



California Fair Political Practices Commission

December 12, 1988

Raymond M. Haight
City Attorney
4740 Scotts Valley Drive, Suite A
Scotts Valley, CA 95066

Re: Your Request for Advice
Our File No. A-88-432

Dear Mr. Haight:

This is in response to your request for advice on behalf of City Councilmember Michael Caffrey regarding his responsibilities under the conflict-of-interest provisions of the Political Reform Act ("the Act").^{1/}

QUESTION

A development project has been proposed consisting of an 18-hole golf course and approximately 265 dwelling units. May Councilmember Caffrey participate in decisions leading to the approval of the subdivision final map for the project?

CONCLUSION

Councilmember Caffrey is prohibited from participating in the decisions regarding approval of the development project.

FACTS

Councilmember Caffrey is a director and the controller of a close family corporation, Zanotto's, Inc. The corporation owns and operates a business known as Zanotto's Deluxe Market ("Zanotto's"), a retail supermarket. The corporation leases the building occupied by the supermarket.

A development project occupying several hundred acres and consisting of approximately 265 dwelling units and an 18 hole

^{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.

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golf course is proposed for the City of Scotts Valley. Councilmember Caffrey owns his residence which is located on property bordering the boundaries of the proposed project. The project is located within a quarter-mile of Zanotto's. There are two other major supermarkets located at the other end of town.

There are three specific decisions the city council is expected to vote on - approval and certification of the environmental impact report ("EIR") for the project, approval of the subdivision tentative map and approval of the subdivision final map.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(b)-(d)

Mr. Caffrey is a public official (Section 82048.) He is therefore prohibited from making, participating in, or using his official position to influence any governmental decision in which he has a financial interest. Mr. Caffrey owns his home and therefore has an interest in real property presumably worth

\$1,000 or more. In addition, he is an employee and a director of Zanotto's, which is also a source of income to him, presumably of \$250 or more in the preceding 12 months. Consequently, Councilmember Caffrey must disqualify himself from participating in any decision which would have a reasonably foreseeable and material financial effect, distinguishable from the public generally, on his real property or on the business entity -- Zanotto's.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

Development of several hundred acres of property bordering on Councilmember Caffrey's residence would increase traffic and noise in that area and may affect property values of existing homes. Approval and certification of the EIR will affect whether the project can be completed. Therefore, it is reasonably foreseeable within the meaning of Section 87103 that the city council's decision to approve and certify the EIR, a first step in the approval of the proposed project, will have an economic effect on Councilmember Caffrey's residential property.^{2/}

The construction of approximately 265 dwelling units and a golf course will bring additional residents and visitors to the area. Since the other major supermarkets are located at the other end of town, more potential customers will be available to shop at Zanotto's resulting in an increase in its revenues. Accordingly, it is reasonably foreseeable that the decision to approve and certify the EIR will have an economic impact on Zanotto's. (See In re Gillmor (1977) 3 FPPC Ops. 38, copy enclosed.)

^{2/} The effects of the other decisions -- approval of the subdivision tentative map and approval of the subdivision final map -- will parallel the effect of the decision to approve and certify the EIR. Hence, the analysis and conclusion with respect to this decision will be equally applicable to the other decisions.

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Material Financial Effect

The effect of a decision is material as to real property if inter alia:

The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

Regulation 18702.3(a)(1).

Since one of the boundaries of the proposed project borders Councilmember Caffrey's residential property, pursuant to subdivision (a)(1) of Regulation 18702.3, the decision to approve and certify the EIR will have a material financial effect on Councilmember Caffrey's real property interests. Accordingly, Councilmember Caffrey must disqualify himself from participating in the decision to approve and certify the EIR unless the effects of the decision on his interests are the same as the effects on the public generally.

Councilmember Caffrey's residential property adjoins the proposed development project. In this respect, the councilmember's residence is situated differently from most residential property in Scotts Valley. Thus, the effect on his property is distinguishable from the effect on the public generally. Accordingly, Councilmember Caffrey must disqualify himself from participating in the decision to approve and certify the EIR.^{3/}

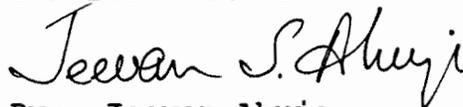
^{3/} Regulation 18702.2 (copy enclosed) details the procedure for determining if the decision will have a material financial effect on Zanotto's. We have not attempted to do that since we do not have sufficient facts about the business entity and, in any event, disqualification is required because of Councilmember Caffrey's ownership of the residential property. This could, however, provide an additional basis requiring Councilmember Caffrey to disqualify himself from participating in the decision to approve and certify the EIR.

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I trust this response has provided you with the guidance necessary to determine Councilmember Caffrey's responsibilities under the Act. If you have any questions, please call me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosure

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November 1, 1988

California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807
Attn: Gevan Ahuja, Esq.

Re: Request for Advice

Dear Mr. Ahuja:

This letter requests advice on behalf of Michael Caffrey, a City Councilman in the City of Scotts Valley, in light of the provisions of the Fair Political Practices Act.

QUESTIONS

Based on the facts stated herein, can Mr. Caffrey participate in voting with respect to the approval of the Subdivision Tentative Map for the residential/golf course development project herein referenced? Can he participate in voting on the approval of the Subdivision Final Map for the project? Prior to consideration of the approval of the Subdivision Tentative Map, can Mr. Caffrey participate in voting with respect to the approval and certification of an Environmental Impact Report for the project?

SUMMARY OF FACTS

Mr. Caffrey is a director of a close family corporation herein referenced as Zanotto's, Inc. He is employed by the corporation on a full-time basis in the position of Controller, and is also a Director. The corporation owns and operates a business known as "Zanotto's Deluxe Market," a retail supermarket. The corporation leases the building occupied by the supermarket.

In addition, Mr. Caffrey owns the home in which he resides on Casa Way in Scotts Valley.

Presently, a development project is proposed for Glenwood Estates. The project consists of approximately 265 dwelling units (representing a mixture of single-family homes and condominiums) and an 18-hole golf course with clubroom facilities. The project

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site consists of several hundred acres of land and one of its boundaries borders the residential parcel owned by Mr. Caffrey, and is located within a quarter-mile of Zanotto's Deluxe Market.

There are two other major supermarkets located in the other end of town (the southern end).

Thank you in advance for your prompt response to this inquiry. Please do not hesitate to contact me if you have any questions or need further information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Raymond M. Haight". The signature is written in dark ink and is positioned above the typed name.

Raymond M. Haight
City Attorney of
City of Scotts Valley

. RMH/mw

cc: Michael Caffrey