



California Fair Political Practices Commission

July 7, 1987

David J. Larsen
Assistant City Attorney
300 W. Third Street
Oxnard, CA 93030

Re: Your Request for Advice
Our File No. A-87-151

Dear Mr. Larsen:

You have requested advice on behalf of Bodine Elias, a member of the Oxnard Planning Commission, concerning her duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Is Ms. Elias prohibited from participating in a decision on whether to allow construction of 60 oceanfront homes by virtue of the fact that the construction will obstruct the ocean view of a home which she owns, or by virtue of the fact that she sells real estate in the area?

CONCLUSION

Ms. Elias may not participate as a planning commissioner in the decision regarding construction of the homes.

FACTS

A development project has been proposed involving the construction of a row of approximately 60 new oceanfront homes along the west side of a beachfront road located in a subdivision in the City of Oxnard known as Oxnard Shores. The

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

planning commission must make a recommendation to the city council regarding whether the project should be approved.

If the project is approved and the 60 homes constructed, it will eliminate the ocean views of approximately 30 existing homes immediately adjacent to the east side of the beachfront road. Ms. Elias and her husband own one of these 30 homes.

You have indicated that it is difficult to discern whether project approval would have any effect on the value of these homes. You stated that while they were presumably purchased with the knowledge that other homes might be constructed between them and the ocean, the fact remains that they had unobstructed ocean views when purchased.

On the other hand, if the project is denied, it is reasonable to expect that no future development will be allowed to the west. Ms. Elias' home has an unobstructed ocean view so it will increase substantially in value if the project is denied. You have stated that denial of the project would increase the monetary value of each of the 30 homes immediately adjacent to the east side of the beachfront roads by tens of thousands of dollars.

Ms. Elias is also a real estate agent for Merrill Lynch. By choice, her sales area is limited to Oxnard Shores. She has sold 30 to 40 homes in Oxnard Shores in the last two years. Only two of these, however, were homes immediately adjacent to the east side of the beachfront road. While other Merrill Lynch agents sell homes in Oxnard Shores from time to time, the bulk of Merrill Lynch's Oxnard Shores sales are made by Ms. Elias. Due to her efforts, Merrill Lynch has sold more homes in Oxnard Shores than any other real estate company in the past two years. There is a good chance that Ms. Elias will sell one or more of the 30 homes immediately adjacent to the east side of the beachfront road in the future.

Ms. Elias is paid on a commission basis. While commissions are required by law to be negotiable, the industry standard for the Oxnard Shores area is approximately 6 percent. Homes in Oxnard Shores typically range from \$175,000 to \$600,000.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which she knows or has a reason to know she has a financial interest. An official has a financial interest in a decision if it will have a reasonably foreseeable material

financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family, or on:

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(b) and (c).

Ms. Elias' home is undoubtedly worth \$1,000 or more. Accordingly, she may not participate in any decision which will have a reasonably foreseeable material financial effect on that real property interest.^{2/}

You have indicated that denial of the project would increase the value of Ms. Elias' home by tens of thousands of dollars. A decision which will increase or decrease the fair market value of an interest in real property by \$10,000 or more is considered to have a material financial effect on the property regardless of the property's value. (Regulation 18702(b)(2), copy enclosed.) Accordingly, Ms. Elias may not participate in the planning commission's decision regarding approval of the development project. Having reached this conclusion, we need not analyze whether Ms. Elias' real estate sales activities require her to disqualify from the decision.

You have also asked whether Ms. Elias may participate in the decision as a private citizen. Regulation 18700.1(a) (copy enclosed) provides that an official is attempting to use her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member,

^{2/} By making a recommendation to the city council, the members of the planning commission are participating in the decision on approval of the proposed development. (Regulation 18700(c)(2).)

David J. Larsen
July 7, 1987
Page 4

officer, employee or consultant of the agency. However, the regulation further provides:

(b) Notwithstanding subsection (a) an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by subsection (a) if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

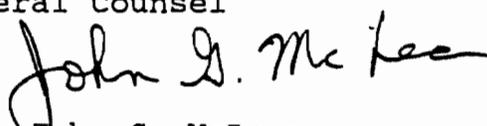
(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

Thus, if Ms. Elias and her husband wholly own the home referred to above, she may appear before the planning commission, as a member of the public, to describe the effect which the decision will have on her home. Her comments must be limited to that personal interest. She may not, for example, act as the spokesperson for her neighborhood or comment on the effect which the decision will have on the real estate industry in Oxnard.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosure

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CITY ATTORNEY • 300 W. THIRD STREET • OXNARD, CALIFORNIA 93030 • (805) 984-4601

K. DLANE LYDERS, CITY ATTORNEY

May 27, 1987

REQUEST

Legal Division
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95817

SUBJECT: Request for a Legal Opinion

To Whom It May Concern:

Please consider this a request for a legal opinion from the Legal Division of the Fair Political Practices Commission concerning the following question.

QUESTION:

Is Planning Commissioner Bodine Elias allowed to participate, as either a Planning Commissioner or private citizen, in the decision to recommend that City Council approve or disapprove construction of approximately 60 oceanfront homes, given the facts outlined below?

FACTS:

The proposed project involves the construction of a row of approximately 60 new oceanfront homes along the west side of a beachfront road located in a subdivision in the City of Oxnard known as Oxnard Shores.

If this project is approved and the 60 homes constructed, it will eliminate the ocean views of approximately 30 existing homes immediately adjacent to the east side of the beachfront road. Whether project approval would have any effect on the monetary value of these 30 homes is difficult to discern. While they were presumably purchased with the knowledge that other homes might be constructed between them and the ocean, the fact remains that they had unobstructed ocean views when purchased.

If this project is denied by the City, it is reasonable to expect that no future development will be allowed to the west. Accordingly, denial of the project would increase the monetary value of each of the 30 homes immediately adjacent to the east side of the beachfront road by tens of thousands of dollars.

Fair Political Practices Commission
Request for Legal Opinion
May 27, 1987
Page Two

Planning Commissioner Bodine Elias and her husband own one of these 30 homes. Their home has an unobstructed ocean view so would increase substantially in value if the proposed project were denied.

Ms. Elias is a real estate agent for Merrill Lynch. By choice, her sales area is limited to Oxnard Shores. She has sold 30 to 40 homes in Oxnard Shores in the last two years. Only two of these, however, were homes immediately adjacent to the east side of the beachfront road. While other Merrill Lynch agents sell homes in Oxnard Shores from time to time, the bulk of Merrill Lynch's Oxnard Shores sales are made by Ms. Elias. Due to her efforts, Merrill Lynch has sold more homes in Oxnard Shores than any other real estate company in the past two years. There is a good chance that Ms. Elias will sell one or more of the 30 homes immediately adjacent to the east side of the beachfront road in the future.

Ms. Elias is paid on a commission basis. While commissions are required by law to be negotiable, the industry standard for the Oxnard Shores area is approximately six percent. Homes in Oxnard Shores typically range from \$175,000 to \$600,000.

AUTHORIZATION:

I, Bodine Elias, authorize this request for advice from the Fair Political Practices Commission and concur with the facts as stated herein.

Jan 2, 1987
Date


Signature

Thank you in advance for your advice. Please contact me directly if you need additional information.

Sincerely,



David J. Larsen
Assistant City Attorney

DJL:vwp