

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

August 9, 1984

Mary A. Chapman, Member
City of Vista Planning Commission
797 Vale View Drive
Vista, CA 92083

Re: Your Request for Advice
Our No. A-84-195

Dear Ms. Chapman:

You have written requesting advice regarding the following situation:

FACTS

The owner of a house across the street from us has applied for a Special Use Permit to have a "country club-like use" on his property. He lacks the acreage to have a golf course or riding trails and he lacks house space for large gatherings inside. Hence the general appeal is for outdoor weddings, meetings, bar mitzvahs, rallies, etc. He has conducted numerous affairs already without a permit so myself, as well as the neighbors, have made many complaints. Several realtors have told us (the neighbors and myself) that this operation would harm the value and salability of our homes. We are in E-1 (half-acre) zoning and have fought encroachments on several previous occasions. I have lived here 30 years but have been on the commission the past 3 years. At present I am actively working with the neighborhood to present an organized protest at the hearing. I, of course, would not be one of the protestors, although, as a homeowner, I have signed the petition against this.

My right to vote has been questioned by some of the opponents so I am asking for your opinion along with the law backing it. I have been told that, as a person who has this place as a permanent home (not a

Mary A. Chapman, Member
August 9, 1984
Page 2

speculation property) and as a person who does not stand to have financial gain from the change, I have the right to vote. However, since there is a question in some minds, a written opinion from your commission would be valuable.

CONCLUSION

You must disqualify yourself from participation in any way in the Planning Commission decision on this matter. That includes discussions as well as actually voting. However, you may represent your sole interest by appearing before the Planning Commission as a homeowner, independently of your neighbors.

ANALYSIS

The Political Reform Act (the "Act")^{1/} prohibits any public official from "making, participating in making, or using his [or her] official position to influence" any government decision in which he or she knows or has reason to know he or she has a financial interest.

You are a public official (planning commissioner) within the meaning of the Act. Sections 82041, 82048 and 87200. Therefore, the prohibition applies to you with respect to decisions made in your capacity as a planning commissioner.

The prohibition applies only to those decisions in which you know or have reason to know you have a financial interest. This term is defined in Section 87103 as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

* * *

^{1/} Government Code Sections 81000-91014 (copy enclosed). All statutory references are to the Government Code unless otherwise specified.

Mary A. Chapman, Member
August 9, 1984
Page 3

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

You have an interest in real property (your home) worth more than \$1,000. The question then is whether the Planning Commission's decision on your neighbor's Special Use Permit will have a reasonably foreseeable material financial effect upon your real property. This has been defined by the Commission's regulation, 2 Cal. Adm. Code Section 18702 (copy enclosed). That section states:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

2 Cal. Adm. Code Section
18702(a).

Your letter states that:

... realtors have told us (the neighbors and myself) that this operation would harm the value and salability of our homes.

This clearly would be "a significant effect" on your real property. Consequently, we need not even consider whether the numerical tests in subdivision (b) (2) of the regulation are satisfied.

However, before concluding that disqualification is required, we must consider whether the significant effect on your property will be "substantially the same as" the decision's effect on the real property of "a significant segment of the public generally." In the case of your agency, the City of Vista Planning Commission, the public generally is all the residents of Vista. Consequently, unless your neighbors constitute a significant segment of Vista's residents, you must disqualify yourself.

We have no detailed facts presented on this question; however, given the nature of the proposed use, it seems unlikely that it would affect more than just the immediate neighbors,

Mary A. Chapman, Member
August 9, 1984
Page 4

which would not constitute a significant segment of the public generally. Hence, you are required to disqualify yourself.

However, Commission regulation 2 Cal. Adm. Code Section 18700 (copy enclosed) does permit you to speak on your own behalf to the Planning Commission when the matter is heard by that body.

(d) Making or participating in the making of a governmental decision shall not include:

* * *

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests;

* * *

(f) "In any way attempting to use his or her official position to influence a governmental decision" shall not include:

* * *

(1) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest;

2 Cal. Adm. Code Section
18700(d)(2) and (f)(1).

It is important to note that you may not speak on behalf of others in using this privilege of self-representation. You also must curtail your organizing activities as you may not use your official position to influence the presentation of the issues to the Planning Commission. (See enclosed advice letters to Thomas J. Harron, No. A-83-184 and to George C. Thacher, No. A-83-226, copies enclosed.)

Mary A. Chapman, Member
August 9, 1984
Page 5

Lastly, you should note that subdivision (b) (5) of this same regulation requires that you announce that you are disqualifying yourself and put your financial interest on the record, before the matter is heard and you step down to speak on your own behalf.

Should you have any questions regarding this letter, please do not hesitate to call me at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosures

Weta, Dally.
July 30, 1984

AUG 2 1984

From Political Practice Commission;

Dear Ann and Malcolm,

Please tell me if I can actively participate as a Planning Commission, taking part in the discussion and the voting, in the forthcoming hearing.

The owner of a home across the street

from me has applied for a Special Use Permit

to have a "Country Club-like use" on his property

He lacks the acreage to have a golf course or

riding trails and he lacks some space for

large gatherings inside. Hence the general

appeal to your outdoor meetings, meetings, for

mitigations, etc. He has conducted numerous

appeals already without a permit so myself,

as well as the neighbors, have made many

complaints. Several neighbors have taken

(the neighbors myself) that this operation would

harm the value and reliability of our homes,

the use in E-1 (rural) zoning and have fought

investments in several previous occasions.

I have lived here 30 years but have been an

The Commission the past 3 years. At

present I am actively working with the neighborhood to present an organized protest at the hearing. I, of course, would not be one of the protesters, although, as a homeowner, I have signed the petition against this.

My right to vote has been questioned by some of the opponents so I am asking for your opinion along with the law backing it. I have been told that, as a person who has this place as a permanent home (not a speculation property) and, as a person who does not stand to have financial gain from the use change, I have the right to vote. However, since there is a question in some minds, a written opinion from your commission would be valuable.

Thank you,
Mary A. Chapman
797 Vale View Dr.
Vista, Ca 92083

(619)
ph. 726-0968