FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 7, 2009

Ms. Evans Phelps

REDACTED

Re: Advisory Letter
FPPC Case No. 050113; Evans Phelps

Dear Ms. Phelps:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act")[1]. As you may be aware, the Commission received a complaint against you alleging violations of the conflict of interest provisions of the Act. Specifically, the complaint alleges that you made and participated in making governmental decisions that had a reasonably foreseeable material financial effect on your real property and your business while serving on the Nevada City Planning Commission. The Commission has decided to close this case with this advisory letter.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use her official position to influence a governmental decision in which she knows or has reason to know she has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official's economic interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.[2] (See Regulation 18700.)

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[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 **through** 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] The additional two steps of the analysis - whether the public generally exception applies and whether the individual is legally required to participate in the governmental decision – are inapplicable to this matter.

As a planning commissioner, you are a public official under the Act. (Sections 82048 and 87200.) By voting and participating in discussions during planning commission meeting during 2002 and 2004, you made and participated in making governmental decisions. According to the complaint, you owned four lots of real property within downtown Nevada City at the time of the decisions. In this matter, the allegations in the complaint turn on whether it is reasonably foreseeable that a material financial effect on your economic interests would result from your votes and participation in discussions regarding certain governmental decisions.

Planning Commission minutes show that you voted and participated in discussions in 2002 to enact renovations to one residence and to demolish and rebuild another even though both residences were within 500 feet of three of your properties. Additionally, you voted and participated in a discussion on June 10, 2004, regarding reconstruction of a balcony of a hotel while one of your economic interests is also a hotel. And, on August 12, 2004, you voted and participated in a discussion to add stairs to an existing porch of a residence within 500 feet of three of your properties. Based on our limited investigation into these matters, there is insufficient evidence to establish that the financial effects of the governmental decisions you made and participated in making would cause a reasonably foreseeable material financial effect on your economic interests given the particular nature of the decisions. Therefore, we have decided to close this case with this advisory letter.

Even though we are closing our file on this matter, please be advised of the conflict of interest provisions of the Act (Sections 87100 and following.) in future decisions that you may make as a public official. The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act. If you need forms or manuals, or guidance regarding your obligations, please call the Commission's Technical Assistance Division at 1-866-275-3772. Please also visit our website at www.fppc.ca.gov. If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

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Galena West
Senior Commission Counsel
Enforcement Division