

## Spediacci, Sheri

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**To:** cityhall@ci.brisbane.ca.us  
**Subject:** Planning Commission meeting of 26 February 2015 - actions of Council Member Miller.

**From:** [Luc Bouchard](mailto:Luc.Bouchard@ci.brisbane.ca.us)  
**Sent:** Tuesday, March 17, 2015 11:09 AM  
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**Cc:** [cityattorney@ci.brisbane.ca.us](mailto:cityattorney@ci.brisbane.ca.us)  
**Subject:** Planning Commission meeting of 26 February 2015 - actions of Council Member Miller.

To: Brisbane City Council

With copy to City Attorney.

From: Luc Bouchard, Brisbane resident

Re: Council member Ray Miller's actions before the planning commission on February 26<sup>th</sup>, 2015.

On February 26<sup>th</sup>, 2015, Council Member Ray Miller appeared before the planning commission to request a reconsideration of the "2015 to 2022 housing element and associated negative declaration" adopted unanimously by the planning commission, and by City Council in a 3-2 vote.

Council Member Miller opened his remarks by stating:

- "First of all I want to make very clear that I'm speaking as an individual in this instance, not for the council. And I checked with the city attorney *Can I do that?* He said *sure! So, OK, here I am!*"

Several concerns come to mind in reaction to the actions of Council member Miller.

1. Council Member Miller, though stating that he was appearing as a private citizen, is a sitting City council member. This is not an optional status, one that he can opt in-and-out of on-demand. He is after all one of the 5 members of the ruling body that has appointment and termination powers over the planning commission

members. His was not, in substance or in appearance, a mere private citizen intervention. He is one of 5 persons in Brisbane who cannot appear as mere Citizens in a planning commission meeting.

2. On multiple occasions during his remarks, Council Member Miller spoke on behalf of the City Council. He also offered his recollection of some City Council opinions that were expressed in committee, or in confidence. When Commissioner Munir directly asked Council Member Miller about the opinions of the council, in a directed manner, Council member Miller answered directly:

- Commissioner Munir: “What were the reasons of the other council members not to agree with this change?”
- Council Member Miller: “To be honest one of the reasons was that they were reluctant to go against you all” ... “that was the reason given” ... “that’s one of the reasons I’ve come this evening to ask you to at least consider this so that when it gets to the council [...] other options have been looked at...” “and another member of the council thought it would be great to have high density housing so close to the school because the kids would not have far to walk, and that kind of bothered me”

The exchange above indicates that Council Member Miller, bothered by the opinions of other Council Members, is willing to bypass all due process for appeal, ignore what both the planning commission and the city council had *approved*, and take action by appearing at the planning commission to ensure that certain options are presented to the City Council. So much for Due Process, respecting the democratic decision making of the very body he serves on, and respecting the independence of planning commission!

3. Council Member Miller stated he consulted with the City attorney. That gives me pause: is there not a myriad of reasons why an action like that of Council Member Miller should be discouraged by the City’s own attorney? We are told by Council Member Miller that the City Attorney’s opinion on the matter is a one-word “Sure!”. It seems the ethical concerns of Council Member Miller’s very direct participation in a planning commission meeting should be obvious. Some are well illustrated in an article by Attorney Micheal Dean in his article “*The Ethical Hazards of City Council Members Attending Other Board Meetings*” [1], and apply directly here:

- a. Potentially revealing a biased view, thereby causing their own disqualification should the matter at hand subsequently come before the council;
- b. Interfering with the role of the commission as an independent advisory body; and
- c. Not acting in accordance with the views of the city council as a whole.

4. No matter the merits of Council Member Miller’s opinions on the matter at hand, which I concede are noble in intent, it seems to me that advocating for the right thing should not be tarnished by going about it in the wrong way.

5. Further reading from the article mentioned above applies directly, and for ease of reference, a portion of it is reproduced here: “*Beyond the issue of perceived bias, participating in a commission meeting raises other ethical questions. For instance, council members generally have the authority to remove a commission*

member. With this power, a council member's mere attendance at a meeting can be highly influential, especially when he or she makes his or her opinions known. **Merely indicating that one is not speaking for the entire council, but rather providing one's own opinion, does not address the significant impact of the "boss" offering an opinion.** This influence may also jeopardize a significant role of the commission, which is to **provide independent recommendations or decisions to the city council.** After all, none of the cities' commissions are required to exist; if the city council wants to have the role of decision-maker, it could take that role. But when a city establishes a commission, the city council has also by implication indicated its desire to have an independent body make decisions or recommendations. **The presence of the appointing authority at the commission meetings affects that independence.** Likewise, in a council-manager form of government, the intent and expectation is that a **city council will act as a whole, not as individuals.** Council members normally receive the same information simultaneously from city staff or from their subordinate commissions or the public's testimony. This allows the council members as a body to draw conclusions in a fair and balanced way based upon the same factual foundation. **City council members may undermine this expectation when they individually attend meetings of a subordinate commission.** To some extent the council member who attends collects information that will not reach other council members in quite the same way. **Those council members who attend may also subtly influence either the outcome of the commission's deliberations or how the matter will eventually be presented before the council — in ways not available to the council members who did not attend the commission meeting.**" [Emphasis added by me.]

I ask that City Attorney provide a formal, written opinion on whether the actions of Council Member Miller have violated any laws or ethical guidelines governing our City. I also ask that the City Council as a whole consider these actions, and determine if there is cause for reaction to Council Member Miller's actions.

Due process is not only a good idea, it is the law.

Regards,

Luc Bouchard, Brisbane Resident.

[1] This article appears in the December 2010 issue of Western City, and can be viewed at: <http://www.westerncity.com/Western-City/December-2010/The-Ethical-Hazards-of-City-Council-Members-Attending-Other-Board-Meetings/>