



AGENDA 1/20/09
ITEM 3.3

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Planning Commission
Applicants – Potential
Conflicts Analyses - Update

DATE: January 12, 2009

RECOMMENDATION

That the City Council review and consider the following information as a part of its evaluation of applicants to fill one (1) unexpired term vacancy on the Planning Commission, which term would end on June 30, 2010.

BACKGROUND

This Office routinely reviews applications to City boards and commissions. The applications generally do not provide complete information; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight major areas of potential conflict disclosed by an application. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission to which the applicant is seeking appointment.

COMMISSION DUTIES

The Planning Commission has two major responsibilities under the City Charter and the Municipal Code: (1) to serve as a quasi-judicial body with respect to the consideration of issuance of certain land use permits, and (2) to serve in an advisory capacity to the City Council with respect to specific proposals for or affecting zonings, rezonings, general plan amendments, and Zoning Code (SJMC Title 20) amendments.

Pursuant to State law, the Commission is required to review redevelopment plans and capital improvement plans. Additionally, under the City's Municipal Code requirements, the Commission is the body charged with initially considering and certifying the adequacy of Environmental Impact Reports (EIRs) and with conducting hearings on protests against Negative Declarations. In addition, the Commission serves in an advisory capacity with respect to other City activities related to land use and development, such as park master plans.

This Office was alerted last week to the names of applicants selected for interview by the City Council for a vacant Planning Commissioner seat with an unexpired term ending on June 30, 2010. Below are some elements reflected on the applications of these applicants for your consideration as the City Council decides which applicant to appoint to fill the vacant Planning Commissioner seat.

APPLICANTS

Hope Allen Cahan:

Ms. Cahan currently is self-employed as a homemaker. She lists on her application that her spouse is employed by the Santa Clara County Office of the District Attorney. She may have to abstain from participating in decisions that would have an impact upon the County of Santa Clara (her spouse's employer). Her application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of her duties on the Planning Commission.

Kerri Lynn Hamilton: Ms. Hamilton lists her current employment on her application as a "full-time community leader" with a background in accounting and horticulture. Her application discloses neither incompatible offices nor pervasive conflicts of interest likely to occur in the performance of her duties on the Planning Commission.

Melia Aldean McCoy-Evans: Ms. McCoy-Evans is an attorney and the sole proprietor of her own general corporate and real estate law practice in San José. She may need to abstain from participating in decisions that would have an impact upon one of her clients. Her application discloses neither incompatible offices nor pervasive conflicts of interest likely to occur in the performance of her duties on the Planning Commission.

Julie Hawkins Moloney: Ms. Moloney is employed as an Associate Planner/ Consulting Planner with Metropolitan Planning Group in Mountain View, CA. She may need to abstain from participating in decisions that would have an impact upon her employer or one of her employer's clients. Her application discloses neither incompatible offices nor pervasive conflicts of interest likely to occur in the performance of her duties on the Planning Commission.

Roy H. Nordblom, III: Mr. Nordblom is a Greenbuilder and Sustainable Construction Consultant with SpinDragon Contracting located in San José. He may need to abstain from participating in decisions that would have an impact upon his employer or one of his employer's clients. His application discloses neither incompatible offices nor pervasive conflicts of interest likely to occur in the performance of his duties on the Planning Commission.

Brian O'Halloran: Mr. O'Halloran is employed with CH2M Hill in San José as a Senior Vice President and Director of Land Development. His application indicates that his group currently has no projects or clients in the City. He may need to abstain from participating in decisions that would have an impact upon his employer or one of his employer's clients. Mr. O'Halloran also would have to act impartially towards projects in which competitors of his employer are involved in order to avoid a common law conflict of interest. His application discloses neither incompatible offices nor pervasive conflicts of interest likely to occur in the performance of his duties on the Planning Commission.

CONCLUSION

Many of the applicants are associated with one or more organizations. It is difficult to ascertain from a number of the applications whether the applicants are paid for their services. Although an applicant's service as a board member of an organization may not constitute a legal conflict of interest, it may create an appearance of conflict if the applicant were to participate in matters concerning his or her organization. If an applicant is compensated, there are likely to be occasions when he or she may have to abstain from participation in matters before the Commission that concern his or her organization or on which the organization has taken a position.

This Office and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement have researched its respective records in order to provide the Council with information related to previous or potential conflicts analyses and pending litigation or Code Enforcement issues. No pending litigation or Code Enforcement issues in connection with these applicants have been identified. Additionally, the applicants do not appear to hold wholly incompatible offices or have pervasive conflicts of interest that would prevent them from serving on the Planning Commission outright, although some may need to disqualify themselves on major policy issues where a particular conflict situation arises.

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**Subject: Updated Conflicts of Interest
Information – Planning Commissioner Applicants**

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You may wish to consider the above comments in recommending an applicant to serve on the Planning Commission.

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By



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cc: Debra Figone, City Manager
Joseph A. Horwedel, Director of Planning Building and Code Enforcement