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November 9, 2018

Via Certified Mail, Return Receipt Requested

Alice T. Germond
Chair
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Re: Request for Reconsideration Regarding Advice Letter A-18-193 (Los Altos Hills)

Dear Ms. Germond:

This letter is a request to the Fair Political Practices Commission (“Commission”) to reconsider Advice Letter A-18-193 (“Letter”), dated October 25, 2018, regarding the determination of a conflict of interest for Town Councilmember Michelle Wu. As we understand it, the Letter has been placed on the agenda for the November 15, 2018, regular Commission meeting. Therefore, we would request that the Commission take an action to reconsider the advice provided in the Letter and direct staff to prepare an updated opinion.

Our original request for advice, dated August 22, 2018, asked whether Councilmember Wu would have a conflict of interest in a decision regarding three proposals to renovate the Los Altos Hills Town Hall facilities, as property she owns is partially within 500 feet of the property line of Town Hall. To supplement our request, we have provided an appraisal report which concluded that it is reasonably foreseeable that the Town’s decision to utilize one or more of the proposed renovation options would not result in any financial impact on the Councilmember’s property. The appraisal further concluded that the fair market value of the Councilmember’s residence will remain unchanged from its current valuation if the Town chose to renovate Town Hall pursuant to any of the three proposed options.

In response, the Letter opined that Councilmember Wu is prohibited from taking part in such decision because it would have a reasonably foreseeable material financial effect on her residence. We would request that the Commission reconsider that opinion on the grounds set forth below.

As the Letter stated, the Councilmember’s real property interest in her property is not

explicitly involved in the decisions relating to Town Hall proposals.¹ Therefore, the effect of the decision at issue will have on the councilmember's interest is reasonably foreseeable only if it can be recognized as a realistic possibility rather than hypothetical or theoretical.² Additionally, as the councilmember's residence is partially within 500 feet of Town Hall, the effect of this pending decision is presumed to be material unless there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on her property.³ The Letter proceeded to conclude that the decision regarding Town Hall renovations would have a reasonably foreseeable material financial effect on the Councilmember's real property interest in her home, and therefore she is prohibited from participating in that decision. The Letter further concluded that the appraisal report incorrectly applied the Commission's regulations because it failed to analyze whether it is reasonably foreseeable that there may be a financial impact on the Councilmember's property from either of the three renovation options.⁴

We believe there are sufficient facts to support a conclusion that there will be no reasonably foreseeable measurable impact on the Councilmember's property.

At the outset, Councilmember Wu's residence is on a street behind Town Hall and separated by several residences from existing Town Hall buildings. Town Hall is not visible from the Councilmember's residence location. Persons desiring to drive from the Councilmember's residence to Town Hall would be required to travel around the hills for approximately 0.3 miles before arrival. The proposals to improve Town Hall are restricted to expansion of the existing building spaces and utilizing additional open space areas at the Town Hall location, and their effects are entirely limited to existing Town Hall structures and buildings.

Additionally, the appraisal report prepared for this request concluded that it is reasonably foreseeable that the three renovation proposals will not result in any financial impact upon the Councilmember's property. The appraisal report determined that the fair market value of the residence would remain unchanged from its current valuation. In reaching this conclusion, the appraisal report analyzed the potential impacts that Town Hall renovation might have on noise, development potential, and character of the neighborhood, and concluded that none of those factors would be impacted.

Specifically, the appraisal report stated:⁵

- Properties on the Councilmember's street are entirely residential and any expansion to Town Hall would not change the existing zoning (Residential-Agricultural District, R-A) or uses on that street.
- Proposed expansion to Town Hall would not change the character of the neighborhood in which the Councilmember's property is located because it

¹ Advice Letter page 3, section B.

² Advice Letter page 3; Regulation 18701(b).

³ Advice Letter page 4, section B.

⁴ Advice Letter page 4, section C.

⁵ See pages 21-22 of 27 of the appraisal report.

would not change existing zoning and parking issues. Town Hall is located at 26379 Fremont Road, Los Altos Hills and access to the Town Hall is from Fremont Road, rather than from the Councilmember's street. Town Hall currently provides onsite parking and visitors to Town Hall would not typically be using the street on which the Councilmember resides, as it is located behind Town Hall and there is no direct access from the street on which the Councilmember resides to Town Hall.

- The appraisal also documented a site visit by the appraiser and the appraiser's interview with the Councilmember. In particular, the appraisal noted that the I-280 Junipero Serra Freeway is approximately 1.0 miles west of the property and the freeway noise, along with normal neighborhood noise, would continue to block any noise from the Town Hall property. Thus, vehicular or pedestrian noise from Town Hall would not be audible from the councilmember's property. Councilmember Wu also stated that vehicular or pedestrian noises from Town Hall is not audible from her property.

On those grounds, we believe there is sufficient evidence to support a conclusion that the proposed three renovation options would merely change the nature of use of Town Hall and provide additional spaces with benefits restricted to that site. To illustrate, FPPC Advice Letter A-16-124 opined that the government decision at issue (rezoning of various parcels) would merely change the nature of an existing use and not expected to result in any traffic increase of any measurable impact on air quality or greenhouse gas levels for the government official's residence, and therefore the government decision will not have a foreseeable and material financial effect on the official's real property interest. (*See also* FPPC Advice Letter A-16-205.)

Similarly here, the renovation to Town Hall is not expected to result in any increase in parking, visitors, noise or other intrusions to the Councilmember's street or her property. Likewise, there is not expected to be any changes in the development potential or zoning of the Councilmember's property. Moreover, neither of the three renovations are expected to alter the existing uses of Town Hall facilities, and their impacts are restricted to Town Hall grounds. The proposed options are intended to utilize existing Town Hall building spaces and open areas to provide additional space with minimal construction costs, service disruption and neighborhood impact. Town Hall has been hosting various community and recreational programs for members of the public even prior to the proposed renovations, and it will continue to host these programs after facilities improvements are made (assuming they are approved). Thus, the proposed governmental decision is not expected to result in any changes of the uses, development potential, and neighborhood character of the Councilmember's residence and street, or of Town Hall itself.

In light of those facts, any potential effect that the proposed Town Hall improvements may have on the Councilmember's property or her street is more hypothetical and theoretical than realistic, and there would be no reasonably foreseeable measurable impact on the Councilmember's property. Thus, it would appear that there is sufficient support for a conclusion that the decision regarding potential Town Hall improvements will not have a foreseeable and material financial effect on the Councilmember's real property interest.

Alice T. Germond
November 9, 2018
Page 4

Based on the foregoing, we would respectfully request that the Commission reconsider the advice provided in Letter A-18-193, and direct staff to prepare an updated opinion in light of the facts discussed above.

A copy of the appraisal report prepared for this request is attached hereto for your reference. If the Commission has any questions or desire additional information, please contact me. I may be reached at (510) 808-2000, or via e-mail at smattas@meyersnave.com.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Steve Mattas", with a long horizontal flourish extending to the right.

Steve Mattas
City Attorney, Town of Los Altos Hills

CC: Dave Bainbridge, General Counsel, Fair Political Practice Commission

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