

Mary Marlow

From: "Marsha Moutrie" <Marsha.Moutrie@SMGOV.NET>
To: "Mary Marlow" <m.marlow@verizon.net>
Cc: <ron.gould@smgov.net>; "Barry Rosenbaum" <Barry.Rosenbaum@SMGOV.NET>; "Eileen Fogarty" <Eileen.Fogarty@SMGOV.NET>
Sent: Tuesday, May 18, 2010 9:10 AM
Subject: RE: Inquiry of Potential Conflict of Interest!

Ms. Marlow,

Again, thank you for notifying us of this concern.

Barry and I discussed your concerns last evening, before the Planning Commission meeting, so that the issue could be addressed at last night's meeting or at future meetings.

Our conclusion is that recusal is not required but that disclosures should be made. Our analysis is that: (1) the requirements of Due Process do not preclude the two Commissioners' participation because consideration of the draft LUCE is a legislative action (not a quasi-judicial action); consequently prejudice is not a legal bar to participation as it would be in a quasi-judicial proceeding; (2) the Political Reform Act does not preclude their participation because the decision of whether to adopt or modify the draft LUCE will not result in a direct financial benefit to the Commissioners (because they are practicing architects the substance of the LUCE may affect their future work, but this possible result is not sufficient to trigger the prohibitions of the Political Reform Act); and (3) because the Commissioners apparently participated in the formulation of a recommendation which will be assessed by the Commission on which they serve, they should publicly disclose their participation in formulating the recommendation in order to avoid the appearance of concealing their role in formulating the recommendation. Overall, the law of conflicts does not preclude officials acting as legislators from formulating and sharing views on issues in advance of the body's consideration of those policy questions. However, we believe that disclosure is important in order to preserve public confidence in the transparency of this process.

If you have additional concerns or comments, you are welcome to contact either Barry Rosenbaum or me. Also, as I said yesterday, I will ensure that all concerned are aware of your groups' concerns.

Marsha Moutrie

From: Mary Marlow [mailto:m.marlow@verizon.net]
Sent: Monday, May 17, 2010 4:24 PM
To: Marsha Moutrie
Cc: ron.gould@smgov.net; Barry Rosenbaum; Eileen Fogarty
Subject: Fw: Inquiry of Potential Conflict of Interest!
Importance: High

Marsha,
 Here is the email I spoke of in our call earlier today. We appreciate your quick response on this issue.

Mary

----- Original Message -----

From: [Mary Marlow](mailto:m.marlow@verizon.net)
To: attorney@smgov.net

Cc: [Zina Josephs](#) ; [Valerie Griffin](#) ; [Catherine Eldridge](#) ; [Maria Loya](#) ; [Elizabeth Riel](#) ; [Jeanne Dodson](#) ; clerk@smgov.net

Sent: Monday, May 17, 2010 4:14 PM

Subject: Inquiry of Potential Conflict of Interest!

TO: City Attorney

From: Neighborhood Council (representing Friends of Sunset Park, North of Montana Association, Ocean Park Association, Pico Neighborhood Association, and Wilshire Neighborhood Coalition)

Re: Inquiry of Potential Conflict of Interest re Architect Planning Commissioners and the draft LUCE

This is a time-sensitive inquiry because the Planning Commission has several additional meetings to review the Draft LUCE and a possible conflict of interest exists. Please respond as soon as possible. Thank you.

Background

We understand that two members of the Planning Commission, who are architects, participated in a meeting or meetings of the Chamber Land-Use subcommittee, out of which have now come proposals for substantial changes to the Draft LUCE's proposed building heights and setbacks (and exponentially more housing units among other things). Planning Commissioner Gwen Pugh's firm, Pugh and Scarpa Architects, Inc, is a member of the Chamber. We also understand that these meetings were closed to the public. These substantive proposals are now being advocated by the Chamber, through their lobbyists, the Harding Larmore firm for the Planning Commission's consideration.

Concern

Certain of the proposed changes, including the allowable heights for commercial and residential projects and business expansions, are in the financial interests of certain businesses and developers, and therefore these architects, individually or through their firm may stand to benefit financially from such changes, if they were adopted.

Conflict of Interest Questions:

- 1) Is it important to know in what capacity these architects participated in these Chamber Land-Use committee meetings – their business capacity or their public capacity as Planning Commissioners?
- 2) Should these architects recuse themselves from consideration of the proposals from this group due to their involvement, coupled with their potential financial interest?
- 3) Should they recuse themselves from further consideration of the LUCE?
- 4) Are they required to have kept an open mind prior to the public meetings on these issues?
- 5) Does this, at the very least, raise the appearance of a conflict?

Thank you.