

Memorandum

PRIVILEGED AND CONFIDENTIAL ATTORNEY OPINION WORK PRODUCT

To: File

From: Gibson Dunn & Crutcher LLP

Re: Martin Interview Memorandum

On January 28, 2014, and January 31, 2014, Robert Martin was interviewed by Reed Brodsky, Rachel Brook, and/or Christian Hudson of Gibson Dunn. Martin was not represented by counsel. All information contained herein was provided by Martin or as indicated. The information in brackets was obtained from publicly-available sources, not from the interview itself. Martin has not read or reviewed the memorandum and has not adopted or approved its contents. Brodsky began all interviews by administering the standard *Upjohn* warnings and requesting that Martin refrain from discussing the investigation and interview with others per Gibson Dunn protocol. Martin stated that he agreed, understood, and did not have any questions.

This memorandum does not contain a verbatim transcript of what was said at the meeting; rather it is a summary of the discussion that reflects counsel's mental thoughts and impressions and is therefore protected from disclosure by the attorney work product doctrine.

I. Background

[On January 19, 2010, Martin was appointed by Governor Christie to be Commissioner of the Department of Environmental Protection ("DEP"). Prior to his appointment, Martin was a partner at Accenture LLP, where he worked for over 25 years. He received a bachelor of arts in Economics and Sociology from Boston College in 1979, and an MBA from George Washington University in 1982.]

II. Superstorm Sandy Aid Allegations

A. March 5, 2013 Meeting with Hoboken Mayor Dawn Zimmer

Martin recalled being asked to meet with Hoboken Mayor Dawn Zimmer in late February 2013. He had received a request from Christina Renna at the Governor's Office to

meet with the Mayor. He recalled that the Governor had promised a meeting with the Mayor and the commissioners of the DEP and DCA (Martin and Richard Constable, respectively). He had met with Mayor Zimmer once or twice before Superstorm Sandy, at events in which she was invited to the State House for meet and greets.

After reviewing his calendar entries, Martin believed the meeting with the Mayor occurred on March 5, 2013. Prior to entering the meeting, he was briefed by his team about potential issues the conference may be about and flooding was emphasized. Martin did not recall bringing any staff with him to the meeting; he recalled the attendees included himself, Commissioner Constable, the Mayor, and two or three other people whose names he did not recall. He did recall that the Mayor had been working with an engineering consulting firm, and that the firm was not one DEP typically worked with in the past. He did not recall which firm it was.

At the meeting Mayor Zimmer brought up her plans for flood walls, which Martin said would require all sorts of permits. Such permitting would be under the DEP's purview. Ultimately, the meeting did not cover anything other than flooding in the city. The Mayor told Martin that they were looking to build a \$90 million flood wall system with street flood gates that would open and close when the floods started. There would also be pumping stations that would pump the water back out towards the harbor.

The Mayor went through the design plan, with her consultants talking about the details. She wanted Martin and Constable to buy in to the project, and she wanted both commissioners to say whether or not this project would work. Martin said that DEP deals with flood control and has coastal engineers in his department who work through any major projects that people want to do with coastal flooding, so he could have people review the project.

The Mayor also requested assistance from the State to help pay for the project. Martin indicated that there would be limited hazard mitigation funding available in the coming months. He remembered that, at the time of the meeting, he knew that the state would have something less than \$400 million available, and that there had been ongoing discussions between DEP, the Governor's Office of Recovery and Rebuilding (GORR), and FEMA about what the final dollar figure would be. He knew at the time that the state did not have \$90 million to fully fund Mayor Zimmer's project, because the state had been receiving Letters of Intent (LOIs) which ultimately totaled approximately \$14 billion. Therefore Martin and Constable told Mayor Zimmer that her request was a big ask and that it was a large amount of money. Martin recalled that someone from the state government explained to Mayor Zimmer the limitations on state funding, but did not know to what extent. He recalled they told Mayor that \$90 million would be a challenge because the pot would be small. He recalled that Mayor Zimmer's response was that she nodded but did not say anything confirming that she understood.

They then started to discuss whether they could get 406 money from FEMA. These funds cover damages to public facilities, but can also be used for some limited hazard mitigation purposes, if the applicant can show that the damage sustained requires building up protections. Unlike 404 funding, which is capped by FEMA, 406 funding can cover potentially any sized project provided it meets the appropriate criteria. Martin and Constable offered to help Hoboken with their application to FEMA for 406 funding to build the flood walls project.

After discussing 406 funding, the meeting focused on how the State could help Hoboken with other projects. Martin recalled that there was a discussion about how NJTransit wanted to protect the rails in the Hoboken Rail Yard and that they might be willing to assist Hoboken's flood planning in the southern section of the city. Further, PSE&G had substations in the west of the town and may want to help with building in that section. Finally, there had been damage to the North Hudson Sewage Authority's plant in the North End of Hoboken, and 406 funding for fixing that damage plus protecting the northern side of the city might be feasible as well. This would include funding for both flood pumps.

Martin recalled that Mayor Zimmer then mentioned that the Rockefeller Group could potentially play a role in putting money into the build-out of the project. He recalled that discussion of the Rockefeller Group was not long, but that the Mayor had mentioned the Rockefeller Group's construction on either the north end or south end of the city could provide protection.

Martin felt the outcome of the meeting was ultimately that the State was asking how it could help Hoboken, a question that both he and Commissioner Constable repeated. Martin also said that he wanted to have his engineers, headed by Dave Rosenblatt (DEP head of engineering and construction) meet with Mayor Zimmer's team and whoever else she wanted them to meet to discuss and analyze the plan. Mayor Zimmer agreed to this request. Martin also told Mayor Zimmer that he was happy to work with her on how to find funding for the project. He recalled that Assistant Commissioner of the DEP, Michele Siekerka, had some meetings with Hoboken, as her portfolio includes water infrastructure projects. Her work ties into the Environmental Infrastructure Trust (EIT), which helps provide bond money for projects. Martin recalled that Siekerka worked on the funding for this project following the meeting.

Martin said there had been no discussion about funding for post-Sandy recovery projects being tied to an endorsement of the Governor, partisanship, or to development projects. Finally, Martin said he never heard the Governor or his administration say that post-Sandy funding is tied to any development project, politics, or endorsement. He continued by saying that post-Sandy funding is objective, and aimed to help the entire state. He has never aimed in any shape or form to work with only Republicans; rather Martin and his staff work with everyone, irrespective of party affiliation. Governor Christie's directive was for him to help all the towns, a directive the Lieutenant Governor had as well.

When asked whether he recalled using a phrase similar to “Birkenstock Group” in the context of Mayor Zimmer, Commissioner Martin did not recall using those words. He recalled talking to all towns and cities about green structures, but does not believe that Mayor Zimmer is any more in favor of green infrastructure than other mayors. He does not remember her being emotional, but rather that she was very concerned about flooding in her town and was a strong advocate that flooding in Hoboken was serious and needed to be addressed.

Martin did not recall meeting with Mayor Zimmer at any other official meeting after this conference.

B. April 23, 2013 and April 25, 2013 Letters

Martin remembered receiving the April 23, 2013 letter from Mayor Zimmer. After receiving it, he had a phone conversation with Marc Ferzan regarding the letter. They could not identify a specific request in the letter, and so they decided to respond by describing the forms of outreach they were doing for Hoboken. This response was memorialized in his April 25, 2013 letter to the Mayor.

C. May 9, 2013 Meeting with Mayor Zimmer

Martin recalled that Rosenblatt and Siekerka had been attempting to set up a meeting with Mayor Zimmer for some time, and that the meeting was moved from May 8 to May 9, 2013, due to a scheduling issue. While Martin did not attend the May 9 meeting himself, he ensured that two assistant commissioners (Rosenblatt and Siekerka) went. He did not recall if Grifa was at this meeting. He also said it was not unusual for the Rockefeller Group to be at the meeting because their participation had been brought up in the March meeting.

D. November 25, 2013 Mayors Meeting

After reviewing documents, Martin recalled that he attended the November 25, 2013, Mayors Meeting regarding the allocation of CDBG dollars. Mayor Zimmer attended, as did Siekerka. At the end of the meeting, Martin said hello to the mayors on the way out the door, and shook Mayor Zimmer’s hand. Mayor Zimmer then asked if Hoboken could get funding for flood pumps from the EIT bridge loan program. Martin and Siekerka replied that they would try to assist with that. Siekerka subsequently called David Zimmer to try to move the funding forward. Martin said that he typically tells his team to expedite application decisions for any Mayors who ask.

Martin did not recall Mayor Zimmer and Marc Ferzan speaking after the meeting, and he did not remember seeing Ferzan talk to anyone.

VI. Miscellaneous

Martin said he would not typically call Lori Grifa to say hello. They were friendly but not friends, and he was too busy to speak for long.

Martin doesn't typically go to meetings with mayors, preferring instead to ask the front office IGA folks to go instead. He might do a "meet and greet," but usually only meets with mayors who have coastal concerns.

One of the major programs that Martin was responsible for in the aftermath of Sandy was the rebuilding of beaches and coastline. This included involvement in cleaning up debris in Hoboken. While each town and city did their own clean-up, the state oversaw all operations to ensure that contractors were in place and that debris was being sorted and moved to the right places.