

Sent by Email

April 26, 2018

To: FPPC Commissioners
From: Al Dugan – Novato
Re: Lucan case 16/264

I was shocked and disappointed a couple of board members continue to be on a mission to exonerate Mr. Lucan. Please pass on the below comments to the board members for their reconsideration of this issue that has been resolved twice before.

To begin I believe Mr. Lucan should have, at the very least, have received a warning letter. Quite frankly I believe there is sufficient evidence to have convicted him of conflict of interest.

I don't have access to the investigation by staff that took over a year to complete, but certainly an investigation of that length would have been regarding evidence of substance.

The following is a summary of the basis for my belief of why a conviction was in order:

1. Eric Lucan first voted to spend Novato city funds on investigating the Novato Downtown SMART third Novato station on October 6, 2015 well before I understand he asked for an opinion from the FPPC regarding conflict of interest regarding his income duplex property he purchased in late 2014. Mr. Lucan's property is a four minute walk from the proposed SMART downtown station. Mr. Lucan was a member of the SMART board, so no doubt he started working on the Novato SMART downtown station with the SMART Board well before this October 6, 2015 vote at the Novato city council. The October 6, 2015 vote can be viewed in the city council meeting minutes of October 6, 2015. Here is the link, please see General Business item 9.

AUTHORIZE STAFF TO INVESTIGATE THE FEASIBILITY OF ESTABLISHING A DOWNTOWN SMART STATION AND EXPEND UP TO \$100,000 TO REIMBURSE SMART FOR REQUIRED STUDIES

<http://novato.org/home/showdocument?id=14727>

I understand Mr. Lucan voted yes without checking with the FPPC on this first vote on the SMART downtown station. This also gave Mr. Lucan plenty of time to get a conflict of interest opinion from the FPPC for the approval vote he, as well as all of us, was sure to come. I believe Mr. Lucan was also in conflict of interest on this very first vote.

In January 2016 Mr. Lucan apparently made a last minute call to the FPPC, rather than a written request, to get an opinion regarding conflict on voting on the approving the Novato SMART downtown station. Mr. Lucan knew if he didn't vote the Novato SMART town station would not be approved. Mr. Lucan indeed turned out to be the swing vote for approval. The Novato city

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staff wrote a report for the city council recommending the Novato SMART downtown station not be funded. The following is the link to the staff report.

http://cms6ftp.visioninternet.com/novato/agendas/pdfstaffreports/cc012616_I-5.pdf

<http://novato.org/home/showdocument?id=17055>

Mr. Lucan rushed this vote thru stating SMART would begin operation very soon and a decision had to be made right away to save money. Mr. Lucan, on the SMART board, either knew or should have known his statement on the startup date was not accurate. SMART had the daunting task of making operational Positive Train Control (PTC), a very complex relatively new system to prevent accidents on the train system. This was common knowledge to me as well as other citizens in Marin. For the record SMART actually became operational more than a year after Lucan's urgent rushed need for action.

Given Mr. Lucan's strong advocacy for the Novato SMART downtown station and his first vote in October 2015, he had three months before the actual approval vote to get an FPPC opinion. Mr. Lucan did not get a FPPC opinion for his property that is a four minute walk from the proposed SMART downtown station. He knew the Novato SMART downtown station vote would fail 2-2, given they highly adverse staff report, without his vote. As a citizen of Novato it certainly appears Mr. Lucan "gamed" the system to assure he could vote on the critical vote needed to get the Novato SMART downtown station underway. Once "Phase I" was approved, Mr. Lucan could expect even city council members who voted no to fund the SMART station would be pressured to continue to spend more funds so as not to "waste the first \$2,500,000".

I was very disappointed he was not fined and found to have a conflict of interests based on the documentation that was readily available by any investigator. To let Mr. Lucan off free now would be a clear message elected officials can "game-the-system" by pleading ignorance or misunderstandings on a clear cut issue, and what I believe was purposeful, attempt to bypass the FPPC regarding a conflict of interest ruling. Mr. Lucan's past history of recusing has been on items much less obvious than this conflict on interests.

I also understand commissioners were struggling to see how Mr. Lucan actions would add value to his duplex property. I find this rather unusual. A simple review of Metropolitan Transpiration Commission (MTC) and the Association of Bay Area Governments (ABAG) guidelines are to plan on Transit Oriented Development (TOD) which is high density around fix transportation like rail, in this case SMART. The SMART stations voted by a past city council of Novato, one in San Marin and one in Hamilton didn't provide Mr. Lucan TOD property status. This new SMART downtown SMART station, four minutes walking distance from his property, puts it well within the fixed railed half mile radius TOD.

Myself, and many other Novato citizens were well aware of the SMART TOD which automatically allowed 30 units per acre rather than the normal Marin County 20 units per acre. Mr. Lucan's immediate benefit was an additional ten units per acre. Even more importantly we,

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as well as Mr. Lucan, knew the current legislative push is to further increase density in TOD's. The recently failed SB 827, which can be expected to be resurrected, would allow Mr. Lucan to build an eight story building on his property or sell his property to a developer at a significant higher price than the purchase price. It is quite obvious Mr. Lucan knew all this information when he both bought his property as well as when he pushed thru the intimal funding for the Novato Downtown SMART station.

In closing, I am shocked and disappointed two board members would reopen this case for a third time. How often has this occurred at the FPPC? This third review is after an one year plus staff investigation. Are a couple of board members trying to overturn a long investigation by staff? The facts are clear, and quite frankly I believe Mr. Lucan had a conflict of interests with potential for substantial enrichment given current higher units per acre as well as future bills like SB 827 and SB 828 that Lucan was more than aware were coming down the pipeline. Mr. Lucan's last minute call to get a FPPC review on conflict of interests in January 2016 reeks of an "end run" attempt based on his involved activity before his first call to FPPC.

Al Dugan

Novato