



MUNICIPALITY OF ANCHORAGE
Board of Ethics

January 9, 2024

Ethics Complaint for Potential Violation 2024-03

Relevant Ethics Topic: Conflicts of Interest – AMC 1.15.060

A complainant¹ alleged that Andre Spinelli (the respondent), a commissioner on the Planning and Zoning Commission, violated Anchorage Municipal Code (AMC) 1.15.060 by not disclosing a conflict of interest. Specifically, the complainant alleged that Mr. Spinelli and his company Spenelli Homes would financially benefit from approving changes to the Girdwood Comprehensive Plan, and Mr. Spenelli did not disclose this fact before the Planning and Zoning Commission reviewed the plan on July 15, 2024. The board accepted the complaint for further review. Having completed its investigation, the board concludes that while the respondent may not have had a prohibited conflict of interest, the respondent should have disclosed the potential conflict to the rest of the body.

I. FACTS

A. Evidence considered by the board

The board received testimony from the complainant and the respondent on November 21, 2024. All information was received during executive session.² The board also considered business license and permitting information the complainant attached to the complaint, which was provided to the respondent. Finally, the board considered the minutes³ and recording⁴ of the July 15, 2024, meeting of the Planning and Zoning Commission, as well as Assembly Ordinance No. 2024-114, which contains background information on the Girdwood Comprehensive Plan and the Planning and Zoning Commission's actions related to the plan.

¹ The complainant's name is redacted pursuant to AMC 1.15.160E and 3.90.040D.

² AMC 4.05.090. The Board's review of a complaint is confidential under AMC 1.15.160 paragraphs A and E.

³ Available on the municipality's website at https://meetings.muni.org/AgendaOnline/Documents/ViewDocument/Planning_and_Zoning_Commission_-_July_15%2C_2024_5739_Minutes_7_15_2024_6_30_00_PM.pdf?meetingId=5739&documentType=Minutes&itemId=undefined&publishId=undefined&isSection=false.

⁴ The recording of the meeting is available on YouTube at <https://www.youtube.com/watch?v=Q7V7wpAP4rc>.

B. *Background of the complaint*

The respondent is a commissioner on the Planning and Zoning Commission. Among other duties, the commission recommends to the Assembly comprehensive plans and ordinances relating to land use planning within the municipality.⁵ The respondent is also the President and thirty-percent owner of Spinelli Homes, a home building company. The respondent's family members own the other 70 percent of the company. Spinelli Homes is one of the largest builders of new homes in the Anchorage area.

On July 15, 2024, the commission considered the Girdwood Comprehensive Plan. The contents of the plan and the history of the plan's development are outlined in AO 2024-114. At the risk of oversimplifying the issues, there was some disagreement at the commission meeting about proposed changes to the plan. Nonprofit organizations associated with Girdwood residents and outdoor recreation groups wanted certain parcels of land to be designated as open spaces for parks and trails, while the municipality's planning department advocated for changing the designation of some parcels from open space to low density residential or mixed use, which would allow the parcels to be developed for housing. The respondent did not disclose any potential conflict related to his family's business and participated in the Planning and Zoning Commission's actions on the plan that evening.

The board of ethics received testimony from both the complainant and the respondent on November 21, 2024. The complainant alleged that the respondent should have disclosed the potential conflict related to the respondent's company before participating in the July meeting.

The complainant attached land use permitting documents for the respondent's company to the complaint. These permits show that within the last four years, Spinelli Homes obtained five building permits to build new houses in Girdwood. The 2024 assessment of these houses was \$3,751,500 (an average of \$750,300 per house). The complainant did not allege any potential conflicts with any of these previously developed properties. Rather, the complainant told the board that the prior permits were relevant to show that Spinelli Homes routinely builds houses in the Girdwood area. Therefore, the complainant believed that the changes to the Girdwood Comprehensive Plan making a large amount of land available for housing development would foreseeably benefit Spinelli Homes because they would almost certainly be involved in developing houses on at least some of that land. He said that the value of the properties being developed, as shown by the previous permits, shows that the financial benefit to Spinelli Homes from developing new houses is more than minor or inconsequential, and would likely be substantial.

Mr. Spinelli said he believed his association with Spinelli Homes is widely known. His resume, which was attached to the assembly memorandum when he was appointed to the commission, lists him as the president of the company. He has disclosed potential conflicts in the past and recused himself from matters before the Planning and Zoning

⁵ The purpose and authority of the Planning and Zoning Commission is outlined in AMC 21.02.030.

Commission that involved Spinelli Homes. He said the reason he did not make a disclosure related to the Girdwood Comprehensive Plan was because Spinelli Homes does not own any of the parcels that would have been impacted by the changes, it does not have current plans to build houses on those parcels, nor does it have any other current projects under development in Girdwood that would have been impacted by the changes. A few months after the commission's meeting (around Labor Day of 2024), Mr. Spinelli did begin the process to buy a property in Girdwood for development. But he did not know about that property in July, and the long-term changes under consideration at the July meeting had no impact on the profitability of this individual property.

Mr. Spinelli believed that even if the Girdwood Comprehensive Plan resulted in future housing development on certain parcels, it was not certain that Spinelli Homes would be involved. As an example, he said another developer was selected for the proposed Holtan Hills housing development project in Girdwood. He also took issue with using a property tax assessment as indication of the profits his company might earn building the house. He said the profit margin on a project is complex and dependent on many factors. Some projects break even, and some might even lose money. Finally, he believed that if he was required to make a disclosure in this case, then he would essentially have to disclose a potential conflict on every matter that came before the Planning and Zoning Commission, since many planning and zoning issues might have hypothetical impacts on the future housing market.

II. DISCUSSION

“A conflict of interest is a conflict between the private interest of a public servant and the official responsibilities of the public servant in the context of an official action.”⁶ “Official action” means participation in a process, including deliberation, in which a decision or recommendation is reached.⁷ When a board member or commissioner has a potential conflict of interest, the member has a duty to disclose the interest to the rest of the body for appropriate evaluation.⁸ The chair or body then determines whether the conflict of interest is permissible or prohibited based on whether the private interest is substantial or minor.⁹ “Following disclosure and a ruling by the chair or body, the jurisdiction of the board of ethics is limited to the sufficiency of the disclosure.”¹⁰

⁶ AMC 1.15.060D.

⁷ AMC 1.15.060C.

⁸ AMC 1.15.060E.

⁹ AMC 1.15.060D-E.

¹⁰ AMC 1.15.060E.2.e.

Mr. Spinelli participated in official actions before the Planning and Zoning Commission and did not make a disclosure. Therefore, the board must analyze whether a disclosure was required. The code of ethics imposes a duty on board or commission members to disclose “potential”¹¹ conflicts of interest to the rest of the body for evaluation. Notably, the code distinguishes between *prohibited* conflicts of interest and *potential* conflicts of interest.¹² This difference in terminology means that even if a scenario does not create a prohibited conflict of interest, it might still be a *potential* conflict that requires disclosure. The word “potential” is not defined in the code. To determine its meaning, dictionaries provide a useful starting point because they provide the common and ordinary meaning of words.¹³ The dictionary definition of “potential” is “existing in possibility; capable of development into actuality; or expressing possibility.”¹⁴ Using that common understanding of “potential conflict of interest,” a board member would be required to make a disclosure even if the board member does not subjectively believe the conflict is a presently manifesting prohibited conflict of interest. The code of ethics has a bias for the disclosures to be made in close cases, so the rest of the body can fairly evaluate whether the conflict is prohibited. This is impossible when no disclosure is made. However, the board is also mindful of public meetings being bogged down by board members making numerous disclosures in situations that involve minor or inconsequential private interests, when those minor interests are unlikely to ever create any real possibility of being a prohibited conflict of interest. A private interest is not a potential conflict of interest simply because a person might think of a hypothetical situation that creates a future conflict. There has to be a reasonable potential for the situation to develop into an actual prohibited conflict of interest for a disclosure to be required.

Applying those principles to this case, the board believes the respondent’s situation created at least a potential conflict of interest. The Planning and Zoning Commission was considering fiercely debated changes to the Girdwood Comprehensive Plan that would have converted parcels of land from open space – set aside for parks and trails – to land that was available for residential development. Mr. Spinelli is the president and part-owner of Spinelli Homes, one of the largest home building companies in Anchorage. Even if the company did not have current plans to build houses on the parcels at issue, it is at least reasonably likely that the company would be involved in major housing developments in Girdwood in the future, and could financially benefit from increased land available for new housing development. The respondent pointed out that Spinelli Homes was not selected as the developer for the Holtan Hills project and said it was possible that his company might not be selected for future projects as well. That may be true. But in the prior case,

¹¹ AMC 1.15.060E.

¹² Compare AMC 1.15.060E and E.2 with paragraph D.2.

¹³ See *Alaskans for Efficient Gov’t, Inc. v. Knowles*, 91 P.3d 273, 276 n.4 (Alaska 2004).

¹⁴ MERRIAM-WEBSTER DICTIONARY 7th Ed. p. 664

Spinelli Homes at least sought to be involved in developing land in Girdwood, even if it was not ultimately selected for the particular project. If large parcels of undeveloped land in Girdwood were suddenly available for housing development, many companies that build residential homes might foreseeably profit from developing the land. It is reasonable to assume that Spinelli Homes would potentially be involved in that process, which creates a potential conflict.

In a prior case involving the Girdwood Comprehensive Plan, the board of ethics said that public servants affiliated with non-profit organizations and nordic ski clubs must disclose their private interests before taking official action on the plan.¹⁵ On the other side of the issue, the respondent's position as the president and part owner of Spinelli Homes was at least as likely as those situations to involve a potential conflict, and should have been disclosed. After the disclosure, the rest of the commission would have decided whether the potential conflict was a prohibited conflict. The facts Mr. Spinelli provided to the board of ethics about his company not owning the parcels or having any current projects under development might have led the commission to conclude that the potential benefit to his company was too speculative to cause a prohibited conflict. But public trust in government is enhanced when that explanation is given during the public meeting of the commission when the official action is taken up, not during an executive session of the board of ethics several months after the fact.

Mr. Spinelli pointed out that he has made disclosures in other cases and his position with Spinelli Homes was common knowledge. But the ethics code requires that conflicts be evaluated in the context of the official action under consideration. The respondent's interest in his company may or may not create a potential conflict of interest in matters before the Planning and Zoning Commission, depending on how likely the matters are to impact the company and how large the impact might be. For that reason, potential conflicts must be disclosed before participating in the official action at issue, regardless of whether the affiliation was disclosed in prior situations.

III. CONCLUSION

The board wishes to stress that while the failure to disclose a potential conflict of interest does violate the code of ethics, the board does not believe the respondent acted in bad faith or intentionally. Volunteer citizens who are willing to serve on municipal boards and commissions are a vital part of the municipality being able to function. The board thanks the respondent for his service. The ordeal of responding to this complaint has no doubt been an educational experience. Public servants faced with a situation that could be viewed as a potential conflict of interest should always disclose the potential conflict. Doing so protects the public servant from future scrutiny because the public servant cannot

¹⁵ See Ethics Complaint for Potential Violation 2021-12. Available on the board's website at <https://www.muni.org/Departments/Assembly/Ethics/Documents/AdvisoryOpinions/2021-12%20Response%20-%20Website.pdf>.

be sanctioned for acting in accordance with the rest of the body's decision after a full disclosure is made.

APPROVED by the Municipality of Anchorage Board of Ethics this 9th day of January, 2024.



Daniel Bellerive, Chair
Gretchen Guess
Forrest Nabors
Kelly Moghadam

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- (2) Respondent
- (3) Municipal Clerk for electronic publication