. It is noteworthy that, while Mr. Hammond presented testimony and documentation from various individuals regarding Mr. Cameron's residency at 3525 Highwood Drive SE, he did not provide direct testimony or documentation from Mr. Cameron himself. If Mr. Hammond's evidence is to be believed, Mr. Cameron was forced to move from 3525 Highwood Drive SE under less than desirable circumstances. However, Mr. Hammond never produced any direct evidence from Mr. Cameron, the individual who would be in the best position to explain the circumstances of his *and* Commissioner Smith-McDermott's residency at 3525 Highwood Drive SE during the timeframe pertinent to this matter. The evidence Mr. Hammond offered does not rebut Commissioner Smith-McDermott's direct testimony and the documentary evidence she produced which indicate that her residence address is 3525 Highwood Drive SE.

In further support of his challenge against Commissioner Smith-McDermott, Mr. Hammond points to the fact that her voter record indicates that she did not update her voting residence address to 3525 Highwood Drive SE until July 11, 2018, the same date she picked up nominating petitions for the office of ANC Commissioner in ANC SMD 7B04. This information is not dispositive on

the issue of whether Commissioner Smith-McDermott actually resided at 3525 Highwood Drive SE during the timeframe pertinent to this matter. The fact that an individual may not timely change their address to reflect their current residence address does not mean that they do not actually reside at that address.

Finally, Mr. Hammond presented documents indicating that Commissioner Smith-McDermott claimed a Homestead Deduction at 4011 Clay Place NE, and that Adele Smith, Commissioner Smith-McDermott's mother, claims a Homestead Deduction at 3525 Highwood Drive SE. In response, Commissioner Smith-McDermott testified that "there was an oversight from Office of Tax and Revenue ["OTR"] regarding the tax payment on [4011 Clay Place NE] that has been rectified." The Board consulted the OTR Real Property Assessment Database to determine whether 4011 Clay Place NE is currently receiving tax relief through the Homestead Deduction program, and ascertained that it is not. The Board takes note of the fact that 4011 Clay Place NE is not currently receiving tax relief through the Homestead Deduction program, and credits her direct testimony regarding the oversight with respect to the deduction. In addition, the Board finds that the fact that 3525 Highwood Drive SE is currently receiving tax relief through the Homestead Deduction program under Adele Smith's name does not undermine Commissioner Smith-McDermott's claim of residency at that address at all times pertinent to this matter.

### **Conclusion**

For the foregoing reasons, the Board finds that Mr. Hammond has not established that Commissioner Smith-McDermott is not qualified to hold the office of ANC Commissioner in ANC SMD 7B04 because she does not reside at 3525 Highwood Drive SE and did not reside there for the requisite period of time before filing her ballot access documents. Therefore, the Board finds that the Resolution issued by ANC 7B is valid.

Date: June 21, 2019

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", written over a horizontal line.

D. Michael Bennett  
Chairman,  
Board of Elections