

Spediacci, Sheri

From: Ray Miller <rc.miller@yahoo.com>
Sent: Thursday, March 19, 2015 5:02 PM
To: luc.bouchard@gmail.com; O'Connell Terry AT SBC; O'Connell, Terry; Lentz, Cliff <at>gmail; Lentz, Cliff; Conway, Clarke; Liu Lori AT yahoo; Liu, Lori
Cc: Holstine, Clay; Roush, Michael; Spediacci, Sheri
Subject: Response to Luc Bouchard

In a message sent to multiple recipients on March 17, 2015 Mr. Bouchard questioned the appropriateness of my appearance before the Planning Commission on February 26, 2015 in a public hearing on the Housing Element. I believe that I did nothing wrong legally, ethically, or substantively.

Legal issue. I asked the City Attorney if there were any legal restrictions on my appearing in the public hearing on the Housing Element. He responded that since the issue was a legislative one, there were none. He added that I don't give up my democratic rights as a citizen when I serve on the City Council. However, it was important for me to state at the beginning of my testimony that I was speaking as an individual not as a representative of the Council. I made that statement and on no occasion during my testimony did I violate it. Of course, everyone knows that I am a Council Member, but that is not the legal issue.

Ethical issue. Since my appearance was friendly, collegial, and totally transparent, I viewed it as collaborative. I did not tell the Commissioners what to do. I only requested that they at least consider ideas that were discussed at public meetings held by the City Council on the Housing Element before they take their final vote. Everything that I said was openly discussed by the Council during its meetings on the Housing Element and available on video. It is totally untrue to say that I was revealing statements made in committee or in confidence. Since Mr. Bouchard stated this as a fact, I think he owes me an apology.

Substantive issues. So why did I believe that appearing before the Planning Commission in this fashion was my best alternative? My concern was not about the Planning Commission itself, but about the approach that was followed by the Planning Department staff. The Council had a very robust discussion about many of the policy issues contained within the Housing Element, especially about different alternatives for meeting our housing requirements as required by State law. We had differences of opinion and ended up with a 3 to 2 vote. Unfortunately, the materials provided to the Commission gave no information on these discussions, including the alternatives that staff agreed met the State requirements. My efforts through administrative channels to include dissenting points of view in the Commission materials were not successful. Consequently, my only hope of opening up the process was to ask the Commission to at least consider the full range of the ideas included in the Council deliberations. They agreed to do so on a 5 to 0 vote (see minutes), and the staff provided the full Council materials for the next Planning Commission meeting. My objective had been fulfilled. At that meeting, which I did not attend, the Commission reaffirmed its original position.

There also seems to be some confusion about when the appeal process is relevant. Appeals from Planning Commission actions are only relevant when the Commission makes decisions on which they are statutorily the "final decision-making body" unless appealed. Usually that involves applications from individual private property owners. Broad public policy issues such as the General Plan (of which the Housing Element is a component) always go to the City Council for final action. In those circumstances the Planning Commission serves as an advisory body. It's quite normal for the Council

to make some modifications of the Commission's recommendation as the Council's perspective is invariably somewhat different.