



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400
Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld
Chair/Board Member

Monica Blum
Board Member

Angela Mariana Freyre
Board Member

Andrew Irving
Board Member

Jane W. Parver
Board Member

Community Boards Voting

Charter Sections: 2601(8), 2604(b)(1)(a), 2604(b)(1)(b), 2604(b)(3)

Opinions Cited: 91-3, 2003-2

Advisory Opinion No. 2005-03

Mark Davies
Executive Director

Wayne G. Hawley
*Deputy Executive Director
& General Counsel*

Astrid B. Gloade
Director of Enforcement

Ute O'Malley
*Director of
Administration*

Felicia A. Mennin
*Director of Financial
Disclosure & Litigation
Counsel*

Christopher M. Lall
*Director of Information
Technology*

Joel A. Rogers
*Director of Training &
Education*

The Conflicts of Interest Board (the "Board") has received a request for an opinion from community board members as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, they may vote at the community board on a proposed rezoning, in light of their home ownership in the proposed rezoning area.

For the reasons set forth herein, the Board determines that community board members who own homes in the proposed rezoning area may vote at the community board concerning the rezoning, provided that they disclose their interests on the minutes of the community board.

Background

The City has fifty-nine community boards, each comprised of up to fifty members, appointed by the President of the respective borough, in

consultation with the City Council members whose districts include the community district. See Charter Section 2800(a)(1). It is a requirement that each member of the community board maintain either a residence or a business, professional, or other significant interest in the community district for appointment. See Charter Section 2800(a)(2). The community boards are charged with advising public officials on any matter relating to the welfare of their district and more specifically with making recommendations on zoning and other land-use matters, community planning, the City budget, and coordination of municipal services. See Charter Section 2800(d). The Department of City Planning (the “DCP”) is proposing the rezoning of an area of 310 blocks in Queens, containing approximately 8,000 properties. As part of the City’s Uniform Land Use Review Process, DCP’s rezoning application is before the local community board for its recommendation. Nine members of the community board have advised that they own homes that are located within the area to be rezoned.

Discussion

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her City position to obtain any private advantage for the public servant or for any person or firm associated with the public servant.

Charter Section 2604(b)(1)(b) provides that a public servant who has an interest in a firm not otherwise prohibited by Chapter 68¹ shall not take any action as a public servant particularly affecting that interest, except that appointed members of a community board may take such action, but may not vote “*on any matter before the community board which may*

¹ Ownership of a home in the City will, without more, not violate Chapter 68. See Charter Section 2601(8).

result in a personal and direct economic gain to the member or any person with whom the member is associated.” (Emphasis added.)

In Advisory Opinion No. 91-3, the Board determined that community board members may participate in discussions at the community board regarding matters involving their economic interests, provided that, before participating in such discussions, they disclose their interest in the matter to the other members of the community board. See Advisory Opinion No. 91-3 at 4. However, as provided for by Charter Section 2604(b)(1)(b), a community board member may not vote on a matter “which may result in personal and direct economic gain to the member.” Id.

In *COIB v. Capetanakis*, COIB Case No. 99-157 (2001), a community board member had an interest in a corporation that owned five vacant lots in the member’s community board district. The corporation proposed a plan to build a senior assisted living facility on the vacant lots. When the community board was asked to vote on whether it supported the use of these lots for a senior assisted living facility, the community board member did not refrain from voting on the lot use resolutions. The Board determined that, by voting on these resolutions, the community board member violated Charter Sections 2604(b)(1)(b) and (b)(3), since his vote could result in a direct economic gain to him.

In Advisory Opinion No. 2003-2, in contrast, the Board determined that community board members could vote on resolutions which might result in an *indirect* economic gain to them. The Board determined that a community board member who owned a licensed liquor facility could vote on the liquor licensing of another, possibly competing, facility within the district, because any advantage to the member was speculative, and any impact on member’s facility would be indirect. Id.

In the present case, the community board members seemingly might benefit, both personally and directly, from the rezoning of the lots on which their homes sit. However, the Board believes that allowing the community board members to vote is not inconsistent with the purposes of Charter Section 2604(b)(1)(b). Here, unlike in *Capetanakis*, the community board members are homeowners in the rezoning area, not business investors in property. Here, it is the DCP, and not the community board members, submitting the rezoning application. Moreover, and perhaps most significantly, the scope of the rezoning proposal is substantial, affecting hundreds of blocks and thousands of properties of which the community board members, individually, each own one. Thus, the economic benefit to the members, while in some sense “direct,” is not specifically directed to them alone. Finally, not allowing the community board members to vote on recommendations regarding a land use proposal affecting such a large portion of the community district would preclude them from performing a key function of the community board, and undermine the requirement that community board members have residences, own businesses, or otherwise maintain interests in the district.

Under these special circumstances, allowing the community members to vote at the community board concerning the rezoning of an area in which they own homes will therefore not violate Chapter 68. However, the community board members must disclose their interest on the record of the community board and to the Board before participating in discussions and voting on such rezoning matters. See, similarly, Charter Section 2604(b)(1)(a), permitting elected officials to vote on a matter in which they have an otherwise disqualifying interest, provided that they disclose the interest to the Board, and on the official records of their body.

Conclusion

Community board members will not violate Chapter 68 if they vote at the community board concerning the rezoning of a large area in which they own homes, provided that they disclose the interest on the minutes of the community board and to the Board.



Steven B. Rosenfeld
Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Jane W. Parver

Dated: November 7, 2005