City of Seattle
Ethics and Elections Commission

May 22, 2015

BY E-MAIL ONLY

Re: Case No. 15-1-0406-1

Dear *******:

On April 6, 2015, you filed a complaint with our office alleging that Dean Paton, a member of the Swedish Medical Center Cherry Hill Campus Major Institutions Master Plan Citizen Advisory Committee ("CAC") violated the Ethics Code. As explained below, I am dismissing your complaint.

FACTS

The Major Institutions Code, SMC Chapter 23.69, requires the formation of a CAC whenever a major institution proposes the adoption of a master plan. In September 2012, the City Council passed Resolution 31384, forming the CAC to review Swedish Medical Center's Major Institutions Master Plan ("MIMP"). The resolution designated CAC voting and alternate members.

CAC seats were filled by various constituencies interested in the MIMP: "representatives of area community groups; near neighbors; general neighbors; property owners; business persons; consumer groups using the services of the institution; persons participating in neighborhood planning; and, general community or citywide representatives. Additionally, members were required to be knowledgeable, experienced or skilled in one of several categories: "Neighborhood organization and issues; Land use and zoning; Architecture or landscape architecture; Economic development; Building development; and Educational or medical services."

Mr. Paton was originally an alternate CAC member. He replaced Nicholas Richter, who was appointed to serve as a "near neighbor." Messrs. Richter and Paton were both near neighbors and both were skilled in "neighborhood organization and issues."

The Washington Community Action Network ("CAN"), a public interest non-profit, was not represented on the CAC, though the organization did work with neighbors and others who

objected to the MIMP. At a March 12, 2015 CAC meeting, Mr. Paton left the table and engaged in a conversation with CAN's attorney, Claudia Newman.

Mr. Paton together with four other CAC members submitted a Minority Report critical of Swedish Medical Center's MIMP on April 2, 2015. That same day, Mr. Paton, together with three other CAC members and one former CAC member filed an appeal with the City's Hearing Examiner of the Environmental Impact Statement filed in conjunction with Swedish Medical Center's MIMP.

RELEVANT LAW

CAC members are subject to SMC 4.16.070.G of the City's Ethics Code, which provides that "[n]o member of an advisory committee…shall…[e]ngage or have engaged in any transaction or activity which would to a reasonable person appear to be in conflict with or incompatible with the proper discharge of official duties, or which would to a reasonable person appear to impair the member's independence of judgment or action in the performance of official duties, without fully disclosing on the public record of the advisory committee the circumstances of the transaction or activity giving rise to such an appearance before engaging in the performance of such official duties."

DISCUSSION

By opposing the MIMP as a member of the CAC – by submitting a Minority Report – and in his individual capacity – by filing an appeal with the Hearing Examiner – Mr. Paton did not violate the Ethics Code. The Ethics Code requires disclosure of transactions or activities that would appear to impair the person's independence of judgment. It does not require that Mr. Paton not hold strong views on the matter on which he is offering advice. (In fact, SMC 23.69.032.B.5 expressly contemplates that members will come to the table with opposing views, requiring that the committee's membership be "balanced, independent and representative.") If Mr. Paton's sister worked for Washington CAN or Swedish Medical Center, for example, or if he was party to a malpractice suit against Swedish Medical Center, the Ethics Code would require that he disclose those kinds of activities before participating in the CAC's work. But the fact that Mr. Paton objects to the MIMP is not something that requires a written disclosure prior to his performance of official duties.

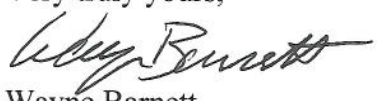
Similarly, Mr. Paton's conversation with an attorney opposing the project does not require written disclosure. The CAC is not a quasijudicial body and *ex parte* communications between the CAC and interested members of the public are not barred. The CAC is more akin to the City Council – its role is both to study the issue *and* to ensure that the views of various

constituencies are taken into account in the decision making process. Members may speak with whomever they choose to inform their positions.

Conclusion

If you would like to appeal my dismissal of these allegations to the full Commission, you may do so under Administrative Rule 4.[1]

Very truly yours,



Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission (*name and address of complainant redacted*)
Dean Paton (*name and address of complainant redacted*)
Steve Sheppard, Dept. of Neighborhoods (*name and address of complainant redacted*)

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[1] Rule 4 APPEALS
A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.
B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.
C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.
D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.
E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.
F. The Commission shall act on the request at the next meeting at which it may be practicable by:
1. deciding whether to review the Executive Director's decision; and
2. if it decides to do so, either affirming, reversing, or amending the decision.
G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.