

## 5. ETHICS DISCLOSURE CHECKLIST

### 1. WHY Disclose?

As participants in a quasi-judicial, public process, we need to ensure objective, fair, and impartial decision making. Public confidence in the Act 250 process is undermined when fairness or impartiality are not observed. The best way you can foster public confidence in the process is to provide full and early disclosure of facts concerning your financial or other relationships with parties to a proceeding before your Commission, whether or not those relationships give rise to an actual conflict of interest or bias.

### 2. WHAT to Disclose?

In any particular proceeding before your District Commission, you should consider whether you fall into one or more of the following categories and should disclose this information, first, to your District Coordinator and Chair and, secondly, to the parties:

- \_\_\_ you have a direct relationship to a party (through blood or marriage relationship, up to the fourth degree of consanguinity or affinity; e.g. your first cousin is the applicant) or a party's agent/representative;
- \_\_\_ you currently act or previously acted as an attorney for a party or otherwise work or worked for a party, whether or not in a representational capacity;
- \_\_\_ you, or a member of your immediate family or household or business associate, has a significant financial or other interest in the outcome of a proceeding pending before your Commission\*;
- \_\_\_ you currently contribute money, time, or services-in-kind to an organization or other entity that is a party or you previously contributed money, time, or services-in-kind to that organization/entity and your feelings are sufficient to give you an interest in the outcome of the proceeding before your Commission;
- \_\_\_ you are a current or past member of the governing board of the organization or other entity that is appearing as a party;
- \_\_\_ you may have bias or personal animosity toward a party or a party's agent/representative; and/or
- \_\_\_ you know information about the project that is material to the subject of the proceeding before your Commission whether or not this information might affect your ability to render an impartial decision (in other words, *ex parte* information).

*Please note that these are the principal situations that require disclosure, but there may be others. When in doubt, check with your District Coordinator.*

\* Note: A "conflict of interest" does not include "any interest that (i) is no greater than that of other

persons generally affected by the outcome of the matter, or (ii) has been disclosed and found not to be significant.” Exec. Code of Ethics, Section I(c) (conflict of interest). Thus, unless you voluntarily recuse yourself for this situation, you must disclose the relevant facts to the parties to note their objections or obtain their waiver.

### 3. **WHEN to Disclose?**

- a) **Prior to the Hearing if possible:** Try to determine as soon as possible if you have a disqualifying relationship or interest that, at a minimum, warrants disclosure and may possibly require you to recuse yourself. To “recuse” oneself from a hearing or other legal proceeding means to not participate in any phase of that proceeding, including, but not limited to, the hearing, deliberations and decision phases.

Usually you can “discover” in advance of a hearing whether you have a conflict of interest or should be disqualified for other reasons by reviewing the application (including Schedule G) or other materials provided to you by the District Coordinator, and completing the above checklist. Contact your District Coordinator to discuss the facts and whether you should recuse yourself. If you decide to recuse yourself at this stage of the proceeding, this will allow the District Coordinator time to contact an Alternate for the hearing. Members who recuse themselves should return the application and other materials to the District office and refrain from discussing the case with others, including other Commissioners and Alternates.

If you determine, after consultation with the District Coordinator, that you have an interest or relationship that does not require your recusal but which should nonetheless be disclosed to the parties, you should follow the process set forth in 4) below.

If you are uncertain whether you have a conflict of interest or other disqualifying interest or an appearance of a conflict of interest that may be waived, you may want to discuss your situation with the Board’s Ethics Officer. If disclosure and waiver are appropriate, see guidance in 4) below.

- b) **At the Hearing if necessary:** If you first learn of an actual or potential conflict or other disqualifying interest at the hearing, ask for a brief recess to confer with the Chair about how to proceed, then use one of the two methods below.

### 4. **HOW to Disclose at the Hearing?**

- a) **If you intend to recuse yourself:** State your disclosure on the record, as clearly

and as succinctly as possible without missing any essential facts. If you intend to recuse yourself, announce your decision, excuse yourself, and leave the hearing.

The Chair should then announce that the proceedings will continue and that a third commissioner will listen to the tapes and review the materials if there is disagreement between the remaining two Commissioners. Return the application and other materials to the office. Refrain from discussing the case with others, including other Commissioners and Alternates.

- b) **If you preliminarily determine that you do not have a disqualifying interest:** State your disclosure on the record, as clearly and as succinctly as possible without missing any essential facts. Then state the reasons why you are not inclined to recuse yourself. For example: "I surveyed a property for the applicant ten years ago and have not worked for this person since; the property that I surveyed is not the property at issue in this proceeding; and I believe that I can render an impartial decision based on the facts in this case." The Chair should then ask each party whether it objects to your participation and, if so, why, noting this for the record. If there are no objections, then the Chair should indicate this on the record.

In the Commission's Findings of Fact, it is prudent to include a statement like: "At the hearing, Commissioner 'xyz' disclosed that she was hired by the applicant ten years ago to survey real property, but not the property that is the subject of this proceeding. She further disclosed that she has not worked for the applicant since that time and that she believes she can impartially consider the merits of the application. In response to this disclosure, all parties stated on the record that they had no objections to Commissioner 'xyz's' participation in this proceeding."

If the parties do not waive objections, then you must decide, in consultation with the Chair, whether you should recuse yourself immediately or recess the hearing to ask the parties to file written objections stating the legal bases for their requests for your disqualification. If after reviewing the parties filings, you decide to recuse yourself, then this should be announced to the parties by staff memo in advance of the reconvened hearing. If, however, after reviewing the parties filings you decide not to recuse yourself, the Chair will need to issue an order ruling on the written objection(s), and explaining your reason(s) for continuing to participate in the proceeding. This order should be issued prior to reconvening the hearing in this matter. The Commission's Findings of Fact should reference this order clarifying that Commissioner "xyz" continued to participate in the proceeding over the parties' objections.

*The above process is designed for major applications where a hearing is required. For*

*minor applications, another process may be appropriate. Even with minor applications, however, Commissioners should be sensitive to actual and potential conflicts of interest and other disqualifying factors and consult with their District Coordinators before joining in decisions on these applications.*

Last Revised: September 8, 2005

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