

June 10, 1996

No. 96-03

Re: Request for Advisory Opinion No. 96-1A-0515-1, Conflict of Interest in Proposed Baseball Stadium Sites

Dear *****:

You ask if the Code of Ethics prohibits any of the nine Pioneer Square Preservation Board (PSPB) members from: (1) participating in the review of any of the three sites that may be selected by the Public Facilities District (PFD) for a new baseball stadium, or (2) developing comments on the adequacy of the Environmental Impact Statement (EIS) that is currently being prepared for site C, with sites A and B as alternatives. The brief answer is yes, because of conflicts of interest, the Code prohibits two PSPB members from participating in the review process of site A, five PSPB members from participating in review of sites A and B and one may be prohibited from participating in the review of any site. If the comments on the EIS apply to all properties equally, the Code would prohibit only the three members receiving compensation for work related to the stadium from participating.

STATEMENT OF FACTS

The PSPB was established pursuant to SMC 23.66. The Board is composed of nine members appointed by the Mayor and was created to advise the Director of Neighborhoods. SMC 423.66.110 (C). The PSPB determines appropriate use, site development and architecture of the private and public buildings located in the Pioneer Square Preservation District (the District) and the use of space in those buildings, pursuant to the specific permitted and prohibited uses contained in SMC 23.66.120 - .130. The Board also reviews and rules on any improvements within the public rights of way, open space and areaways throughout the District. Five members constitute a quorum.

The enabling ordinance requires the Mayor to appoint members with specific expertise and interests. SMC 23.66.110 provides in relevant part:

The Preservation Board shall be composed of nine (9) members, all of whom shall be appointed by the Mayor and confirmed by the Council, and shall consist of two (2) architects, two (2) owners of property in the District, one (1) District

retail business owner, one (1) attorney, one (1) human service representative, one (1) at-large member, and one (1) historian or architectural historian. At least one (1) of the Board's members shall be a resident of the District.

The Public Facilities District (PFD) was established by State law to develop a new major league baseball stadium in King County. The PFD is responsible for selecting the design and the site for the stadium. Currently it is considering three sites. Two of the sites, A and B, are located within the boundaries of the District.

Site A is directly north of the Kingdome, between Occidental Street and the railroad, bordered by King Street to the north. It is right next to The Florentine Condominiums located at 526 First Avenue South. If the stadium is built on site A, all natural light will be blocked from the condominiums in the Florentine. Therefore, the Florentine Owners' Association opposes site A.

Site B is immediately south of the Kingdome and is bordered on the West by Occidental Avenue South, on the South by South Royal Brougham Way and on the East by the Burlington Northern Railroad tracks.

Site C is located South of the District, between South Royal Brougham Way and South Massachusetts Street, Occidental and the Burlington Northern tracks. If the PFD selects sites A or B, it will seek a certificate of approval from the PSPB. If it selects site C, no request will be submitted to PSPB.

The PFD has selected site C as the preferred site. Thus, the Environmental Impact Statement (EIS) that is currently being developed will focus primarily on site C. The EIS must also discuss an alternative site and a no action alternative site. Thus, discussion of sites A and B will also be included in the EIS. The development of an EIS includes a comment period in which the City will be asked to comment. Generally, Department of Neighborhood staff assigned to the PSPB comment, but the PSPB may also be asked to comment on the adequacy of the EIS.

The following is a list of the nine PSPB members and any potential conflicts of interest with in one or more of the proposed sites:

***** and ***** each own a condominium unit at The Florentine.

***** owns property in the District that is approximately three blocks from site A and approximately seven blocks from site B.

***** and ***** are architects who work for architectural firms hired to design the new stadium.

***** is the Partner in Charge of Davis Wright Tremaine, the law firm that represents Shapiro & Associates, which is the consultant in charge of preparing the draft environmental impact statements on the three proposed sites. In addition, she has personally done work for Shapiro & Associates and has advised them in connection with the baseball stadium project.

***** publicly opposed the baseball stadium's financing plan that was on the September 1995 ballot. ***** testified in favor of the financing recommendation of the King County Executive's Task Force on Stadium Alternatives before a committee of the Washington State House of Representatives, in October 1995. That financing plan was not adopted when the Legislature voted to fund the stadium.

***** owns a 50% interest in a company that operates a restaurant that is approximately two blocks from site A and four blocks from site B.

***** does not own property in the Pioneer Square area potentially affected by any of the three proposed baseball stadium sites, nor does he have any private or business interests that could be affected by any of the stadium sites.

ANALYSIS

1. PSPB Members Are Subject To The Code of Ethics.

The Code of Ethics applies to all current and former City officers and employees. See SMC 4.16.070 and SMC 4.16.075. "City officer" and "employee" is defined in the Code as one who has a position in a City agency. SMC 4.16.030(E) provides:

"City officer or employee" means every individual elected or appointed to an office or position of employment in any City agency, whether such individual is paid or unpaid.

SMC 4.16.030(D) provides:

"City agency" means every department, office, board, commission, or committee of the City, or any subdivision thereof, but excludes public corporations and ad hoc advisory committees. (emphasis added).

In *Op Sea Ethics & Elects Comm'n 13 at 2 (1995)*, we advised that the Landmarks Preservation Board is subject to the Code of Ethics, i.e., not an ad hoc advisory committee, since it has the authority to make a final determination designating or refusing to designate landmarks and approving or denying proposed improvements to designated landmarks. Even though the PSPB does not make final decisions, it is

not an ad hoc advisory body, because the enabling ordinance, SMC 23.66.100-.190, mandates PSPB review and recommendation to the Department of Neighborhoods Director for any decision regarding the use and development of property in the District. In order to conduct the review and make the recommendations, the PSPB must interpret the ordinance provisions regarding permitted and prohibited uses. Therefore, members of the PSPB are subject to the Code of Ethics.

2. PSPB Members Who Receive Compensation For Work Involving A Matter Before PSPB May Not Participate In The Consideration Of Or Decision Making On That Matter.

The Code of Ethics prohibits City officers and employees from having a financial or private interest in matters on which they must act. SMC 4.16.070 (1)(b) provides that no City officer or employee shall:

Have a financial or other private interest, direct or indirect, personally or through a member of his or her immediate family, in any matter upon which the officer or employee is required to act in the discharge of his or her official duties, and fail to disqualify himself or herself from acting or participating

In Op Sea Ethics & Elects Comm'n 9 (1993), we held that DCLU's Director of Permits and Plans Division had a financial interest in matters involving the architect for the Eagle's Auditorium renovation project because the Director's spouse had a contract with that architect to provide consulting on the renovation project. Since Washington is a community property state, a spouse has a one-half undivided interest in his or her spouse's earnings. PSPB members ***** , ***** , and ***** have a financial interest in the stadium project generally and the site review process specifically because conditions the PSPB might impose in the site review could negatively impact their clients. Therefore, they are prohibited from participating in the PSPB discussion and the vote with respect to all aspects of the site review.

3. PSPB Members Whose Property Could Be Affected By The Proposed Sites May Not Participate In The Review Of Those Sites.

The Code of Ethics requires City officers and employees to disqualify themselves from official action in instances where it would appear that a conflict would impair their independent judgment. SMC 4.16.070(1)(a) provides that no current officer or employee shall:

Engage in any transaction or activity, which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of official duties, or which impairs, or would to a reasonable person appear to impair, the officer's or employee's independence of judgment or action in the performance

of official duties and fail to disqualify him or herself from official action in those instances where the conflict occurs.

PSPB members, *****, and ***** own property in the area near site A. They stand to either gain or lose financially if site A is ultimately confirmed as the location for the future baseball stadium. It would appear to a reasonable person that their property ownership would impair their independent judgment in reviewing site A. Thus, SMC 4.16.070(1)(a) requires them to disqualify themselves from participating in the PSPB discussion and vote with respect to all aspects of a review of site A.

*****, and ***** own property in the area near sites A and B. They could gain or lose financially if either is chosen for the future baseball stadium. Thus, pursuant to SMC 4.16.070(1)(a), they must disqualify themselves from participating in the PSPB discussion and vote with respect to all aspects of any review of site A or site B.

4. A PSPB Member Who Publicly Opposed The Baseball Stadium Financing Plan Should Consider Disqualifying Himself From The Review Of Any Of The Proposed Baseball Stadium Sites.

The Code of Ethics prohibits City officers and employees from engaging in any activity that would appear to conflict with or be incompatible with official duties. SMC 4.16.070(1)(a) provides that no City officer or employee shall:

Engage in any transaction or activity which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of official duties, or which impairs, or would to a reasonable person appear to impair, the officer's or employee's independence of judgment or action in the performance of official duties and fail to disqualify him or herself from official action in those instances where the conflict occurs.

***** publicly opposed the baseball stadium's financing plan. In addition, he testified before a State Legislative Committee for a financing plan that was not adopted by the State Legislature. This activity may suggest to a reasonable person an opposition so strong as to impair his independent judgment regarding any site. Although we cannot conclude without more facts that ***** must disqualify himself from the review process, he should consider disqualifying himself with respect to all aspects of the site review, in light of his opposition to the stadium.

5. A PSPB Member Who Is Not Compensated For Work Related To The Proposed Sites, Does Not Own Property Near The Proposed Sites And Has Not Been Involved In Proceedings Regarding The Stadium, Need Not Disqualify Himself From The Review Process.

***** does not have a financial interest in any of the proposed baseball stadium sites and there is no evidence that he has impaired independent judgment concerning the baseball stadium matter.

6. If Five Or More PSPB Members Are Disqualified From The Review Process For Any Site, The Rule Of Necessity May Require Participation With Disclosure.

If five or more of the nine members are required to disqualify themselves from considering one of the sites, PSPB would be precluded from acting because it would not have a quorum required by law. In that case, the Rule Of Necessity may dictate that some of the members who disqualified themselves must act, but must disclose their conflict of interest. Because the Rule of Necessity is a judicially created principle, we suggest that PSPB seek assistance from the Law Department.

7. Only The Three Members Receiving Compensation For Work Related To The Stadium Must Disqualify Themselves From Commenting On The EIS.

If the comment on the EIS is restricted to technical matters that apply generally to all of the sites equally, the only members who must disqualify themselves from participating in developing the comments are the three who receive compensation from work related to the stadium project. As we understand comments on the adequacy of an EIS, the commentor raises questions about the methods used to make evaluations and the scope of the issues evaluated. Thus, they are not specific to any site. Therefore, all of the members may participate in the comment process, except those that have a conflict with the entire project by receiving compensation for work.

CONCLUSION

Members of a City Board that must approve the architecture and site development of the proposed baseball stadium may not participate in any aspect of the review of any site in which they have engaged in activity that would appear to impair independent judgment or in which they have a financial interest, as follows:

***** and ***** have a financial interest in site A because they each own condominium units at The Florentine.

***** and ***** have a financial interest in sites A and B because they own property and a business, respectively, near sites A and B.

***** and ***** have a financial interest in all of the sites because they are architects who work for architectural firms hired to design the new stadium.

*****has a financial interest in all of the sites because she is the Partner in Charge of Davis Wright Tremaine, the law firm that represents Shapiro & Associates, which is the consultant in charge of preparing the draft environmental impact statements on the three proposed sites. In addition, she has personally done work for Shapiro & Associates and has advised them in connection with the baseball stadium project.

*****may have engaged in activity, when he publicly opposed the baseball stadium, that would appear to impair his independent judgment about all of the sites.

If five or more members cannot participate in the PSPB review of a stadium site, PSPB will not have the requisite quorum. Solutions to this problem include ascertaining whether another body has the power to act in PSPB's stead, or having disqualified PSPB members act under the Rule of Necessity. We suggest that PSPB seek legal advice from the Law Department to determine how to proceed.

The Code does not prohibit most PSPB members from participating in the process of commenting on the adequacy of the EIS, since such comments are not specific to any property. The PSPB members who receive compensation for work related to the stadium project may not participate in the EIS comment process.

The Commission's advisory opinion is based on the general facts as stated above. The Commission does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Commission to reach a different conclusion. In addition, Commission advisory opinions are narrowly drawn to interpret the ordinances the Commission is authorized to administer. They do not address whether the proposed action is prudent, good public policy or effective management practice.

FOR THE SEATTLE ETHICS AND ELECTIONS COMMISSION

Carolyn M. Van Noy,
Executive Director

This action was reviewed and approved by the Commission at its meeting of June 5, 1996. The Commission members voting to take this action were:

Timothy Burgess, Chair
Marc A. Boman

Not Present:
Lue Rachelle Brim-Atkins

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