

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, REQUIRING MEMBERS OF THE CULTURAL RESOURCES REVIEW BOARD TO SUBMIT A STATEMENT OF FINANCIAL INTERESTS AS PROVIDED IN SECTION 112.3145, FLORIDA STATUTES.

RECITALS

WHEREAS, the Cultural Resources Review Board (CRRB) is an appointed board of the St. Johns County Board of County Commissioners established pursuant to Article III of the Land Development Code; and

WHEREAS, the purpose of the CRRB is to establish priorities for the identification, nomination, protection, preservation, and potential acquisition of cultural resources within St. Johns County; and

WHEREAS, in furtherance of this purpose, the CRRB has the power to designate Significant Cultural Resources, review and comment on Cultural Resource Management Plans as part of the County's Development Review Process, evaluate and issue recommendations for County Landmark and County Landmark District Designations, and issue Certificates of Appropriateness for projects affecting County Landmarks and County Landmark Districts; and

WHEREAS, on October 28, 2015, the Florida Commission on Ethics issued an advisory opinion finding that members of the St. Augustine Historic Architecture Review Board are local officers as defined by Section 112.3145(1)(a)2.d, Florida Statutes, and are subject to financial disclosure requirements; and

WHEREAS, the purpose and powers of the St. Augustine Historic Architecture Review Board are analogous to those of the CRRB; and

WHEREAS, the County has determined that, based on the Commission on Ethics advisory opinion, the CRRB should file an annual statement of financial interest as provided in Section 112.3145, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY:

Section 1. The above recitals are incorporated into the body of this resolution and are adopted as findings of fact.

Section 2. Members of the CRRB shall be required to file a statement of financial interest as provided in Section 112.3145, Florida Statutes, within 30 days of appointment and from then on no later than July 1 of each year.

Section 3. To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 16th day of February, 2016.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

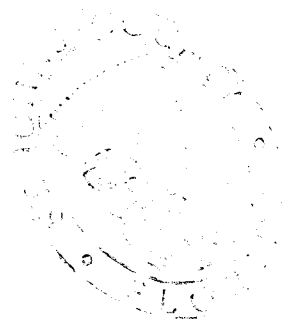
Attest:

Ken Halterman
Deputy Clerk

By:

Jeb S. Smith
Jeb S. Smith, Chair

RENDITION DATE 2/18/16



DISCLOSURE OF FINANCIAL INTERESTS

MEMBER OF HISTORIC ARCHITECTURAL REVIEW BOARD

To: Isabelle Lopez, City Attorney (St. Augustine)

SUMMARY:

A member of a particular historic architectural review board that possesses certain powers and functions is a “local officer” subject to the financial disclosure requirements of Section 112.3145, Florida Statutes. Referenced are CEOs 11-1, 85-64, and 81-16.¹

QUESTION:

Is a member of an historic architectural review board a “local officer” required to file financial disclosure, pursuant to Section 112.3145, Florida Statutes?

Your question is answered in the affirmative.

You ask whether a member of the City’s Historical Architectural Review Board (HARB) is a “local officer” required to file financial disclosure. Further, you relate that HARB members currently are not listed by the applicable local financial disclosure coordinator as persons who are subject to the financial disclosure requirements.

According to the City’s Municipal Code, Sections 28-81 to 28-91, and the Architectural Guidelines for Historic Preservation, prepared in 2011 by the City’s Planning and Building Division, HARB has five members who are appointed by the City Commission, to three-year terms. HARB is not the designated local planning agency pursuant to Section 163.3174, Florida Statutes, and does not have control over land use or the interior of buildings, but regulates the exterior architectural elements of buildings and sites.

The Code of Ethics provision relevant to your inquiry is Section 112.3145(1)(a)2.d, Florida Statutes,² which defines “local officer” to mean:

2. Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;

Section 112.3145(1)(a)2.d requires financial disclosure (CE Form 1) for members of boards that have power to recommend, create, or modify land planning or zoning, but exempts members of collegial bodies that merely advise certain other boards.

The answer to your inquiry depends on whether HARB has the power to recommend, create, or

modify land planning or zoning within the City, or whether it is a body with only the power to make recommendations to planning or zoning boards. The Commission has long looked to the powers and duties of a board to determine if its members were “local officers” subject to financial disclosure. For example, members of a task force with authority to review zoning, landscaping, and sign codes were not “local officers” within the meaning of the statute, because the advisory body had no authority over permitting or planning. CEO 86-3. Similarly, panels that included technical experts studying well fields, and citizens studying beach erosion, were deemed advisory boards, because members had the power to collect data and make policy recommendations to decision makers, but did not exercise authority over land use, zoning or natural resources. CEO 85-64, CEO 81-16.

After a change in the law,³ the Commission opined that persons serving on an advisory committee, which made land use and zoning recommendations to a city community redevelopment agency, were no longer required to file financial disclosure. CEO 00-19. Similarly, persons serving on community panels assembled to advise a county on its land use plan, which could only be adopted or modified by the county commission, were not “local officers” for the purposes of financial disclosure. CEO 01-11.

Notwithstanding that HARB is not the City’s designated local planning agency, it nevertheless has the power to develop its own rules and procedures, and exerts considerable authority within the City’s historic districts, where City requirements impact the style of architecture, the materials used, and the appearance of buildings and signs. According to the City’s municipal code and architectural guidelines, HARB advises governmental agencies and property owners; designates historic landmarks; reviews applications for building permits on property abutting or immediately facing historic districts; and recommends stop work orders when projects do not comply with historic preservation guidelines. In addition to these advisory duties, the municipal code grants HARB the following powers:

- No building permit may be issued within Historic Preservation Zoning Districts unless HARB issues a Certificate of Appropriateness, indicating that the plans meet architectural requirements. Section 28-87(1), City Municipal Code.
- No demolition or relocation permit may be issued for structures within Historic Preservation Zoning Districts and National Register Districts, or for structures that have been designated an historic landmark anywhere in the city, or for structures that are 50 years or older and listed on the Florida Master Site File maintained by the State of Florida Division of Historic Resources, unless HARB issues a Certificate of Demolition or Relocation. Section 28-87(3), City Municipal Code.
- No newspaper vending machine, or similar machine designed to dispense advertising materials, may be installed unless HARB issues a Certificate of Appropriateness. Section 28-87(11), City Municipal Code.

If HARB merely issued technical advice or policy papers about historic preservation goals, its board members would be exempt from financial disclosure obligations, unless the City imposed the filing obligation by local ordinance. However, HARB is an entity that holds public meetings in which applications from property owners are reviewed during a public hearing. HARB is not a mere advisory board, because its members vote to approve, deny, or table applications, and its decisions become final and binding unless they are appealed to the City Commission.

Although HARB is not the designated local planning agency responsible for the City’s comprehensive plan, HARB exercises authority over property owners, who cannot obtain permits to erect new structures in historic zones, or materially change the appearance of historic structures, or demolish or move such buildings, without a Certificate of Appropriateness. The Community Planning Act [Section 163.3164(16), Florida

Statutes], which requires comprehensive plans in all cities and counties, defines “development permit” as any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government permitting the development of land. In the City, land within Historic Preservation Zoning Districts cannot be developed unless HARB grants a Certificate of Appropriateness. This authority makes it possible for HARB to recommend, create, or modify land planning or zoning within the City. Therefore, we find that members of HARB are “local officers” as defined in Section 112.3145(1)(a)2.d, Florida Statutes, and subject to financial disclosure.

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on October 25, 2015, and **RENDERED** this 25th day of October, 2015.

Stanley M. Weston, *Chair*

^[1]Prior opinions of the Commission on Ethics can be obtained from its website (www.ethics.state.fl.us).

^[2]The City has not enacted any ordinances or resolutions to impose financial disclosure on local governing boards, beyond what is required by Florida law, as permitted in Section 112.3145(1)(a)(f), Florida Statutes.

^[3]Chapter 2000-243, Laws of Florida, amended Section 112.3145(1)(a)2, effective January 1, 2001, specifically removing citizen advisory committees from a list of “local officers” required to file financial disclosure, unless the appointing authority imposes the obligation on advisory committee members by adopting a regulation to that effect.