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TO: **PLANNING COMMISSION**

FROM: **SCOTT ANDERSON, DIRECTOR OF COMMUNITY DEVELOPMENT**

SUBJECT: **PROCEDURES FOR CONFLICT OF INTEREST RECUSALS AND
IMPARTIALITY ABSTENSIIONS**

REPORT DATE: **SEPTEMBER 25, 2003**

MEETING DATE: **OCTOBER 8, 2003**

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BACKGROUND

From time to time, Commissioners are faced with situations where a financial conflict of interest requires them to “recuse” themselves from participating in the review of applications in accordance with the Political Reform Act of the State of California.

At other times, Commissioners may find themselves in a position where they believe they cannot be impartial decision-makers, but where no financial conflict of interest exists as defined by the Political Reform Act.

The purpose of this discussion item is to help Commissioners distinguish such cases and choose the appropriate course of action before and during meetings.

Financial Conflicts of Interest

Financial conflicts of interest are defined in Section 87100 of the California Government Code. The most common financial conflict for Commissioners in the Town of Tiburon is that their home or other property owned by them is located within 500 feet of a project pending before the Commission. Staff has prepared color maps, which will be distributed at the meeting, showing the 500 foot radius around the home of each Commissioner. Another financial conflict occasionally experienced by Commissioners is that they may be the applicant, designer, or architect on a project being reviewed by the Commission. In other cases, a Commissioner may have a financial interest in a project pending before the Commission. An example would be a new restaurant, in which a Commissioner is a partner or investor, seeking permits from the Commission. All of these instances are clear financial conflicts, and the Commissioner must recuse himself from the item. The procedure for recusal is set forth in attached **Exhibit 1**. Please familiarize yourselves with this procedure.

The Town Attorney advises that there are many other situations that may constitute a conflict of interest, and has requested that Staff distribute a booklet issued by the Fair Political Practices Commission (FPPC) to provide Commissioners with more detailed information. The booklet, entitled “Can I Vote?”, is attached as **Exhibit 2**.

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The determination as to whether a financial conflict of interest or potential conflict of interest may exist can be a complicated one. Staff recommends that Commissioners seek the advice of the Town Attorney in any cases where there is uncertainty.

The Fair Political Practices Commission (FPPC) may need to be contacted by the Town Attorney in some cases. While FPPC staffers will often give “verbal” opinions on conflict questions, only a written response from that agency is binding, and these written opinions can take several weeks or months to arrive.

Questionable Impartiality

For any number of reasons, Commissioners may feel that they cannot impartially act on an application, even though there is no financial conflict of interest. This may be because the applicant is a close personal friend or associate, or for similar reasons. In such cases, Commissioners should abstain from consideration of the item. This does not mean that the Commissioner “recuses” himself; that procedure is used only for financial conflicts of interest.

In cases where there is questionable impartiality, the Commissioner should announce his concern immediately prior to consideration of the item and indicate that he will abstain from participation in the item and will not vote on the item. The Commissioner will keep his seat at the dais and will not step down or leave the room. Leaving the room could call into question the issue of whether a quorum has been retained. This is an issue that should be avoided and easily can be avoided if the Commissioner retains his seat.

When a Commissioner has announced his intention to abstain from an item, he should not speak, gesture, make facial expressions, or otherwise participate in any way during the Commission’s deliberations on the item in question. A “poker face” is the appropriate demeanor. When the time for voting arrives, the Commissioner should simply say, “I abstain”. When the item is concluded, the Commissioner may participate in all remaining items on the agenda as usual.

Conclusion

Staff is hopeful that the above information will assist Commissioners when facing conflict of interest or impartiality situations. Please don’t hesitate to seek advice from Staff if you have any questions.

Exhibits

1. Government Code Section 87105 (recusal procedure).
2. Booklet entitled “Can I Vote?” prepared by FPPC.