



California Fair Political Practices Commission

December 7, 1988

Michael H. Roush
City Attorney
P.O. Box 920
Pleasanton, CA 94566-0802

Re: Your Advice Request
Our File No. A-88-404

Dear Mr. Roush:

You have requested advice on behalf of Kenneth Mercer about application of conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to his duties on the City Council and Redevelopment Agency of the City of Pleasanton.

QUESTIONS

Mr. Mercer owns stock in Community First Bank of Pleasanton. Community First Bank owns the property for its main office which is situated within the boundaries of the proposed redevelopment area.

1. May Mr. Mercer participate in a decision to adopt a redevelopment plan for infrastructure improvements, such as sewer and water systems, traffic circulation, and parking?

2. Will the decision's effect on the bank be the same as the effect on a significant segment of the general public?

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

CONCLUSION

1. Mr. Mercer is disqualified from participating in the decision to adopt a redevelopment plan because of the variety of ways redevelopment will have foreseeable and material effects on Community First Bank of Pleasanton. For example, improved infrastructure systems foreseeably will increase business in the downtown area and also will increase property values. The combination of these effects on Community First Bank is enough to require Mr. Mercer's disqualification.

Certain decisions to implement the redevelopment plan, however, may not require disqualification. An example is the decision to select a consultant to design parking garage plans. Nevertheless, Mr. Mercer must examine each decision to determine if disqualification is required.

2. Partly because the bank owns commercial property in the downtown area, a material financial effect on the bank will not be substantially the same as the effect on a significant segment of the general public. Therefore, Mr. Mercer is disqualified from participating in the redevelopment decision.

FACTS

Mr. Mercer is a member of the City Council and the Redevelopment Agency of the City of Pleasanton. Mr. Mercer also owns stock worth more than \$1,000 in Community First Bank of Pleasanton ("Community First").

Community First has net tangible assets of more than \$18 million and pretax income for the past fiscal year of more than \$2.5 million. Its stock is not traded on any stock exchange. The bank also owns its main office in downtown Pleasanton. This property is worth about \$1.5 million. The main office does 66 percent of the bank's business. The bank's two offices in Pleasanton have about a 30-percent share of the banking market in Pleasanton.

The redevelopment agency will be considering adoption of a redevelopment plan to improve infrastructure in the downtown area, such as improvement of water, sewer, traffic circulation and parking systems. The redevelopment plan provides that the power of eminent domain will be used only for infrastructure improvements.

You have estimated that bank deposits would have to increase by \$75,000,000 for the bank's net profits to increase by \$150,000 based on a 2-percent profit spread on bank deposits. Alternatively, total bank deposits in Pleasanton

would have to increase by \$250,000,000 for Community First's net profits to increase by \$150,000, based on a 2-percent profit spread on deposits and a 30-percent market share of all bank deposits in Pleasanton.

You also believe the redevelopment plan will not result in an increase or decrease in the bank's existing expenses. First, the bank already has adequate parking facilities. Second, other infrastructure improvements are not related to the bank's other business expenses.

You estimate that increased property values resulting from redevelopment will not have a material financial effect on the bank. This estimate is based on the assumption that redevelopment will result in increased tax revenues of \$22,708,500. If every dollar of increased revenues were spent on capital projects, creating a dollar-for-dollar increase in the value of property in the redevelopment area, redevelopment would increase property values by \$58,983 per acre. The value of Community First's property then would increase by \$33,652 based on the property's square footage -- 24,952 square feet.

In a telephone conversation on December 6, 1988, Robert Philcox, the president of Community First National Bank which owns Community First Bank of Pleasanton, explained that deposits are liabilities for the bank. More deposits provide more money for the bank to loan out. Present redevelopment plans include using eminent domain to take part of the bank's parking lot. Compensation for this property will be in the form of points that reduce real estate taxes.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which the official knows or has reason to know he has a financial interest. An official has a financial interest in a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on the official, or a member of his or her immediate family, or on a business entity in which the official has an investment interest worth \$1,000 or more. (Section 87103(a).)

Mr. Mercer is a public official who has an investment interest in Community First. (Sections 82048 and 87103(a).) Therefore, he is disqualified from participating in the decision to adopt the redevelopment plan if the decision will have a foreseeable and material financial effect on Community First.

Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood it will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

In a recent decision, the Second District Court of Appeal concluded that redevelopment foreseeably results in increased property values in a redevelopment area. (Downey Cares v. Downey Community Development Commission (1987) 196 Cal.App.3d 983, 991.)

The intent of Pleasanton's proposed redevelopment plan is to revitalize the downtown commercial center by improving the infrastructure system. As was the case in Downey Cares, supra, adoption of a redevelopment plan foreseeably will affect businesses and property values in Pleasanton's proposed redevelopment area. Therefore, the redevelopment plan decision foreseeably will affect Community First.

Materiality

Mr. Mercer will be disqualified if the decision to adopt the redevelopment plan also will have a material financial effect on the bank.

Regulation 18702.2 (copy enclosed) provides guidelines for determining whether a decision will have a material financial effect on a business entity. Based on the financial size of Community First, Regulation 18702.2(b) and (e) provide that the effect of a decision is material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

Therefore, if the redevelopment decision will result in a fiscal year increase of \$150,000 or more in Community First's gross revenues or assets, including the value of the bank's property, Mr. Mercer is disqualified from the decision. Alternatively, if the decision will result in the bank's incurring additional expenses of \$50,000 or more, Mr. Mercer is disqualified.

Presently, we do not have enough information to determine precisely how much the redevelopment plan decision will affect Community First's gross revenues, expenses or assets. First, the test for calculating the effect on gross revenues applies to gross income, not just net profits. "Income" for purposes of the Act includes any payment. (Section 82030.) Therefore, present estimates about increased net profits based on a 2-percent profit spread are not accurate indicators for gauging the effect of the decision on Community First's gross income. Instead, if the decision were to increase or decrease deposits by \$150,000 or more, the effect on Community First would be material.

Second, we have no information about other factors, such as how increased tax assessments will affect Community First's expenses. Therefore, we cannot compare the facts provided with the materiality standards of Regulation 18702.2(b).

Nevertheless, in spite of our inability to estimate precisely the extent of the decision's effect on Community First, we conclude that because the decision foreseeably will affect the bank in several ways, the effect will be significant. (In re Oglesby, 1 FPPC Ops. 71, 81; Athan Advice Letter, No. A-86-094, copies enclosed.) For example, revitalization of business in the downtown area foreseeably will increase the bank's deposits, which will increase the bank's liabilities and ability to make more loans. New taxes will affect expenses. Under the proposed redevelopment plans, using eminent domain to take part of the bank's parking lot also will affect the bank's tax expenses. Finally, infrastructure improvements will affect the value of the bank's property.

As the Commission concluded in the Oglesby opinion, supra, we believe a combination of the preceding effects foreseeably will have a material financial effect on the bank. Therefore, Mr. Mercer is disqualified from participating in the decision to adopt the redevelopment plan.

Mr. Mercer, however, may participate in certain decisions to implement the redevelopment plan, which will not have a

material financial effect on the bank. (See Athan Advice Letter, supra.) For example, disqualification may not be required for a decision to hire a consultant to design parking garages. Mr. Mercer will be disqualified only from those implementation decisions that will have a foreseeable and material financial effect on Community First.

Effect on a significant segment of the general public

Community First owns commercial property and does business in the proposed redevelopment area. In the Owen opinion, the Commission pointed out that aspects of a proposed land use plan would have "particular and identifiable" effects on a councilmember's commercial property, different from the effect on a significant segment of the general public. (In re Owen (1976) 2 FPPC Ops. 77, 83, copy enclosed.) The Commission concluded that owners of commercial property were not a significant segment of the general public even in a core downtown area. Based on Owen, Community First, as an owner of commercial property, is not a member of a significant segment of the general public.

In your letter you also asked whether based on an argument in the Legan opinion, businesses in Pleasanton's downtown area are a significant segment of the general public for that area. (In re Legan (1985) 9 FPPC Ops. 1, 14, copy enclosed.) In the Legan opinion, however, Kaiser Cement owned undeveloped property zoned for residential use. Kaiser was not an owner of commercial property. Also, in Legan, the Commission rejected the argument that the "public generally" exception applied to a decision which affected only a small area of the county if all property owners in that area were similarly affected.

As mentioned before, Community First owns commercial property and a business in the proposed redevelopment area. Therefore, in accord with the Owen opinion, as an owner of commercial property, Community First is not a member of a significant segment of the downtown area because not every business owns property in the area. Also, redevelopment will not affect the gross revenues, expenses or assets of all businesses in Pleasanton in a similar fashion. Therefore, for purposes of the redevelopment plan decision, Community First is not affected in the same way as a significant segment of the general public.

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I hope this letter provides you with adequate guidance.
Please call me at (916) 322-5901 if you have any questions
about this letter.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Margarita Altamirano". The signature is written in dark ink and is positioned above the typed name and title.

By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures



F P P C
CITY OF PLEASANTON
P.O. BOX 820 • PLEASANTON, CALIFORNIA 94566-0802

CITY OFFICES
123 MAIN STREET

CITY COUNCIL
847-8001

CITY MANAGER
847-8008

CITY ATTORNEY
847-8003

FINANCE
847-8033

PERSONNEL
847-8012

CITY OFFICES
200 OLD BERNAL AVE.

PLANNING
847-8023

ENGINEERING
847-8041

BUILDING INSPECTION
847-8015

COMMUNITY SERVICES
847-8160

WATER - BILLING
847-8038

FIELD SERVICES
5335 SUNOL BLVD.

PARKS
847-8056

SANITARY SEWER
847-8061

STREET
847-8066

WATER
847-8071

FIRE
4444 RAILROAD AVE.
847-8114

POLICE
4833 BERNAL AVE.
P.O. BOX 909
847-8127

October 14, 1988

Ms. Diane Griffiths
General Counsel
Fair Political Practice Commission
428 J Street, Ste. 800
P. O. Box 807
Sacramento, California 95804

Dear Ms. Griffiths:

I am writing to request an informal advice letter concerning a possible conflict of interest of one member of the City Council of the City of Pleasanton.

FACTS

A redevelopment agency ("Agency") has been activated in the City of Pleasanton and the members of the City Council have been designated as the members of the Agency pursuant to Health & Safety Code Section 33200. No redevelopment plans have yet been adopted, but the Agency is considering the adoption of a redevelopment plan which would include the downtown core area and some of the surrounding properties.

The redevelopment plan which is under consideration is not a standard redevelopment plan. Its primary purpose is to assist in providing infrastructure improvements in the downtown area in order to overcome conditions which are currently disincentives to development and investment in the downtown area. These conditions include aging and obsolete sewer and water systems, poor circulation patterns, inadequate and poorly planned parking, etc. The redevelopment plan will contain limits on the Agency's power of eminent domain preventing the condemnation of properties for purposes other than the provision of these infrastructure improvements.

Mr. Mercer, the Mayor and an Agency member, owns stock valued at over \$1,000 in Community First Bank of

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Pleasanton. The main branch of Community First Bank of Pleasanton is located within the proposed Redevelopment Project area on property owned by the bank and valued at approximately \$1.5 million. The bank has four branches, two of which are in Pleasanton. The main branch represents approximately sixty-six percent (66%) of the bank's business, as measured by percent of total deposits. The bank has approximately a thirty percent (30%) market share in Pleasanton. The bank is not a member of the National Association of Securities Dealers ("NASD") and its stock is not listed on the New York Stock Exchange, though it meets the criteria for listing on the New York Stock Exchange (net tangible worth of at least \$18 million and pre-tax tangible assets of at least \$2.8 million). Community First Bank of Pleasanton is incorporated under California Law, but is exempt from the necessity to be qualified for public sale under Corporation Code Section 25100, subdivisions (c) and (d).

ANALYSIS

My analysis of this problem is set forth below for whatever assistance it may be.

The issue is whether Mr. Mercer's stock ownership in Community First Bank of Pleasanton is a financial interest requiring his disqualification from Redevelopment Plan decisions. Clearly, Mr. Mercer's stock ownership is an investment in a business entity within the meaning of Government Code Section 87103(a) and the investment is worth \$1,000 or more. Administrative Code Section 18702, subdivision (a) states that a financial effect is material "if the decision will have a significant effect on the business entity . . ." (2 Cal.Admin, Code §18702, subd. (a).) An impact is foreseeable if it is substantially probable. (Thorner, 1 FPPC at 204.) The statute requires foreseeability, not certainty, and whether financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made always depends on the facts of each particular case. (Id., 1 FPPC at 205-206.)

One factor is whether the business entity will be affected in a manner described in Section 18702.2. (2 Cal.Admin. Code §18702, subd. (b)(2).) Section 18702.2 defines when there will be a material financial effect on a business entity. To determine materiality under the guidelines of the Administrative Code requires characterizing

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the business entity in terms of membership or lack thereof in the National Association of Securities Dealers (NASD) or listing of its stock or lack thereof on the New York or American Stock Exchanges. Community First Bank of Pleasanton is not a member of NASD and its stock is not listed on the New York or American Stock Exchanges. In the absence of such membership or listing, one must determine whether the business entity's stock must be qualified for public sale or exempt from the necessity of qualification pursuant to California Corporations Code Section 25110. Community First Bank of Pleasanton is incorporated under California law and is exempt from the necessity to be qualified for public sale under Corporation Code Section 25100, subdivision (c).

Administrative Code Section 18702.2, subdivision (f) is the regulation that applies to Community First Bank of Pleasanton, since it is a business which is exempt from qualification under the Corporations Code, is not an NASD member, is not listed on the New York or American Stock Exchanges, but meets the financial criteria for listing on the New York Stock Exchange. The effect will be material if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more;
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

Whether one of the three threshold levels for materiality would be exceeded as a result of decisions relating to adoption of the Redevelopment Plan requires a judgment as to whether such effects are reasonably foreseeable, keeping in mind that the downtown area is already developed and the proposed Redevelopment Plan will not provide for large scale clearance or radical alteration of existing land use patterns. Instead the Redevelopment Plan primarily will provide for the construction of infrastructure improvements relating to circulation, parking,

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streetscape design and public facilities. The improvements will be designed to correct existing deficiencies in these facilities in the downtown area. It is hoped that these improvements will revitalize the area by removing barriers to investment, resulting in increased commercial activity.

As a general rule, banks make an approximate two percent (2%) spread on money deposits, e.g., the bank pays the depositor at 8% per annum and lends the money at 10% per annum. With a 2% spread, it would take an increase in deposits of \$75,000,000 to increase the bank's revenues by \$150,000 per year, which is the threshold of materiality required to establish a conflict of interest under Section 18702.2(d)(1). Moreover, it can be reasonably assumed that increases in bank deposits resulting from redevelopment activity will be split by the eight banks in the redevelopment project area approximately in accordance with their current market shares. Thus, for example, with Community First National Bank holding a 30% market share, redevelopment activity would have to attract an additional \$250,000,000 in bank deposits to downtown Pleasanton in order for Community First Bank's revenues to increase by \$150,000.

An increase in banking activity of this magnitude as a result of redevelopment activity is extremely unlikely. Because the redevelopment plan is designed primarily to assist in financing necessary public improvements and does not contemplate significant changes in existing development, the redevelopment plan should have little effect on the overall number of depositors. I believe, therefore, that it is not reasonably foreseeable that a decision concerning the adoption of the proposed redevelopment plan will result in an increase or decrease in revenues for a fiscal year of Community First Bank of \$150,000 or more.

I also do not think it is reasonably foreseeable that Redevelopment Plan decisions would affect the banks' existing expenses beyond the \$50,000 statutory threshold. The bank already has parking adequate for its needs and the proposed infrastructure improvements are not related to the bank's other business expenses.

Consideration of the effects of Redevelopment Plan decisions on the real property of the bank is more difficult. Redevelopment Plan decisions may affect the real property interests of the bank. In analyzing the impact of redevelopment plan adoption upon the value of the bank's

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interests in its real property, I realize that any discussion of future property values is necessarily speculative. On the other hand, I recognize that the Fair Political Practices Commission, both in its formal opinions and in informal advice letters, has most often found that a redevelopment project will affect the value of real property within a project area. The FPPC has noted on several occasions that a primary object of any redevelopment project is to raise property values. (FPPC opinions appear to create a rebuttable presumption that the adoption of a redevelopment project will have a significant impact on the value of commercial properties located within the project area and, therefore, their owners.)

On the other hand, it is not difficult to construct a plausible argument that the effect of redevelopment activity on the property of Community First Bank will be insignificant. For this purpose, I assume that the net present value of increased revenues resulting from implementation of a redevelopment plan is \$22,708,500.^{1/} Using a simple but highly optimistic assumption that every dollar of the \$22,708,500 increase in tax revenue from redevelopment is applied to capital projects within the redevelopment project area, and that each dollar spent on capital projects generates a one-for-one increase in the value of land in the redevelopment area, then redevelopment would generate increased land values of \$58,983 per acre. Applying that result, the Community First National Bank parcel (which has 24,975 square feet) would receive a prorated share equal to \$33,652 in increased value from redevelopment activities. This is barely one-fifth of the threshold necessary to establish a conflict of interest for Mayor Mercer.

Finally, a determination must be made as to whether decisions relating to the Redevelopment Plan would affect Community First Bank of Pleasanton in a way distinguishable from their effect on the public generally. Under the Administrative Code a single industry, trade or profession does not ordinarily constitute "the public generally," although it may do so if it is a predominant one in the official's jurisdiction. (2 Cal.Admin. Code §18703.) The

^{1/} Projections based upon analysis of Economic and Planning Systems, dated April 11, 1988.

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FPPC has held that the "public" is all the persons residing, owning property, or doing business, in the jurisdiction of the body or agency in question. Under the Community Redevelopment Law the territorial jurisdiction of a redevelopment agency of a city is the territory within its limits, i.e., within the city. (Health & Safety Code §33120.)

In interpreting the term "distinguishable from its effect on the public generally," the FPPC has provided a "significant segment" exception to the disqualification requirement. Disqualification will not be required if:

". . . The decision will affect the official's interest in substantially the same manner as it will affect . . . a significant segment of the public."
(2 Cal.Admin. Code §18703, subd. (a); Legan/County of Santa Clara, 9 FPPC 1, 13.)

Thus, after determining the reference group that comprises the "public generally," the FPPC requires a determination of that subset of the public, which comprises the possible "significant segment."

Owen/City of Davis considered participation of city governmental officials in decisions on a specific land use plan for the city's core area. (Id., 2 FPPC 77, (6/2/76).) Owen held that the "public generally" comprised those persons within the jurisdiction of the officials, i.e., the residents and persons doing business in the city. (Id., 2 FPPC at 81.) Owen further held that residential homeowners and limited partners in a retail business that leased space in an existing commercial building in the core area constituted "significant segments" of the public generally. (Id., 2 FPPC at 81-82.) In contrast, Owen held that the segment of the public owning buildings leased for commercial purposes was not a significant segment, since it was much smaller than that of residential property owners.

Legan considered participation of county governmental officials in deliberations by the county Board of Supervisors on a proposed General Plan Amendment which would approximately double the allowable density of development on hillside parcels consisting of forty or more acres. (Legan, supra, 9 FPPC at 1-2.) An entity in which one official owned stock and was employed held four parcels of forty or more acres. (Id.) Legan held that the "public"

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relevant to a county Board of Supervisors consisted of the entire jurisdiction of the county, because the impact of land use decisions would not be limited to unincorporated areas of the county. (Id., 9 FPPC at 12.) Legan further held that the relevant group to focus on as a possible "significant segment" consisted of those hillside property owners whose parcels were forty acres or more, since these individuals would be affected by a change in density limitations in substantially the same manner as the official's employer. Legan held that this group had "neither the numerical size nor the heterogeneity to constitute a significant segment of the public within the meaning of 2 Cal.Admin. Code Section 18703."

Applying what appears to be the traditional FPPC analysis to this case, the "public generally" would appear to be all those residing, owning property, or doing business within the City of Pleasanton. The group on which to focus as a possible significant segment would appear to be Project Area commercial businesses, since these are the entities which are likely to experience an increase in gross revenues and/or an increase in real property value due to redevelopment infrastructure improvements similar to that experienced by the banks. One could reasonably argue, however, that the "public generally" should consist of all those residing, owning property or doing business in the Project Area, since they are the ones upon whom Redevelopment Plan decisions will have a direct impact. Measured against this group, Project Area commercial businesses, which include the banks, may constitute a significant segment. To my knowledge, the FPPC has never directly addressed this particular factual situation.

I would appreciate your comments on this analysis and your specific advice on whether or not Mayor Mercer must disqualify himself from participating in redevelopment plan adoption decisions. If you have any questions or need further information please contact either myself or the City's special redevelopment counsel, Mr. Brent Hawkins. His telephone number is (916) 444-3900.

Very truly yours,

Michael H. Roush
Michael H. Roush *by T. Brent Hawkins*
City Attorney

MHR:wpc(2871r)



FPPC
OCT 18 2 05 PM '88
CITY OF PLEASANTON
P.O. BOX 920 • PLEASANTON, CALIFORNIA 94566-0802

CITY OFFICES
123 MAIN STREET

October 14, 1988

CITY COUNCIL
847-8001

CITY MANAGER
847-8008

CITY ATTORNEY
847-8003

FINANCE
847-8033

PERSONNEL
847-8012

CITY OFFICES
200 OLD BERNAL AVE.

Ms. Diane Griffiths
General Counsel
Fair Political Practice Commission
428 J Street, Ste. 800
P. O. Box 807
Sacramento, California 95804

PLANNING
847-8023

Dear Ms. Griffiths:

ENGINEERING
847-8041

I am writing to request an informal advice letter concerning a possible conflict of interest of one member of the City Council of the City of Pleasanton.

BUILDING INSPECTION
847-8015

FACTS

COMMUNITY SERVICES
847-8160

A redevelopment agency ("Agency") has been activated in the City of Pleasanton and the members of the City Council have been designated as the members of the Agency pursuant to Health & Safety Code Section 33200. No redevelopment plans have yet been adopted, but the Agency is considering the adoption of a redevelopment plan which would include the downtown core area and some of the surrounding properties.

WATER - BILLING
847-8038

FIELD SERVICES
5335 SUNOL BLVD.

PARKS
847-8056

SANITARY SEWER
847-8061

STREET
847-8066

The redevelopment plan which is under consideration is not a standard redevelopment plan. Its primary purpose is to assist in providing infrastructure improvements in the downtown area in order to overcome conditions which are currently disincentives to development and investment in the downtown area. These conditions include aging and obsolete sewer and water systems, poor circulation patterns, inadequate and poorly planned parking, etc. The redevelopment plan will contain limits on the Agency's power of eminent domain preventing the condemnation of properties for purposes other than the provision of these infrastructure improvements.

WATER
847-8071

FIRE
4444 RAILROAD AVE.
847-8114

POLICE
4833 BERNAL AVE.
P.O. BOX 909
847-8127

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Pleasanton. The main branch of Community First Bank of Pleasanton is located within the proposed Redevelopment Project area on property owned by the bank and valued at approximately \$1.5 million. The bank has four branches, two of which are in Pleasanton. The main branch represents approximately sixty-six percent (66%) of the bank's business, as measured by percent of total deposits. The bank has approximately a thirty percent (30%) market share in Pleasanton. The bank is not a member of the National Association of Securities Dealers ("NASD") and its stock is not listed on the New York Stock Exchange, though it meets the criteria for listing on the New York Stock Exchange (net tangible worth of at least \$18 million and pre-tax tangible assets of at least \$2.8 million). Community First Bank of Pleasanton is incorporated under California Law, but is exempt from the necessity to be qualified for public sale under Corporation Code Section 25100, subdivisions (c) and (d).

ANALYSIS

My analysis of this problem is set forth below for whatever assistance it may be.

The issue is whether Mr. Mercer's stock ownership in Community First Bank of Pleasanton is a financial interest requiring his disqualification from Redevelopment Plan decisions. Clearly, Mr. Mercer's stock ownership is an investment in a business entity within the meaning of Government Code Section 87103(a) and the investment is worth \$1,000 or more. Administrative Code Section 18702, subdivision (a) states that a financial effect is material "if the decision will have a significant effect on the business entity . . ." (2 Cal.Admin, Code §18702, subd. (a).) An impact is foreseeable if it is substantially probable. (Thorner, 1 FPPC at 204.) The statute requires foreseeability, not certainty, and whether financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made always depends on the facts of each particular case. (Id., 1 FPPC at 205-206.)

One factor is whether the business entity will be affected in a manner described in Section 18702.2. (2 Cal.Admin. Code §18702, subd. (b)(2).) Section 18702.2 defines when there will be a material financial effect on a business entity. To determine materiality under the guidelines of the Administrative Code requires characterizing

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Whether one of the three threshold levels for materiality would be exceeded as a result of decisions relating to adoption of the Redevelopment Plan requires a judgment as to whether such effects are reasonably foreseeable, keeping in mind that the downtown area is already developed and the proposed Redevelopment Plan will not provide for large scale clearance or radical alteration of existing land use patterns. Instead the Redevelopment Plan primarily will provide for the construction of infrastructure improvements relating to circulation, parking,

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streetscape design and public facilities. The improvements will be designed to correct existing deficiencies in these facilities in the downtown area. It is hoped that these improvements will revitalize the area by removing barriers to investment, resulting in increased commercial activity.

As a general rule, banks make an approximate two percent (2%) spread on money deposits, e.g., the bank pays the depositor at 8% per annum and lends the money at 10% per annum. With a 2% spread, it would take an increase in deposits of \$75,000,000 to increase the bank's revenues by \$150,000 per year, which is the threshold of materiality required to establish a conflict of interest under Section 18702.2(d)(1). Moreover, it can be reasonably assumed that increases in bank deposits resulting from redevelopment activity will be split by the eight banks in the redevelopment project area approximately in accordance with their current market shares. Thus, for example, with Community First National Bank holding a 30% market share, redevelopment activity would have to attract an additional \$250,000,000 in bank deposits to downtown Pleasanton in order for Community First Bank's revenues to increase by \$150,000.

An increase in banking activity of this magnitude as a result of redevelopment activity is extremely unlikely. Because the redevelopment plan is designed primarily to assist in financing necessary public improvements and does not contemplate significant changes in existing development, the redevelopment plan should have little effect on the overall number of depositors. I believe, therefore, that it is not reasonably foreseeable that a decision concerning the adoption of the proposed redevelopment plan will result in an increase or decrease in revenues for a fiscal year of Community First Bank of \$150,000 or more.

I also do not think it is reasonably foreseeable that Redevelopment Plan decisions would affect the banks' existing expenses beyond the \$50,000 statutory threshold. The bank already has parking adequate for its needs and the proposed infrastructure improvements are not related to the bank's other business expenses.

Consideration of the effects of Redevelopment Plan decisions on the real property of the bank is more difficult. Redevelopment Plan decisions may affect the real property interests of the bank. In analyzing the impact of redevelopment plan adoption upon the value of the bank's

interests in its real property, I realize that any discussion of future property values is necessarily speculative. On the other hand, I recognize that the Fair Political Practices Commission, both in its formal opinions and in informal advice letters, has most often found that a redevelopment project will affect the value of real property within a project area. The FPCC has noted on several occasions that a primary object of any redevelopment project is to raise property values. (FPCC opinions appear to create a rebuttable presumption that the adoption of a redevelopment project will have a significant impact on the value of commercial properties located within the project area and, therefore, their owners.)

On the other hand, it is not difficult to construct a plausible argument that the effect of redevelopment activity on the property of Community First Bank will be insignificant. For this purpose, I assume that the net present value of increased revenues resulting from implementation of a redevelopment plan is \$22,708,500.^{1/} Using a simple but highly optimistic assumption that every dollar of the \$22,708,500 increase in tax revenue from redevelopment is applied to capital projects within the redevelopment project area, and that each dollar spent on capital projects generates a one-for-one increase in the value of land in the redevelopment area, then redevelopment would generate increased land values of \$58,983 per acre. Applying that result, the Community First National Bank parcel (which has 24,975 square feet) would receive a prorated share equal to \$33,652 in increased value from redevelopment activities. This is barely one-fifth of the threshold necessary to establish a conflict of interest for Mayor Mercer.

Finally, a determination must be made as to whether decisions relating to the Redevelopment Plan would affect Community First Bank of Pleasanton in a way distinguishable from their effect on the public generally. Under the Administrative Code a single industry, trade or profession does not ordinarily constitute "the public generally," although it may do so if it is a predominant one in the official's jurisdiction. (2 Cal.Admin. Code §18703.) The

^{1/} Projections based upon analysis of Economic and Planning Systems, dated April 11, 1988.

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FPPC has held that the "public" is all the persons residing, owning property, or doing business, in the jurisdiction of the body or agency in question. Under the Community Redevelopment Law the territorial jurisdiction of a redevelopment agency of a city is the territory within its limits, i.e., within the city. (Health & Safety Code §33120.)

In interpreting the term "distinguishable from its effect on the public generally," the FPPC has provided a "significant segment" exception to the disqualification requirement. Disqualification will not be required if:

". . . The decision will affect the official's interest in substantially the same manner as it will affect . . . a significant segment of the public."
(2 Cal.Admin. Code §18703, subd. (a); Legan/County of Santa Clara, 9 FPPC 1, 13.)

Thus, after determining the reference group that comprises the "public generally," the FPPC requires a determination of that subset of the public, which comprises the possible "significant segment."

Owen/City of Davis considered participation of city governmental officials in decisions on a specific land use plan for the city's core area. (Id., 2 FPPC 77, (6/2/76).) Owen held that the "public generally" comprised those persons within the jurisdiction of the officials, i.e., the residents and persons doing business in the city. (Id., 2 FPPC at 81.) Owen further held that residential homeowners and limited partners in a retail business that leased space in an existing commercial building in the core area constituted "significant segments" of the public generally. (Id., 2 FPPC at 81-82.) In contrast, Owen held that the segment of the public owning buildings leased for commercial purposes was not a significant segment, since it was much smaller than that of residential property owners.

Legan considered participation of county governmental officials in deliberations by the county Board of Supervisors on a proposed General Plan Amendment which would approximately double the allowable density of development on hillside parcels consisting of forty or more acres. (Legan, supra, 9 FPPC at 1-2.) An entity in which one official owned stock and was employed held four parcels of forty or more acres. (Id.) Legan held that the "public"

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relevant to a county Board of Supervisors consisted of the entire jurisdiction of the county, because the impact of land use decisions would not be limited to unincorporated areas of the county. (Id., 9 FPPC at 12.) Legan further held that the relevant group to focus on as a possible "significant segment" consisted of those hillside property owners whose parcels were forty acres or more, since these individuals would be affected by a change in density limitations in substantially the same manner as the official's employer. Legan held that this group had "neither the numerical size nor the heterogeneity to constitute a significant segment of the public within the meaning of 2 Cal.Admin. Code Section 18703."

Applying what appears to be the traditional FPPC analysis to this case, the "public generally" would appear to be all those residing, owning property, or doing business within the City of Pleasanton. The group on which to focus as a possible significant segment would appear to be Project Area commercial businesses, since these are the entities which are likely to experience an increase in gross revenues and/or an increase in real property value due to redevelopment infrastructure improvements similar to that experienced by the banks. One could reasonably argue, however, that the "public generally" should consist of all those residing, owning property or doing business in the Project Area, since they are the ones upon whom Redevelopment Plan decisions will have a direct impact. Measured against this group, Project Area commercial businesses, which include the banks, may constitute a significant segment. To my knowledge, the FPPC has never directly addressed this particular factual situation.

I would appreciate your comments on this analysis and your specific advice on whether or not Mayor Mercer must disqualify himself from participating in redevelopment plan adoption decisions. If you have any questions or need further information please contact either myself or the City's special redevelopment counsel, Mr. Brent Hawkins. His telephone number is (916) 444-3900.

Very truly yours,

Michael H. Roush
Michael H. Roush *by T. Brent Hawkins*
City Attorney

MHR:wpc(2871r)



CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, P.O. BOX 3070, GARDEN GROVE, CALIFORNIA 92642

OFFICE OF THE CITY ATTORNEY

(714) 638-6881

April 27, 1988

Barbara Millman
Legal Counsel
Fair Political Practices Commission
428 "J" Street
Sacramento, California 95874

Re: **Request for Advice Letter re
Financial Conflict of Interest**

Dear Ms. Millman:

The City, sitting as the City redevelopment agency, has requested that we obtain an advice letter regarding the qualification of the Mayor to vote on acquisition and disposition of property in a particular redevelopment project area. The following will give you a background of the facts in the situation.

BACKGROUND

Mayor Williams of Garden Grove, a general law city, votes as a member of the City Council, chairs its meetings, and votes as a member of the redevelopment agency. The Mayor owns "legal non-conforming" commercial property in two areas of the City. Three of the legal non-conforming parcels are in a redevelopment project area--the Harbor Corridor area. From time to time, redevelopment projects are designated and implemented in the project area. At present, the "Haster Sungrove" project is in issue, and the subject of this advice request.

"Haster Sungrove" is a project with the goal of recycling a five acre area from mixed commercial uses into a motel-restaurant development. The parcels are freeway off-ramp adjacent and ideal for the proposed development. The present uses include a service station, an animal hospital, a vacant auto repair facility, a night club, and a vacant parcel.

The 1987-88 assessed valuation of Haster Sungrove is \$1,818,739. The assessed valuation of the completed project could be \$9,300,000, if all of the parcels are acquired. The total assessed valuation for the entire Harbor Corridor redevelopment project area is \$132,104,200. The "Haster Sungrove" project is in the Southeast corner of the redevelopment project area and is not expected to have a major positive affect project-wide.

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The area in question is bisected by Harbor Boulevard, which is next to Disneyland. Disneyland is approximately 2 1/2 miles north of Mr. Williams' property on Harbor Boulevard. The entire area is heavily urbanized with tourist commercial uses and shopping centers.

The Mayor also has a general insurance agency and real estate brokerage business located in the redevelopment area. Mayor Williams' business is one of 75 insurance brokerage businesses located in the City of Garden Grove. In addition to his daughter who manages the insurance business, he reports that he has three employees. A copy of Mayor Williams' Statement of Economic Interests is attached.

The Mayor's real property as reported on his Statement of Economic Interest is as follows (the distance measurements are along connecting streets):

In Redevelopment Project Area

	<u>Value</u>	<u>Approximate Distance from Project</u>
12291 Harbor Boulevard (brokerage business)	\$240,000	1 mile
12311 Harbor Boulevard	\$240,000	1 mile

Outside Project Area

	<u>Value</u>	<u>Approximate Distance from Project</u>
12292 Thackery Drive	\$115,000	1 mile
12312 Thackery Drive	\$130,000	1 mile
11942-52 Garden Grove Blvd.	\$720,000	4/5 miles
11241 Chapman	\$360,000	1 1/2 miles

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Re: **Request for Advice Letter re
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QUESTION

May Mayor Williams participate in and vote on the "Haster Sungrove" issues--in particular, acquisition and disposition of real estate and funding decisions?

Very truly yours,



STUART SCUDDER
Interim City Attorney

SS/pw

- Attachment (1): Map of City with addresses indicated
- Attachment (2): Map of Redevelopment Project Area
- Attachment (3): Copy of Mayor Williams' Statement of Economic Interests