



City of

Annapolis

ETHICS COMMISSION

c/o CITY OF ANNAPOLIS OFFICE OF LAW
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Subject: Determination re Jon Arason Complaint

A complaint filed with the Ethics Commission (Commission) on July 27, 2015, alleged that the former City Director of Planning and Zoning (P&Z), Jon Arason, violated a provision of the City Ethics Code limiting post-employment engagement by a City employee or official. Annapolis City Code (Code) Section 2.08.040.C.1 provides:

“A former official or employee may not assist or represent any party other than the City in a case, contract, or other specific matter involving the City if that matter is one in which the former official or employee significantly participated as an official or employee.”

The action cited as violating this provision was Mr. Arason's involvement in matters relating to the proposed development of the Katherine properties, often referred to as Crystal Spring (Development), subsequent to his separation from employment with the City.

After considering the complaint, the Commission, pursuant to the Ethics Commission Procedures for Conducting Ethics Commission Business (Procedures) Section C.4, referred the complaint to the Office of Law for investigation. After reviewing the investigative report the Commission determined there was sufficient evidence of a violation and issued a Notice of Charge.

A hearing, undertaken pursuant to Commission Procedures Section 6 was convened on January 7, 2016. Counsel represented Mr. Arason and an Assistant City Attorney presented the charge against Mr. Arason. Five persons were called to present evidence supporting the charge: the Complainant, Gerald W. Weingrad; the City's Chief of Comprehensive Planning, Sally Nash; the Director of the City's Department of Neighborhood and Environmental Programs (DNEP), Maria Broadbent; the City's Chief of Current Planning, Eugene Thomas Smith; and a person engaged in the efforts to develop Crystal Spring, Marshall Breines. The respondent testified in opposition to the charges. The Assistant City Attorney introduced seven exhibits and counsel for Mr. Arason introduced one exhibit.

In assessing the presented evidence the Commission considered two questions:

(1) Did Mr. Arason significantly participate during his City employment in deliberations relating to the Development?

(2) After separation from City employment, did Mr. Arason assist proponents of the Development?

The Commission's assessment of the evidence supports a conclusion that Mr. Arason did significantly participate during his City employment in deliberations relating to the Development and, after separation from City employment, assisted proponents of the Development, thereby violating Code Section 2.08.040.C.1.

The three City employees' testimony unequivocally establishes Mr. Arason's significant participation before his separation from City employment. Ms. Nash testified to his participation in the traffic study needed for the Development, which included meetings with the consultants preparing the study. Ms. Broadbent testified to his engagement in the Forest Stand Delineation and Forest Conservation Plans needed for the development, which included him participating in meetings and requesting to be copied on e-mails relating to these plans. She indicated DNEP's interest in the P&Z Director's input. Mr. Smith testified Mr. Arason participated in both internal City meetings and public meetings. This included the Annapolis Economic Development Corporation business meeting on January 11, 2011, regarding Forest Drive development which included a presentation of conceptual plans for the Crystal Spring development. He further testified that, with Crystal Spring being the second or third largest development in which he has been involved during his 23 years of employment with the City, he would expect the involvement of Mr. Arason as the P&Z Director. This testimony is supported by the many e-mail exchanges that were introduced into evidence.

Mr. Weingrad's and Mr. Breines' testimony explicitly establishes that Mr. Arason assisted proponents of the Development after his separation from City employment. Mr. Weingrad testified to Mr. Arason submitting written testimony regarding the Forest Conservation Ordinance, supporting the position of the Development's proponents, and to the proponents presenting Mr. Arason as "part of their team" at a work session on July 15, 2015. Mr. Breines' testified that Mr. Arason's assisted in furthering better communications with the P&Z Department. This included Mr. Arason's sending of a letter to the P&Z Department Director on July 29, 2015. Mr. Arason acknowledged the assistance he provided, stating he envisioned a potential for future compensation as a retained land use planning expert.

Counsel for Mr. Arason suggested that a violation finding would require an unduly broad interpretation of Code Section 2.08.040.C.1 inconsistent with Mr. Arason's conduct. The Commission observed that Mr. Arason is well versed in interpreting statutes as evidenced by his extensive experience in often convoluted land use planning issues and his post graduate education. He testified that upon becoming familiar with Code Section 2.08.040.C.1 he immediately terminated his relationship with the Crystal Spring'

developers. In this regard, he adopted as his own testimony this excerpt from an October 14, 2015, letter from his counsel to the Ethics Commission:

“Until he [Mr. Arason] received this Notice of Charge, he believed that the law established a period of one year during which he was barred from acting as a compensated agent before a city agency. He now knows that this understanding of the law was wrong and he regrets that mistake.”

It is clear Mr. Arason upon reviewing for the first time Code Section 2.08.040.C.1 immediately concluded the conduct at issue was suspect. His conclusion reflects the Commission’s finding that the Code is unambiguous.

The Commission rejects the suggestion that Mr. Arason’s engagement as a City employee in Development matters can be separated into components, thereby permitting his later post-employment engagement in other subsequent components of the Development’s review. Code Section 2.08.040.C.1 restricts a former employee from being engaged against the City in a case, contract, or other specific matter in which he has significantly participated during employment. Mr. Arason’s comment that he should only be restricted from participating in matters in which he made formal decisions is without merit.

The Commission accepts Mr. Arason’s testimony that he was not familiar with the Ethics Law change enacted in May, 2013, which was seven months before his separation from employment in January, 2014. The Commission further accepts his testimony that he sought to honor the prior law, with which he was familiar, which prohibited him within one year following termination from acting as a compensated representative in any matter before the City in which he participated substantially as a City employee with there being no restriction thereafter. Mr. Weingrad’s testimony that Mr. Arason expressed an intention not to accept compensation from the Crystal Spring developers for one-year supports Mr. Arason’s testimony. From testimony heard it is believed Mr. Arason did not receive any compensation.

The Commission notes Mr. Arason’s lax attitude regarding the Ethics Law. Upon leaving the civil service in 1996 to become P&Z Director, Mr. Arason became an exempt employee serving at the discretion of the Mayor. At that time, as he indicated in testimony, he became familiar with the applicable Ethics Law provision regarding post-employment limitations as he envisioned the prospect of having to earn income in the private sector if he was ever dismissed. Nineteen years later, when this prospect became reality he did not re-familiarize himself with the Ethics Law. He indicated it “did not cross [his] mind” and it was “...nothing I dwelt on.” Had he undertaken even a cursory review, the Commission is convinced he would not have engaged in the conduct upon which the Complaint is founded.

The above findings of fact and conclusions of law provides that Mr. Arason had violated Annapolis City Code Section 2.08.040.C.1 which limits post-employment engagement by a City employee or official. In following the Ethics Commission Procedures for Conducting Business a second hearing was held on February 18, 2016, to allow evidence of mitigation in relation to the sanctions available to the Commission. In balancing fairness in this determination, the Commission declines to exercise any of its enforcement authority available in City Code Section 2.08.100, Enforcement. While Mr. Arason violated the Ethics Law and was lax in not reviewing that law upon his separation from City employment, the Commission believes the violation was not willful and he did not profit from it. Upon becoming aware of the violation he immediately ceased the culpable behavior.

The Commission believes the City shares blame for this violation. Mr. Arason testified there was no effort by the City to educate him regarding the post-employment limitations of the Ethics Law. Likewise, the three City employee witnesses indicated no such training was provided, testifying that until they became aware of this complaint they had no knowledge of the limitations. Further, Mr. Arason was not afforded an exit interview upon his separation. Had that interview been undertaken, it would have logically included direction as to post employment limitations. The Commission believes that had the City provided this instruction or an exit interview, Mr. Arason would not have engaged in the conduct precipitating the subject complaint. This belief provides an additional equitable consideration for the Commission to decline to exercise enforcement authority afforded by the Ethics Law. The City, in conjunction with the Ethics Commission, needs to train its employees regarding the Ethics Law.

This determination will be posted on the City's web site pursuant to Code Section 2.08.110 which provides, in relevant part, that "...[i]f a finding of violation is made, the final determination will be made public and posted on the City's web site."


James E. Dolezal
Chairman