



California Fair Political Practices Commission

May 15, 1986

Merle D. Hall
City Councilmember
City of Walnut Creek
c/o 1111 Civic Center Drive, Suite 330
Walnut Creek, CA 94596

Re: Your Request for Follow-Up
Advice
Our File No. A-86-061-2

Dear Mr. Hall:

You have written seeking follow-up advice to our previous advice letter A-86-061 to David Benjamin, Walnut Creek City Attorney, who had requested advice on your behalf. You have presented extensive additional facts in your follow-up request. Your complete letter and its attachments are attached hereto and incorporated by reference. The factual material presented in your letter can best be summarized by your letter's "Conclusions," as follows:

CONCLUSIONS:

We have analyzed all my contiguous parcels of land in Walnut Creek as to their current and potential uses under Measure "H".

The parcel at 1815 Mt. Diablo is owned by a separate entity in which I am a minority owner without control so it is not foreseeable that its value would be affected by a decision to allow aggregation of parcels for development purposes.

The property on California Blvd. could be used as land for development under Measure "H" or for income as is currently the case. The highest and best use is for income. Therefore, its market value would not be affected by a decision to allow aggregation of parcels for development purposes.

Merle D. Hall
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Page 2

The property at 1821/25 Mt. Diablo Blvd. could be used as land for development or for its present income plus additional income from an add-on under Measure "H". Alternately, it could be used for its current income only. The highest and best use, or market value, is a function of its current income only. Therefore, the market value would not be affected by a decision to aggregate under Measure "H".

In summary, it has been concluded that the question of aggregation will not affect the market value of any of my properties in Walnut Creek. Accordingly, it would be appreciated if you could clarify your letter of 3/4/86 by confirming whether or not I should participate in a decision by the City Council on the intent of Measure "H" as to the issue of aggregation of parcels.

RESPONSE

In your letter you also have stated the Measure "H" aggregation issue as follows:

The question of my participation in an interpretation of Measure "H" involves the assemblage of contiguous parcels of land for development. I own contiguous parcels in Walnut Creek. However, they are already developed and produce income. Therefore, in order to determine whether my participation will have an impact on the market value of my parcels it is necessary to determine if the highest and best use of my property (market value) is a function of its income or as land for development under Measure "H".

Before going on, it is necessary to exclude one of my contiguous parcels from the analysis. That parcel is located at 1815 Mt. Diablo Blvd. This property is under separate ownership in which I hold only a minority interest. In order to include this parcel in my analysis of the adjacent parcels I would have to assume that I could buy out the other owners or have them contribute their interests into a larger partnership owning all four parcels in which I would be the majority owner and they the minority. Neither of these options have been discussed so it is impossible to determine any costs or benefits that might result. Accordingly, any analysis of an addition to my adjacent property which might include

Merle D. Hall
May 15, 1986
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this parcel would be purely hypothetical. Therefore, it seems that even if such an analysis proved beneficial as to my market value, it is not reasonably foreseeable.

The aggregation issue is whether separate parcels, each with its own development limitations under Measure "H", can be "aggregated" into one large parcel, which would not permit more development but would allow for more flexibility on design, etc. One need not currently own contiguous parcels in order to aggregate, one could later acquire rights to contiguous parcels and then seek to aggregate, assuming that the council decides to allow aggregation.

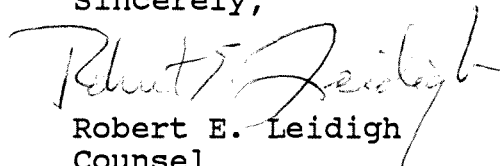
Thus, the issue is not really so much that you own contiguous parcels, but more one of whether any of your parcels would bring a different price if aggregation with any neighboring parcels is permitted.

CONCLUSION

With respect to your parcels which you have analyzed, we are in no position to validate or to refute your analysis. If, in fact, no one would be willing to pay more, or less, for your parcels, regardless of whether aggregation is permitted under Measure "H", because they are currently being utilized to their "best and highest use," so that aggregation does not affect their current fair market value, there would be no requirement for you to disqualify yourself from participation in the aggregation decision. See, Legan Opinion, 9 FPPC Opinions, No. 85-001, August 20, 1985, copy enclosed, regarding fair market value.

Should you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: David Benjamin, City Attorney

MERLE HALL INVESTMENTS

1111 CIVIC DRIVE, SUITE 330
WALNUT CREEK, CALIFORNIA 94596
(415) 933-4000

F P P C
APR 21 9 07 AM '86

April 18, 1986

Robert E. Leidigh
Counsel - Legal Division
California Fair Political Practices Comm.
P.O. Box 807
Sacramento, Ca 95804-0807

Re: Request for Advice on behalf of
Merle Hall your file No. A-86-061

Dear Mr. Leidigh,

This is to attempt to clarify an apparent mis-communication that occurred in my request for advice and your response of March 4, 1986.

In my letter I stated if development of contiguous parcels could be aggregated that it might "improve the value of development rights". I then attempted to point out that I felt a decision on this issue had no effect on my interests since their value was based on the existing income as opposed to the development potential.

Apparently, I failed to make this last point clear since your response mistakenly suggested that I agreed (last paragraph, Page 6)... "there could be an increase in the fair market value..." of my property. Therefore, I will try to further differentiate between the questions of "fair market value" and the "value of development rights".

Fair market value is generally considered to be the price agreed to between willing buyers and sellers within the context of existing or pre-conditioned restrictions. It also assumes the property is intended to be utilized for its "highest and best" use. The highest and best use is defined as that which results in the greatest economic potential consistent with a reasonable degree of risk.

The question of my participation in an interpretation of Measure "H" involves the assemblage of contiguous parcels of land for development. I own contiguous parcels in Walnut Creek. However, they are already developed and produce income. Therefore, in order to determine whether my participation will have an impact on the market value of my parcels it is necessary to determine if the highest and best use of my property (market value) is a function of its income or as land for development under Measure "H".

Before going on, it is necessary to exclude one of my contiguous parcels from the analysis. That parcel is located at 1815 Mt. Diablo Blvd. This property is under separate ownership in which I hold only a minority interest. In order to include this parcel in my analysis of the adjacent parcels I would have to assume that I could buy out the other owners or have them contribute their interests into a larger partnership owning all four parcels in which I would be the majority owner and they the minority. Neither of these options have been discussed so it is impossible to determine any costs or benefits that might result. Accordingly, any analysis of an addition to my adjacent property which might include this parcel would be purely hypothetical. Therefore, it seems that even if such an analysis proved beneficial as to my market value, it is not reasonably foreseeable.

The analysis of the remaining properties is as follows:

A) LAND FOR DEVELOPMENT:

Prior to the passage of Measure "H", commercial land values in the Core Area of Walnut Creek were ranging from \$30-\$50.00 per sq. ft. However, those prices average approximately \$20.00 per sq. ft. of new building area. In other words, if a new 60,000 sq. ft. building was built on a 40,000 sq. ft. parcel (3 stories of 20,000 sq. ft. each) the land cost was probably \$30.00 per sq. ft. ($\$20.00 \times 60,000 \text{ sq. ft. of building} = \$1,200,000 / 40,000 \text{ sq. ft. of land} = \$30.00 \text{ per sq. ft. of land}$).

Another way of stating this is the floor area ratio (FAR). A 60,000 sq. ft. building on 40,000 sq. ft. of land has an FAR of 1.5/1. Therefore, the FAR value of the same land, assuming a \$20.00 land value for each sq. ft. of building space, would be \$30.00 per square foot ($1.5 \times \$20.00 = \30.00). Similarly, the value of land in a 2.5/1 FAR zone would be \$50.00 per square foot ($2.5 \times \$20.00 = \50.00) land suitable for a 2/1 FAR would be worth \$40.00 per sq. ft. ($2 \times \$20.00 = \40.00), etc.

Under Measure "H" the maximum commercial building allowed is 10,000 sq. ft. per parcel regardless of its size. Therefore, any commercial parcel is worth \$200,000 (10,000 x \$20.00 = \$200,000), as development land, assuming land is still worth \$20.00 per square foot of building area.

It follows that the 10,000 square foot Measure "H" limitation will result in a de-valuation of larger parcels as follows:

| <u>Gross Value</u> | <u>Size</u> | <u>Land</u> | <u>Sq. Ft. Value</u> |
|--------------------|---------------|-------------|----------------------|
| \$200,000 | 5,000 sq.ft. | | \$40.00 |
| 200,000 | 10,000 sq.ft. | | 20.00 |
| 200,000 | 20,000 sq.ft. | | 10.00 |
| 200,000 | 40,000 sq.ft. | | 5.00 |

Accordingly, it might be assumed that owners of larger parcels simply will not sell to developers under Measure "H". Conversely, the lack of future building space could make it desirable to develop on small parcels and even more desirable to aggregate contiguous small parcels, if allowed. In fact, it might even be predicted that the FAR value of aggregated small parcels would rise to \$25.00 per sq. ft. of building space or \$250,000 per parcel (\$25.00 x 10,000 sq. ft. of building area = \$250,000).

In my case I own 3 contiguous parcels located at 1821/25 Mt. Diablo Blvd. and 4 contiguous parcels on California Blvd. Under Measure "H" the land could be valued as follows:

| | | | |
|------------|---|-----------------|-------------|
| Mt. Diablo | - | \$250,000 x 3 = | \$ 750,000 |
| California | - | \$250,000 x 4 = | \$1,000,000 |

B) INCOME VALUE:

If property includes land and existing buildings that are rented, the market value question requires a determination of the highest and best use. One use would be land for development, ie, demolish the existing buildings and replace with a better or larger one. Another use would be to retain the existing building for its rental income. We have already discussed the value of my property as land for development under Measure "H". We must now consider its value as income property.

The income approach to valuation requires the use of a capitalization (cap) rate. Cap rate is defined as the net rental income divided by the value. In other words, if a purchaser pays one million dollars for a property that has a net income of \$100,000 per year the cap rate is 10% ($100,000 / 1,000,000 = 10.0\%$). If the same property had a \$50,000 income the cap rate would be 5% ($50,000 / 1,000,000 = 5.0\%$), etc.

Cap rates of income properties vary by their age, condition, location, terms and types of tenancies and overall economic conditions, ie, interest rates, inflation rates, etc. In Walnut Creek the cap rates purchasers are realizing on properties comparable to mine are approximately 9.0% at this time. I have enclosed summary operating statements on both my Mt. Diablo and California Blvd properties. Their values, based on the income approach are as follows:

| | <u>Income</u> | <u>Cap Rate</u> | = | <u>Value</u> |
|------------|---------------|-----------------|---|--------------|
| Mt. Diablo | \$165,000 | 9.0 | = | \$1,835,000 |
| California | \$400,000 | 9.0 | = | \$4,445,000 |

C) ADD-ON INCOME VALUE:

This approach will test whether the market value of my properties would increase if I were allowed to aggregate parcels and add on to the buildings under Measure "H". To do this I have enclosed schematic drawings of my properties that illustrate the approximate layout of land and buildings. On California Blvd. I currently have 43,200 sq. ft. of building space. Since Measure "H" would only allow 40,000 sq.ft. (4 parcels x 10,000 = 40,000) there is no chance of an expansion. Therefore, this analysis is not necessary as to that property.

On Mt. Diablo Measure "H" would allow 30,000 sq. ft. (3 parcels at $1821/25 \times 10,000 = 30,000$). The existing building space on those parcels is approximately 11,000 sq. ft. Therefore, it's theoretically possible to add 19,000 sq. ft. if allowed by aggregation.

The question is whether that allowance would change the current market value. The answer requires comparing the cost of the addition to the capitalized value of the added rental income to determine if the investment would be economically feasible.

The net rent on the existing 11,000 sq. ft. of street level space is \$15.00 per sq. ft. This was negotiated for a new 5 year lease commencing 1/1/86 and is therefore representative of the current market for that location. Applying that rate to the additional space produces this result:

| | | |
|---------------------------|---|--------------|
| 19,000 sq. ft. x \$15.00 | = | \$ 285,000 |
| Capitalization rate | = | .09 |
| | | ----- |
| Value of Income Increment | = | \$ 3,167,000 |

The cost of a theoretical addition is aggravated due to the parking requirements as applied to this relatively small and irregularly shaped property. The existing parking area is the minimum allowable under the current regulation and yet it covers the entire available surface area. Therefore, an addition would require an underground parking structure to house the parking required for the addition. Since the addition and new parking structure would presumably displace the existing parking it would have to be large enough to also accomodate existing parking.

The cost of such an addition has been estimated by an independent expert, Mr. Karl Nystrom, an instructor in cost estimating at U.C. Berkeley. His enclosed calculations come to a total of \$3,892,000. The add-on income value is therefore:

| | | |
|------------------------------|---|-------------|
| Existing Income Value | = | \$1,835,000 |
| Plus: Income Increment Value | = | 3,167,000 |
| Less: Cost of Addition | = | 3,892,000 |
| | | ----- |
| Add-on Income Value: | | \$1,110,000 |

D) MARKET VALUE:

As we discussed before, the market value is a function of the highest and best use. In this case we have discussed three uses, land for development under Measure "H", property held for income with existing rents and property acquired to add onto. They compare as follows:

| | <u>Mt. Diablo</u> | <u>California</u> |
|---------------------|-------------------|-------------------|
| Land Value | \$ 750,000 | \$1,000,000 |
| Income Value | \$1,835,000 | \$4,445,000 |
| Add-on Income Value | 1,110,000 | - |
| Market Value | \$1,835,000 | \$4,445,000 |

E) CONCLUSIONS:

We have analysed all my contiguous parcels of land in Walnut Creek as to their current and potential uses under Measure "H".

The parcel at 1815 Mt. Diablo is owned by a separate entity in which I am a minority owner without control so it is not foreseeable that its value would be affected by a decision to allow aggregation of parcels for development purposes.

The property on California Blvd. could be used as land for development under Measure "H" or for income as is currently the case. The highest and best use is for income. Therefore, its market value would not be affected by a decision to allow aggregation of parcels for development purposes.

The property at 1821/25 Mt. Diablo Blvd. could be used as land for development or for its present income plus additional income from an add-on under Measure "H". Alternately, it could be used for its current income only. The highest and best use, or market value, is a function of its current income only. Therefore, the market value would not be affected by a decision to aggregate under Measure "H".

In summary, it has been concluded that the question of aggregation will not affect the market value of any of my properties in Walnut Creek. Accordingly, it would be appreciated if you could clarify your letter of 3/4/86 by confirming whether or not I should participate in a decision by the City Council on the intent of Measure "H" as to the issue of aggregation of parcels.

Sincerely yours,



Merle D. Hall

MDH/nem
enclosures

P.S. You will note that the schematic drawing of the Mt. Diablo Blvd. property illustrates the parcel boundaries configured differently than before. This was due to an error which has been corrected. The total number of parcels remains the same.

Annual Property Operating Data

Date March 1986
 Price \$ 1,835,000
 Loans \$ _____
 Equity \$ _____

Purpose _____
 Name Hall, Merle
 Location 1821-25 Mt. Diablo
 Type of Property Commercial
 Assessed/Appraised Values
 Land \$ _____ %
 Improvement \$ _____ %
 Personal Property \$ _____ %
 Total \$ _____ 100 %
 Adjusted Basis as of _____ \$ _____

FINANCING

| Existing | Balance | Payment | # Pymt/Yr. | Interest | Term |
|-----------|----------|---------|------------|----------|-------|
| 1st | \$ _____ | _____ | _____ | _____ % | _____ |
| 2nd | \$ _____ | _____ | _____ | _____ % | _____ |
| 3rd | \$ _____ | _____ | _____ | _____ % | _____ |
| Potential | | | | | |
| 1st | | | | _____ % | |
| 2nd | \$ _____ | _____ | _____ | _____ % | _____ |

| | | % | 2 | 3 | Comments |
|----|------------------------------------|---|------|---------|---------------------|
| 1 | SCHEDULED RENTAL INCOME | | | 180 000 | 5 Year Lease @ |
| 2 | Less: Vacancy and Credit Losses | | | | \$15,000/Mo. |
| 3 | EFFECTIVE RENTAL INCOME | | | | Substantially Net |
| 4 | Plus: Other Income | | | | |
| 5 | GROSS OPERATING INCOME | | | 180 000 | |
| 6 | Less: Operating Expenses | | | | |
| 7 | Accounting and Legal | | | | |
| 8 | Advertising, Licenses and Permits | | | | |
| 9 | Property Insurance | | 1500 | | |
| 10 | Property Management | | 6000 | | |
| 11 | Payroll-Resident Management | | | | |
| 12 | Other | | | | Land Value: |
| 13 | Taxes-Worker's Compensation | | | | (Under Measure "H") |
| 14 | Personal Property Taxes | | | | Three Parcels |
| 15 | Real Estate Taxes | | | | x \$200,000 |
| 16 | Repairs and Maintenance (exterior) | | 5000 | | \$600,000 Total |
| 17 | Services-Elevator | | | | |
| 18 | Janitorial | | | | |
| 19 | Lawn (landscape) | | 2500 | | |
| 20 | Pool | | | | |
| 21 | Rubbish | | | | |
| 22 | Other | | | | |
| 23 | Supplies | | | | |
| 24 | Utilities-Electricity | | | | |
| 25 | Gas and Oil | | | | |
| 26 | Sewer and Water | | | | |
| 27 | Telephone | | | | |
| 28 | Other | | | | |
| 29 | Miscellaneous | | | | |
| 30 | | | | | |
| 31 | TOTAL OPERATING EXPENSES | | | 15 000 | |
| 32 | NET OPERATING INCOME | | | 165 000 | = .09 = \$1,833,000 |
| 33 | Less: Annual Debt Service | | | | |
| 34 | CASH FLOW BEFORE TAXES | | | | |

Annual Property Operating Data

Date March 1986
 Price \$ 4,445,000
 Loans \$ _____
 Equity \$ _____

Purpose _____

Name Hall, Merle

Location So. California Blvd. (Petticoat Lane)

Type of Property Commercial

FINANCING

| Assessed/Appraised Values | Existing | Balance | Payment | # Pymt/Yr. | Interest | Term |
|----------------------------|-----------|----------|---------|------------|----------|-------|
| Land | 1st | \$ _____ | _____ | _____ | _____ % | _____ |
| Improvement | 2nd | \$ _____ | _____ | _____ | _____ % | _____ |
| Personal Property | 3rd | \$ _____ | _____ | _____ | _____ % | _____ |
| Total | Potential | \$ _____ | _____ | _____ | _____ % | _____ |
| Adjusted Basis as of _____ | 1st | \$ _____ | _____ | _____ | _____ % | _____ |
| | 2nd | \$ _____ | _____ | _____ | _____ % | _____ |

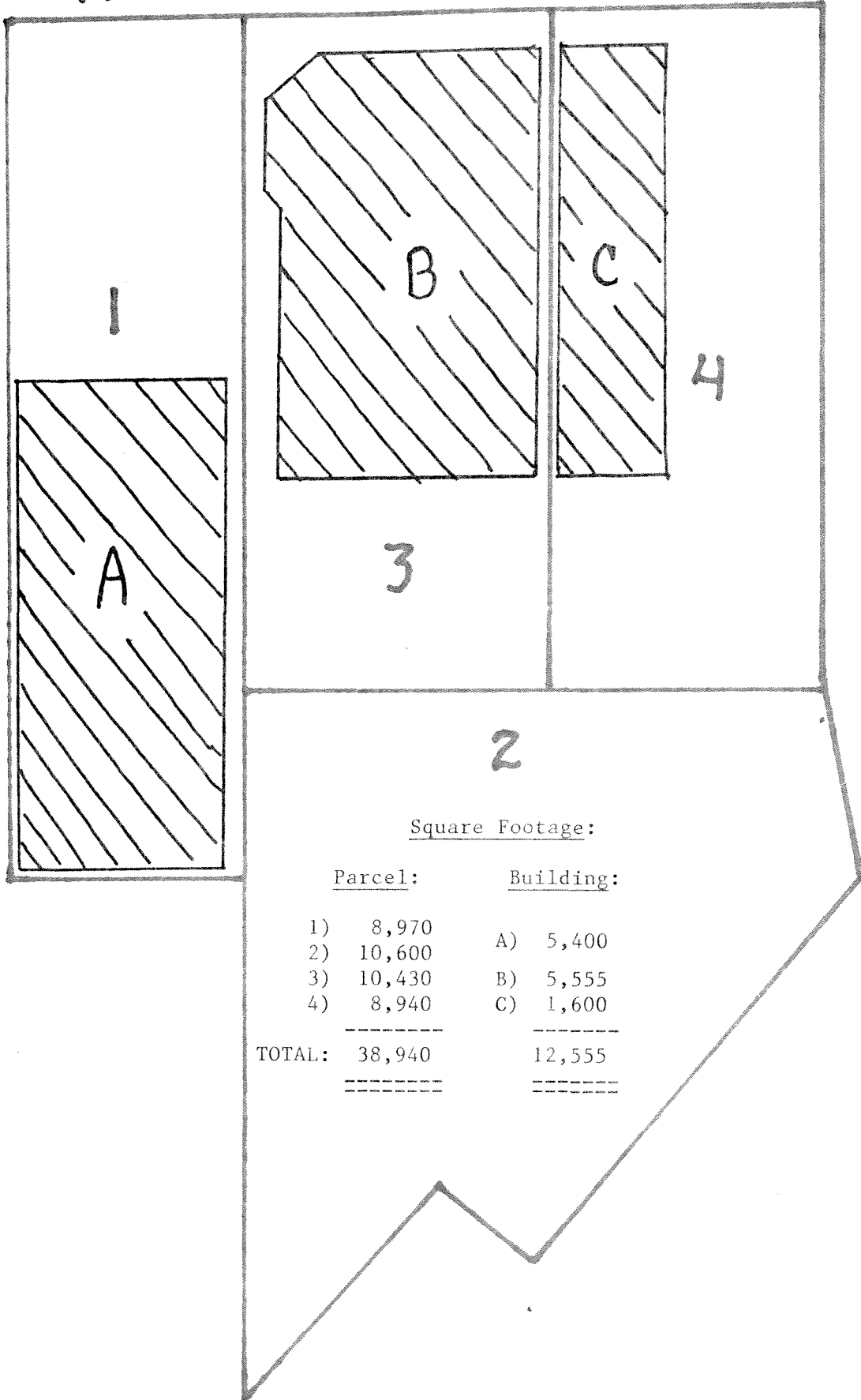
| | | | | | | | | | | Comments |
|----|-----------------------------------|--|--|--|--|--|--|--|--|------------------------------------|
| 1 | SCHEDULED RENTAL INCOME | | | | | | | | | 43,200 Sq. Ft. |
| 2 | Less: Vacancy and Credit Losses | | | | | | | | | 17 Leases |
| 3 | EFFECTIVE RENTAL INCOME | | | | | | | | | Average Apx. \$1.00 |
| 4 | Plus: Other Income | | | | | | | | | per Sq. Ft. |
| 5 | GROSS OPERATING INCOME | | | | | | | | | Substantially Net |
| 6 | Less: Operating Expenses | | | | | | | | | |
| 7 | Accounting and Legal | | | | | | | | | |
| 8 | Advertising, Licenses and Permits | | | | | | | | | |
| 9 | Property Insurance | | | | | | | | | |
| 10 | Property Management | | | | | | | | | |
| 11 | Payroll-Resident Management | | | | | | | | | |
| 12 | Other | | | | | | | | | |
| 13 | Taxes-Worker's Compensation | | | | | | | | | Land Value: (Under Measure "H") |
| 14 | Personal Property Taxes | | | | | | | | | 4 Parcels |
| 15 | Real Estate Taxes (exterior) | | | | | | | | | x \$200,000 |
| 16 | Repairs and Maintenance | | | | | | | | | \$800,000 Total |
| 17 | Services-Elevator | | | | | | | | | |
| 18 | Janitorial | | | | | | | | | |
| 19 | Lawn (landscape) | | | | | | | | | |
| 20 | Pool | | | | | | | | | |
| 21 | Rubbish | | | | | | | | | |
| 22 | Other | | | | | | | | | |
| 23 | Supplies | | | | | | | | | |
| 24 | Utilities-Electricity | | | | | | | | | |
| 25 | Gas and Oil | | | | | | | | | |
| 26 | Sewer and Water | | | | | | | | | |
| 27 | Telephone | | | | | | | | | |
| 28 | Other | | | | | | | | | |
| 29 | Miscellaneous | | | | | | | | | |
| 30 | | | | | | | | | | |
| 31 | TOTAL OPERATING EXPENSES | | | | | | | | | 100 000 |
| 32 | NET OPERATING INCOME | | | | | | | | | 400 000 ÷ .09 = \$4,444,000 |
| 33 | Less: Annual Debt Service | | | | | | | | | |
| 34 | CASH FLOW BEFORE TAXES | | | | | | | | | |

Mt. Diablo Blvd.

1825

1821

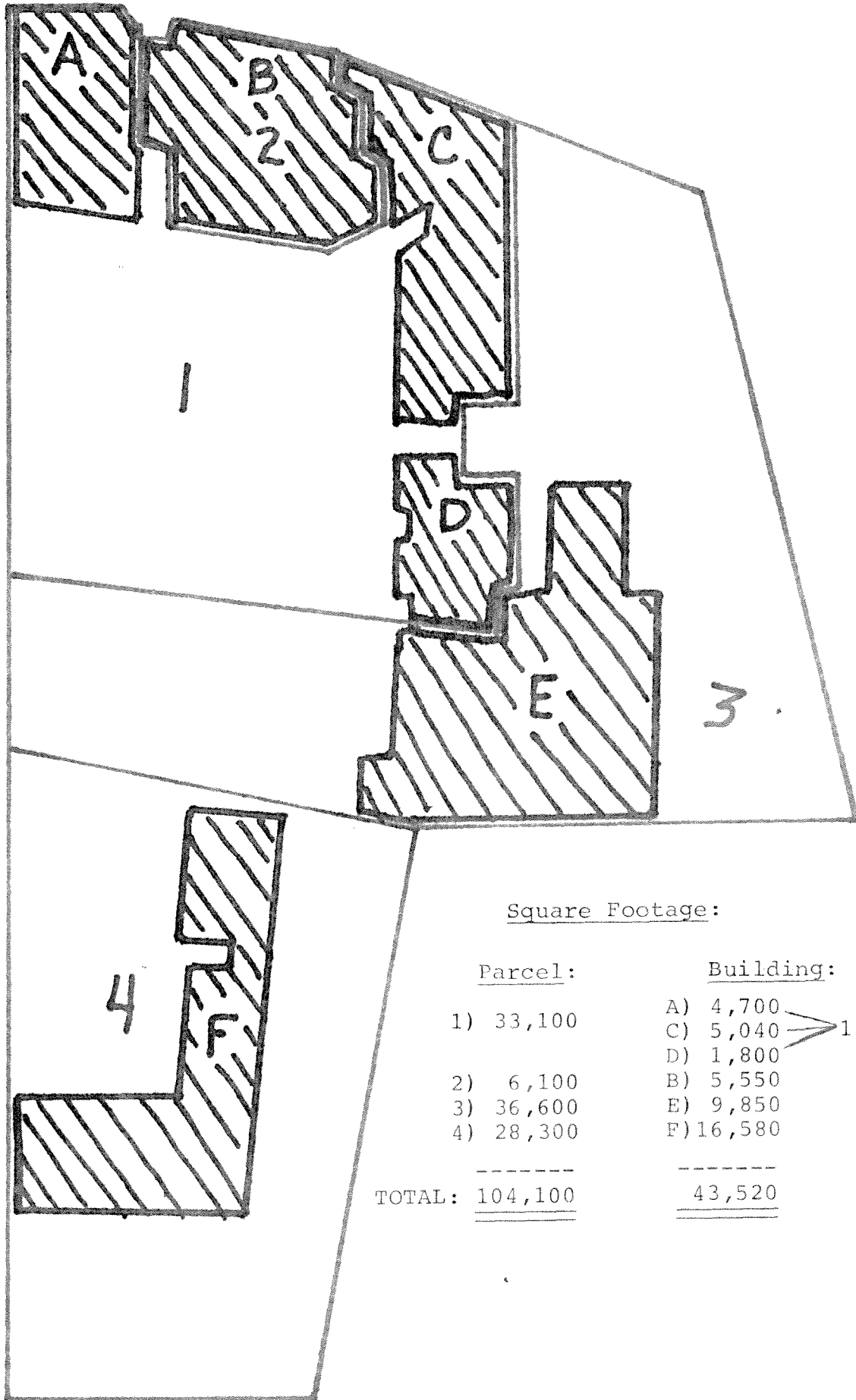
1815



Square Footage:

| <u>Parcel:</u> | <u>Building:</u> |
|----------------|------------------|
| 1) 8,970 | A) 5,400 |
| 2) 10,600 | B) 5,555 |
| 3) 10,430 | C) 1,600 |
| 4) 8,940 | |
| ----- | ----- |
| TOTAL: 38,940 | 12,555 |
| ===== | ===== |

S. California Blvd.



Square Footage:

| <u>Parcel:</u> | <u>Building:</u> | |
|-----------------------|------------------|----------|
| 1) 33,100 | A) 4,700 | } 11,540 |
| | C) 5,040 | |
| | D) 1,800 | |
| 2) 6,100 | B) 5,550 | |
| 3) 36,600 | E) 9,850 | |
| 4) 28,300 | F) 16,580 | |
| <u>TOTAL: 104,100</u> | <u>43,520</u> | |



April 18, 1986

MERLE HALL INVESTMENTS
1111 Civic Drive
Suite 330
Walnut Creek, CA 94596

Attn: Merle Hall

Re: Mt. Diablo Blvd.

Dear Mr. Hall:


In accordance to your request we have estimated the proposed structures to be erected on your property at 182125 Mt. Diablo Blvd., Walnut Creek, California.

I have personally visited the site. Due to the location of the existing buildings and the irregular shape of the rear property, you could encounter some restrains with the design of the structures. However, we have estimated the most economical way of construction using average quality finishings as the guidelines.

Our pricing source for the structures are Lee Saylor cost data. In addition to these sources we have used in-house cost information of a parking structure that now is in bidding process. We have also calculated a standard Construction duration of one year.

If you need any additional information please feel free to call or write.

Very truly yours,


Karl R. Nyström
Construction Manager

KRN:ljt

WESTERN PROJECT SERVICES, INC.

KARL R. NYSTROM

PRESIDENT

PROJECT MANAGEMENT AND CONSULTING with responsibilities including multi-project management, budgeting and control. Supervision of construction managers. Design of MIS documentation and implementation of same.

SUMMARY: Over twenty years of diversified experience: Design, General Contracting and Owner/Developer representation. Skilled in all facets of the Construction Industry and experience in working with large scale development teams. Have engaged in every aspect of project development.

RESPONSIBILITIES

President for Western Project Services, Inc., and in charge of all project management consultant services. Participates in the development of all Western's projects. Also responsible for all construction activities and the day-to-day operations. Extensive involvement in predesign feasibility studies, design and construction management. Responsibilities include the preparation of client contracts, evaluation procedures and material alternatives design and construction practices, purchasing, bid packaging and control mechanisms as relate to budgets and construction progress observation.

PROFESSIONAL BACKGROUND

Bachelor of Science - Civil Engineering - 1958
VASA Technical Institute of Finland

Masters of Business - International Marketing - 1973
University of Hartford, Connecticut

University of California, Berkeley - Present
Lecturer in Construction Management

PROJECT MANAGEMENT AND CONSULTING EXPERIENCE

Until starting up Western Project Services, Inc., Karl R. Nystrom has serviced a multitude of clients on various major projects throughout California.

Experience has included assisting Clients in the selection of Architect/Engineers, other facility consultants and in the preparation of data supportive of certificate of need applications. As an active participant with the Client's team, consults on time and cost constraints during the programmatic, schematic design, design development, and construction stages of a project.

Directs the preparation of scope/budgets from program information and preliminary drawings, providing a solid basis for control of construction time and costs. During the preconstruction phase, budgets and schedules are monitored, evaluated, and updated for use in determination of the bid/negotiate/award procedure. These and other control procedures are regularly reviewed and monitored through a series of meetings with the Client and Architect/Engineer during construction.

PRIOR EXPERIENCE

Worked as Manager in charge of Design and Construction for large real estate developers. Has designed computerized Management Information Systems (MIS). Organized Construction Management groups for large national and overseas projects. Thorough knowledge of the Construction Industry including commercial, industrial, shelter, and specialty projects. Knowledge of mechanical and electrical design and construction.

Has managed \$10 million and larger projects throughout the nation from inception to tenant move in. Has managed the design and construction of over 3500-units apartment as well as single housing projects. Attached is a listing of past and present project experience.

WESTERN PROJECT SERVICES, INC.

Karl R. Nystrom
Consultant and President

PAST AND PRESENT PROJECT HISTORY

PROJECT: Walnut Creek Center I & II
Walnut Creek, California

SIZE & TYPE: 500,000 SF 7-story office and parking complex.
Cast in place post tension concrete.

DUTIES & CLIENT: Construction Manager for:
Carma Developers
595 Market Street
San Francisco, CA 94105
Dale Moffett

YEAR: 1980-82

PROJECT: California Center
Sacramento, California

SIZE & TYPE: 300,000 SF office building.
Light steel with glass and tile curtain walls.

DUTIES & CLIENT: Same as above.

YEAR: 1980-82

PROJECT: Salvio Pacheco Square
Concord, California

SIZE & TYPE: 120,000 SF 3-story office and retail complex.
Light steel, wood and stucco. Design and build.

DUTIES & CLIENT: Construction Manager for:
IRM Corporation
1443 Danville Blvd.
Alamo, CA 94507
A. L. Walburg

YEAR: 1982-83

PROJECT: Wilson Building
San Francisco, California

SIZE & TYPE: 70,000 SF 7-story office and retail building.
80 year old brick and concrete.
Seismic upgrade and Tenant Improvements.

DUTIES & CLIENT: Same as Pacheco Salvio Square.

YEAR: 1981-present

PROJECTS: Various apartment projects throughout the nation.

SIZE & TYPE: Garden Light frame from 100-500 unit multi-family projects.

DUTIES & CLIENT: District Manager in charge of all construction subcontracting for 1500 units/year.

Kassuba Development Corp.
Palm Beach, Florida
Nick Reich, President

YEAR: 1973-75

PROJECT: Milvia Center Building
Berkeley, California

SIZE & TYPE: 40,000 SF 7-story office building.
Steel moment frame with precast concrete and glass curtain walls.

DUTIES & CLIENT: Construction Manager for:
Toltec Development Corp.
2118 Milvia Street
Berkeley, California
Vera Leo, President

YEAR: 1982-present

PROJECTS: Various banking and office facilities throughout Northern California and overseas.

SIZE & TYPES: From single banking units to large multi-story, high-rise buildings.

DUTIES: Manager, Design and Construction
Bank of America
San Francisco, California
Ray Wirta, President CSC

YEAR: 1974-76

PROJECTS: Various Restaurants on the West Coast.

SIZE & TYPE: 4,000 SF and larger freestanding as well as in-line Straw Hat Pizza Restaurants.

DUTIES & CLIENT: Project Management for all design and building activities.
Straw Hat Restaurant Corporation
6400 Village Parkway
Dublin, CA 94566
Chuck Douglass

YEAR: 1978-79

PROJECTS: Various apartment projects, condos (FHA and conventional) throughout the San Francisco Bay Area.

SIZE & TYPE: Garden Light framed, 50-200 units multi-family projects.

DUTIES & CLIENT: Construction Manager in charge of Design and Construction. Day to day supervision of all Designers and General Contractors.
American Development Corporation
Larkspur, California
John Hoffmeier, District Manager

YEAR: 1977-78

PROJECTS: Various housing projects throughout the East Coast.

SIZE & TYPE: Garden Light framed, 30-350 unit multi-family and single-family housing projects.

DUTIES: Manager of Production for all construction activities.
Achenbach Realty
Essex, Connecticut
George Achenbach, President

YEAR: 1971-73

COST OF 19,000 SQUARE FOOT ADDITION

1821/25 Mt. Diablo Blvd
Walnut Creek, California

OFFICE STRUCTURE

The 3,800 SF footprint will create some higher than usual costs. The exterior cladding will have a high cost contribution, elevator is needed, every floor to have restrooms etc.

The total hard construction costs would then be \$72.00/SF for shell and core and a \$38.00/SF TI cost is estimated. This includes all contractors O.H. and profits. All five stories will be above ground.

PARKING GARAGE

Due to the irregular shape of the site, the parking garage would have been somewhat inefficient. Layout preliminary studies show that 27 vehicles or 370 SF per vehicle, would be the ultimate usage for each 10,000 SF level. Therefore, we need 4 levels at 27 vehicles to obtain 108 cars. We assume that 2 stories will be below ground, and 2 stories above the ground.

The total hard construction costs for the parking garage is estimated at $\$24.00 \times 40,000 \text{ SF} = \$960,000$ including all Contractors O.H. & Profits.

Enclosed please find a detailed breakdown of other costs associated with the construction of the garage and office building.

TOTAL GARAGE COSTS (1986 Pricing)

TOTAL HARD CONSTRUCTION

| | | |
|---|---------------|--------------|
| 40,000 SF x 24.00/SF | \$ 960,000 | |
| Architectural/Structural Design Fees | <u>57,600</u> | \$ 1,017,600 |

SOFT COSTS

| | | |
|---|---------------|---------|
| Civil, Soils, Testing, Traffic Fire Safety, etc... | 58,000 | |
| Hookups; Sewer, Water Drainage, PG&E, etc... | 32,000 | |
| Development/Supervision and overhead | <u>38,400</u> | 128,400 |

CONTINGENCIES & ESCALATION on Construction Costs 48,000

FINANCING COSTS (1,145,000)

| | | |
|---|---------------|---------|
| Loan Fees - 3 Points | 34,400 | |
| Course of Construction Interest (1,145,000 x .50 x 1 year x 12.0%) | <u>68,700</u> | 103,100 |

TOTAL COST OF PROJECT \$ 1,297,100

TOTAL OFFICE BUILDING COSTS (1986 Pricing)

TOTAL HARD CONSTRUCTION

| | | |
|---|----------------|--------------|
| 19,000 Shell & Core @ 72.00 (All costs include Contractor O.H. and Profits) | \$ 1,368,000 | |
| Architectural & Structural Design Fees | 109,400 | |
| T.I.'s - 90% x 19,000 SF x \$38.00/SF | <u>649,800</u> | |
| | | \$ 2,127,200 |

SOFT COST

| | | |
|---|---------------|---------|
| Civil, Soils, Testing, Traffic, Fire, etc... | 85,800 | |
| Hookups; Sewer, Water Drainage PG&E, etc... | 25,000 | |
| Development/Supervision and overhead | <u>80,000</u> | |
| | | 190,800 |

CONTINGENCY & ESCALATION on Construction Costs 100,000

FINANCING COSTS (\$2,300,000)

| | | |
|--|----------------|---------|
| Loan Fees - 3 Points | 38,900 | |
| Course of Construction (2,300 x .50 x 1 year x 12.0%) | <u>138,000</u> | |
| | | 176,900 |

\$ 2,594,900



California Fair Political Practices Commission

April 22, 1986

Merle D. Hall
Merle Hall Investments
1111 Civic Drive, Suite 330
Walnut Creek, CA 94596

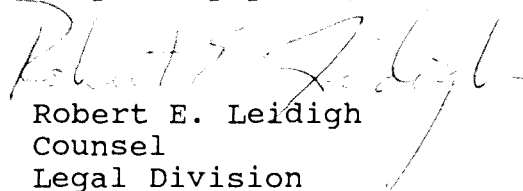
Re: 86-061

Dear Mr. Hall:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh



California Fair Political Practices Commission

March 4, 1986

David Benjamin
City Attorney
City of Walnut Creek
P.O. Box 8039
Walnut Creek, CA 94586

Re: Your Request for Advice on
behalf of Merle Hall
Our File No. A-86-061

Dear Mr. Benjamin:

This is in response to your letter, dated February 19, 1986, requesting formal written advice on behalf of Merle Hall, Councilmember of the City of Walnut Grove. You have stated the material facts as follows.

FACTS

On November 5, 1985, the voters of Walnut Creek approved an initiative ordinance entitled "Traffic Control Initiative," Measure H on the November ballot. The fundamental provision of Measure H is Section 2(a), which states in part as follows:

No buildings or structures shall be built in the City of Walnut Creek unless (1) the A.M. and P.M. peak hour volume-to-capacity ratio of all intersections on Ygnacio Valley Road and all intersections within the Core Area along Main Street, Broadway, California Boulevard, Mt. Diablo Boulevard, Civic Drive and Parkside Drive is .85 or less....

Because some of the intersections specified by Measure H do not, at this time, meet a volume-to-capacity ratio of .85 or less at the A.M. and P.M. peak hours, the prohibition imposed by Section 2(a) took effect on November 29, 1985, the date Measure H itself took effect.

Although Section 2(a) prohibits the construction of any building or structure within the City, Section 2(b) sets forth seven categories of exemptions from this building prohibition. Buildings or structures which qualify under any of these

exemptions may be built even if the traffic service level established by the Measure is not reached. The exemptions pertinent to this request are those stated in subsections (1) and (2), which provide as follows:

(1) Commercial buildings up to 10,000 square feet on a single parcel....

(2) Housing projects up to 30 units on a single parcel in the Core Area and 10 units on a single parcel outside the Core Area, provided that housing built in an existing residential district does not exceed the density allowed by the zoning ordinance for that district as of April 26, 1985....

Measure H defines the word "parcel" to mean "... a single parcel of record on the date of enactment of this ordinance" (Measure H, Section 2(3)(1)). As used in Section 2(b)(2), the term "Core Area" refers generally to the downtown area of Walnut Creek as defined in the City's General Plan.

Soon after the passage of Measure H, a number of questions were presented which required definition or interpretation of its key provisions. One such question concerns the proper interpretation of Section 2(b)(1) and (2), regarding the construction of commercial buildings or housing projects on a single parcel. In some cases, one person may own two or more contiguous parcels. Under Measure H, that property owner would be allowed to construct a commercial building up to 10,000 square feet on each parcel; alternatively, the owner would be allowed to construct a housing project of up to 30 units on each parcel if the property is located in the Core Area, or up to ten units on each parcel if the property is located outside the Core Area.

Because Measure H allows a certain amount of development on each separate parcel, several developers asked the City whether the allowable development potential of two or more contiguous parcels could be aggregated and distributed across the parcels without regard to parcel boundaries. It was argued that shifting development across parcel lines would permit projects of superior design with fewer impacts on traffic circulation.

For example: Under Measure H, the owner of three contiguous parcels would be allowed to construct three separate commercial buildings, one on each parcel, not to exceed 10,000 square feet each. One commercial building of 30,000 square feet, however, could allow for a more pleasing design and a more efficient use of the property by consolidating such common requirements as parking, stairs and hallways, elevators and

David Benjamin
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Page 3

heating, ventilation and air conditioning equipment. Similarly, the owner of five contiguous parcels in the Core Area would be allowed, under Measure H, to construct 30 dwelling units on each parcel. A consolidated project of 150 units, however, could improve traffic circulation by decreasing driveway cuts and allowing more land to be used for open space and common recreational facilities.

This issue of the aggregation and distribution of development rights and other questions of interpretation were transmitted to the City Council on December 17, 1985. Upon the advice of the City Attorney the question of the aggregation of development rights, and other land use issues, was referred to the Planning Commission for a report and recommendation.

Following a public hearing, the Planning Commission concluded that the aggregation and distribution of development rights on contiguous parcels would have a beneficial effect on traffic circulation and urban design. It therefore recommended to the City Council that Measure H be interpreted to allow the aggregation of development rights for contiguous parcels under the same ownership, provided that the ultimate density of development for all parcels does not exceed the development that would have been permitted for each parcel individually.

In the absence of Councilmember Hall's participation, the City Council is equally divided on the question of adopting the Planning Commission's recommendation. The City Council has agreed to continue its discussion on this item to allow Councilmember Hall to seek advice from the Commission.

Councilmember Hall has the following financial interests which may be affected by the City Council's decision on the aggregation of development rights under Measure H:

1. Councilmember Hall is the President and sole shareholder of Dynamic Agents, Inc., a real estate brokerage and management company doing business as "Merle Hall Investments." Councilmember Hall's interest in his company exceeds \$100,000 and his income from the company exceeds \$10,000 per year.

2. Councilmember Hall has a direct investment in the following real property in Walnut Creek which is composed of two or more contiguous parcels:

- a. Councilmember Hall owns interests in real property located at 1815, 1821 and 1825 Mt. Diablo Boulevard (.89 acre). He is the sole owner in fee of the property at 1821 and 1825 Mt. Diablo; he has an undivided 1/3 interest, as tenant in

common, of the property at 1815 Mt Diablo Boulevard. This property is composed of separate but contiguous parcels and is improved with three single-story buildings, totalling approximately 12,500 square feet, that are leased for office use. The value of this property exceeds \$100,000.

b. Councilmember Hall also owns interests in real property located on California Boulevard in Walnut Creek and commonly known as "Petticoat Lane." This property is approximately 2.39 acres in size, and is composed of four separate but contiguous parcels. It is improved with six one or two-story buildings totalling approximately 43,500 square feet that are leased to various tenants for commercial use. The value of this property exceeds \$100,000.

3. Councilmember Hall's company, Merle Hall Investments, manages other property located at 1535, 1540 and 1544 Third Avenue. This property consists of three parcels zoned M-2 (Multiple Family Residential). It is improved with 3 fourplex residential structures. For the management of this property Merle Hall Investments receives income in excess of \$1,001 but less than \$10,000 per year.

QUESTIONS

Councilmember Hall wishes to know whether he can:
(1) participate in the City Council's decision to allow aggregation and distribution of development rights among contiguous parcels under Measure H, or (2) participate in the City Council's decision to place an amendment to Measure H on the June ballot.

CONCLUSIONS

(1) Councilmember Hall should not participate in the City Council's decision regarding the interpretation of Measure H if it is determined that there would be a material financial effect as to any of his economic interests. (2) Likewise he should not participate in the Council's decision regarding placing the measure on the ballot.

ANALYSIS

The Political Reform Act^{1/} prohibits a public official from making, participating in making or in any way attempting to use

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

his or her official position to influence a governmental decision in which he or she has a financial interest. Section 87100.

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 its effect on the public generally, on the official or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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(a)-(e).

1. Merle Hall Investments

Councilmember Hall has a direct investment (Section 87103(a)) of more than \$1,000 in Merle Hall Investments, the company is a source of income (Section 87103(c)) of more than \$250 per year to Councilmember Hall and he is an officer (Section 87103(d)) of that business entity. Consequently, Councilmember Hall will be required to disqualify himself if the City Council's decision will have a reasonably foreseeable

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material financial effect, distinguishable from its effect on the public generally,^{2/} on Merle Hall Investments.

The effect of a decision, in the case of Merle Hall Investments, will be material if the decision will result in an increase or decrease in the gross revenues of the company of \$10,000 or more in a fiscal year or a similar affect upon its assets. (See, 2 Cal. Adm. Code Section 18702.2(g).)

Arguably, it may be reasonably foreseeable that the City Council's decision will result in an increase or decrease in the gross revenues of Merle Hall Investments of \$10,000 or more during a fiscal year. However, without additional facts regarding the company's past annual revenues, its share of the real estate market and the possible impact of the decision on the real estate market, we are unable to conclude that Councilmember Hall's interests in Merle Hall Investments would require him to disqualify himself from participating in the aggregation decision.

If, however, it can be shown that Councilmember Hall's income from Merle Hall Associates could be increased or decreased by \$250 or more as a result of this decision, then disqualification would be required pursuant to 2 Cal. Adm. Code Section 18702.1.

2. Councilmember Hall's Real Property Interests

You have stated that in your view "it is reasonably foreseeable that the market value of contiguous parcels under the same ownership would increase if the limited development rights afforded by Measure H could be aggregated and distributed across those parcels without regard to parcel boundaries." Councilmember Hall agrees that this interpretation of Measure H "may improve the value of development rights allowed under Measure H."

While both of you agree that there could be an increase in the fair market value of Councilmember Hall's real property interests should the City Council decide to interpret Measure H to allow aggregation of contiguous parcels, there are two issues that must be addressed. First, Councilmember Hall emphatically believes it is either not feasible, or in some

^{2/} Generally, an industry, trade or profession does not constitute a significant segment of the general public; therefore, the "public generally" exception is not applicable to Merle Hall Investments. See, 2 Cal. Adm. Code Section 18703.

cases not practical, for him to take advantage of any additional development rights that would be available to him under the aggregation interpretation of Measure H. Secondly, we have not been provided with any data concerning the probable magnitude of financial effect of this decision on the fair market value of Councilmember Hall's real property holdings.

With respect to the issue of whether Councilmember Hall would, in fact, utilize any additional development rights afforded by the aggregation interpretation, the Commission held in the Legan Opinion:^{3/}

The intended or probable use for property potentially benefited or harmed by a decision is not considered in the analysis of the reasonably foreseeable effects of a decision. The decision's effect upon the property's current fair market value is the appropriate test.

9 FPPC Opinions at 15.

In Legan, County Supervisor Legan's employer (Kaiser) insisted that it would not utilize the increased permissible housing density that would be available for its Hillside property but rather intended to keep this property as an undeveloped buffer zone for its quarry and cement plant operations. In refusing to adopt Supervisor Legan's approach as to what was the reasonably foreseeable effect of the governmental decision on Kaiser's real property holdings, the Commission stated:

There are several problems with considering such an approach. First, we must look at the objective effect upon the value, not whether the owner will act to realize the increased value by selling or developing the property. The second problem is that there is no guarantee that Kaiser won't change its use of the property once the decision has been made and the benefit conferred.

9 FPPC Opinions at 9.

Consequently, Councilmember Hall's intentions with respect to the future use of his property cannot be taken into consideration in determining the reasonably foreseeable financial effect of the decision on his real property

^{3/} Opinion requested by Thomas L. Legan, 9 FPPC Opinions 1, No. 85-001, August 20, 1985.

holdings. For example, a developer might pay more for the Mt. Diablo Boulevard property because he or she could add improvements to the 12,500 square feet of single-story buildings thereby increasing the office space to as much as 30,000 square feet, if the interpretation is adopted by the Council to permit aggregation of parcels. On the other hand, this might not be feasible and there might be no significant effect upon the fair market value of these parcels.

Even though the City Council's decision could have a reasonably foreseeable financial effect on Councilmember Hall's real property holdings, disqualification would not be required unless the financial effect would be material. Under 2 Cal. Adm. Code Section 18702(b)(2)(B), the effect of this decision will be material if it will increase or decrease the total fair market value of all of Councilmember Hall's real property holdings by at least \$1,000 and will also be at least \$10,000 or one-half of 1 percent, whichever is less.

Since we have not been provided with any facts concerning the magnitude of the probable effect of this decision on Councilmember Hall's real property holdings we cannot conclude whether or not the financial effect of this decision will be material. If, however, you believe that the materiality criteria have been satisfied, you should advise Councilmember Hall that he may not participate in or attempt to use his official position to influence the City Council's decision on the interpretation of Measure H.

3. The Property Managed by Merle Hall Investments

The owners of the property managed by Merle Hall Investments are sources of income in excess of \$250 (Section 87103(c)) to Councilmember Hall as he is the sole shareholder of Merle Hall Investments. (See, Section 82030(a).) Therefore, disqualification will be required if the City Council's decision could have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the owners of these properties by way of an effect upon the fair market value of their parcels.

Again, as we have no facts concerning these persons or entities we can offer no conclusion as to whether the financial effect on these sources of income to Councilmember Hall would be material.

4. The Towne Centre Shopping Complex

You have, subsequent to your written request (on February 26), orally sought our advice on behalf of Councilmember Hall regarding a related matter.

David Benjamin
March 4, 1986
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By its terms, Measure H would prevent the construction of the Towne Centre Shopping Complex. Based upon our previous advice to you related to this project (Advice Letter No. A-83-266), Councilmember Hall has disqualified himself in the past with respect to decisions on this project. The project is a large commercial complex covering several blocks in downtown Walnut Creek and would involve a hotel, Macy's store and numerous other retail outlets, as well as an adjacent parking structure. Councilmember Hall's Mt. Diablo Boulevard and "Petticoat Lane" properties are situated nearby to the proposed Towne Centre Shopping Complex.

You have been informed that the developers of the proposed complex intend to ask the Council on Tuesday, March 4th, to place a measure on the June 1986 ballot which would exempt the Towne Centre Shopping Complex from the restrictions imposed by Measure H, thereby allowing the project to go forward. If the measure is not approved by the Council or if placed upon the ballot and defeated, the project cannot proceed unless the developers succeed in a court challenge to Measure H's applicability to the project. (In your legal analysis of Measure H for the ballot pamphlet, you pointed out that case law has held that local land-use ordinances may not affect redevelopment projects; the Towne Centre project is a redevelopment project.)

You have asked whether, in light of our advice in the Thorson letter, No. A-85-221, Councilmember Hall, despite what you and he have determined to be a disqualifying financial interest in the proposed project, may participate in the Council's decision regarding placing the question on the June ballot. Because of the time frame in which such a decision must be made by the Council, we have not had sufficient time in which to consider the matter in great depth. However, it is our belief that the unique factual content present in the Thorson situation is not present here. Consequently, we conclude that if Councilmember Hall is disqualified with respect to major "go or no go" decisions relating to the Towne Centre Shopping Complex, he is also disqualified from participating in the decision to place the matter on the ballot.

In this instance, the project's developers seek the ballot measure as a way to allow the project, which is otherwise blocked, to go forward. If Councilmember Hall were a consultant hired by the developers to represent them before the Council to seek the ballot measure, he would be disqualified under the "nexus" provisions of 2 Cal. Adm. Code Section 18702(b)(3). He could not accomplish in his role as a councilmember what he is being paid to do as a private consultant. Clearly, it would be inappropriate to permit him

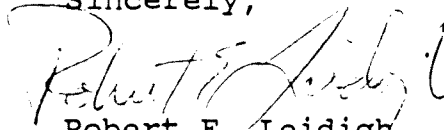
David Benjamin
March 4, 1986
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to participate in the Council's deliberations simply because the matter would be placed before the voters for ultimate determination. Although Councilmember Hall's disqualifying interest here is his ownership of nearby property, not a "nexus" relating to income, the Act does not distinguish between degrees or types of disqualifying financial interests. Therefore, we conclude that participation would be inappropriate in this circumstance if disqualification is required.

You have also asked the related questions of whether Councilmember Hall could participate in a Council decision to urge a position of support or opposition to the measure if it were to be placed on the ballot (either by the Council or by initiative measure). We advised you that he may not. However, he may, as an individual councilmember, take a public position on the measure, may urge the citizens of Walnut Creek to vote in a particular way and may contribute to the campaign for the position of his choice; subject, of course, to the restriction that he not use public funds in this regard.

If we can be of further assistance to you or Councilmember Hall concerning this matter please to not hesitate to contact us again.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh



FEB 20 9 02 AM '86

February 19, 1986

Mr. Robert Leidigh
Chief of Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95804

Re: Request for Advice

Dear Mr. Leidigh:

I have been authorized by Merle Hall, Council Member of the City of Walnut Creek, to submit on his behalf this request for formal written advice pursuant to Government Code §83114(b). Council Member Hall's mailing address is 1111 Civic Drive, Walnut Creek, California 94596. This request seeks guidance on Council Member Hall's obligation under the conflict of interest provisions of the Political Reform Act of 1974.

The facts material to the consideration of the questions presented below are as follows:

I. STATEMENT OF FACTS.

On November 5, 1985, the voters of Walnut Creek approved an initiative ordinance entitled "Traffic Control Initiative", Measure H on the November ballot. (A copy of Measure H, marked Exhibit A, is included with this request.) The fundamental provision of Measure H is Section 2(a), which states in part as follows:

No buildings or structures shall be built in the City of Walnut Creek unless (1) the A.M. and P.M. peak hour volume-to-capacity ratio of all intersections on Ygnacio Valley Road and all intersections within the Core Area along Main Street, Broadway, California Boulevard, Mt. Diablo Boulevard, Civic Drive and Parkside Drive is .85 or less....

Because some of the intersections specified by Measure H do not, at this time, meet a volume-to-capacity ratio of .85 or less at the A.M. and P.M. peak hours, the prohibition imposed by Section 2(a) took effect on November 29, 1985, the date Measure H itself took effect.

Mr. Robert Leidigh
February 19, 1986
Page 2

Although Section 2(a) prohibits the construction of any building or structure within the City, Section 2(b) sets forth seven categories of exemptions from this building prohibition. Buildings or structures which qualify under any of these exemptions may be built even if the traffic service level established by the Measure is not reached. The exemptions pertinent to this request are those stated in subsections (1) and (2), which provide as follows:

(1) Commercial buildings up to 10,000 square feet on a single parcel;....

(2) Housing projects up to 30 units on a single parcel in the Core Area and 10 units on a single parcel outside the Core Area, provided that housing built in an existing residential district does not exceed the density allowed by the zoning ordinance for that district as of April 26, 1985;

Measure H defines the word "parcel" to mean "...a single parcel of record on the date of enactment of this ordinance" (Measure H, Section 2(e)(1)). As used in Section 2(b)(2), the term "Core Area" refers generally to the downtown area of Walnut Creek as defined in the City's General Plan. (The nature and characteristics of the Core Area were described in more detail in Council Member Hall's request for advice dated November 28, 1983, your advice number A-83-266).

Soon after the passage of Measure H, a number of questions were presented which required definition or interpretation of its key provisions. One such question is central to this request: it concerns the proper interpretation of Section 2(b)(1) and (2), regarding the construction of commercial buildings or housing projects on a single parcel. In some cases, one person may own two or more contiguous parcels. Under Measure H, that property owner would be allowed to construct a commercial building up to 10,000 square feet on each parcel; alternatively, the owner would be allowed to construct a housing project of up to 30 units on each parcel if the property is located in the Core Area, or up to ten units on each parcel if the property is located outside the Core Area.

Because Measure H allows a certain amount of development on each separate parcel, several developers asked the City whether the allowable development potential of two or more contiguous parcels could be aggregated and distributed across the parcels without regard to parcel boundaries. It was argued that shifting development across parcel lines would permit projects of superior design with fewer impacts on traffic circulation.

Mr. Robert Leidigh
February 19, 1986
Page 3

For example: Under Measure H, the owner of three contiguous parcels would be allowed to construct three separate commercial buildings, one on each parcel, not to exceed 10,000 square feet each. One commercial building of 30,000 square feet, however, could allow for a more pleasing design and a more efficient use of the property by consolidating such common requirements as parking, stairs and hallways, elevators and heating, ventilation and air conditioning equipment. Similarly, the owner of five contiguous parcels in the Core Area would be allowed, under Measure H, to construct 30 dwelling units on each parcel. A consolidated project of 150 units, however, could improve traffic circulation by decreasing driveway cuts and allowing more land to be used for open space and common recreational facilities.

This issue of the aggregation and distribution of development rights and other questions of interpretation were transmitted to the City Council on December 17, 1985 (See Council Agenda Summary, December 17, 1985, attached to this request as Exhibit B. The aggregation issue is discussed in that memorandum under "Issue No. 5."). Upon the advice of this office, the question of the aggregation of development rights, and other land use issues, was referred to the Planning Commission for a report and recommendation.

Following a public hearing, the Planning Commission concluded that the aggregation and distribution of development rights on contiguous parcels would have a beneficial effect on traffic circulation and urban design. It therefore recommended to the City Council that Measure H be interpreted to allow the aggregation of development rights for contiguous parcels under the same ownership, provided that the ultimate density of development for all parcels does not exceed the development that would have been permitted for each parcel individually. The Planning Commission's recommendation on this issue, and others, was then scheduled for a public hearing before the City Council on January 21, 1986. (See City Council Agenda Summary, dated January 21, 1986, attached to this request as Exhibit C; the aggregation issue is discussed in that memorandum as "Issue No. 3.")

Prior to the City Council meeting, I met with Council Member Hall to discuss the effect that his financial interests might have on his ability to participate in the decision on the aggregation of development rights, and other issues that would be presented to the City Council at the same time. Based upon my review of Council Member Hall's financial interests, the applicable provisions of the Political Reform Act and the Commission's regulations and opinions, I advised Council Member Hall to abstain from the discussion and decision on the aggregation of development rights, and he did so.

Mr. Robert Leidigh
February 19, 1986
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Following the public hearing before the City Council, however, the Council was unable to reach a decision on whether to permit the aggregation of development rights on contiguous parcels. Two Council Members believed that the aggregation of development rights should be permitted; two others believed that the language of Measure H should be strictly adhered to and that development should only be allowed on individual parcels. I advised the City Council that, under the Political Reform Act, the need to resolve a tie-vote does not justify Council Member Hall's participation. Council Member Hall, however, seeks definitive advice on whether the conflict of interest provisions of the Act require him to abstain from participation on this issue. The Council agreed to continue its discussion on this item to allow Council Member Hall to seek advice from the Fair Political Practices Commission.

II. COUNCILMEMBER HALL'S FINANCIAL INTERESTS.

Council Member Hall has the following financial interests which may be affected by the City Council's decision on the aggregation of development rights under Measure H; financial interests which are not affected by this particular issue are omitted.

1. Council Member Hall is the President and sole shareholder of Dynamic Agents, Inc., a real estate brokerage and management company doing business as "Merle Hall Investments." Council Member Hall's interest in Merle Hall Investments exceeds \$100,000.00, and his income from the company exceeds \$10,000 per year.

2. Council Member Hall has a direct investment in the following real property in Walnut Creek which is composed of two or more contiguous parcels:

a. Council Member Hall owns interests in real property located at 1815, 1821 and 1825 Mt. Diablo Boulevard (.89 acre). He is the sole owner in fee of the property at 1821 and 1825 Mt. Diablo; he has an undivided 1/3 interest, as tenant in common, of the property at 1815 Mt. Diablo Boulevard. This property is composed of separate but contiguous parcels and is improved with three single-story buildings, totalling approximately 12,500 square feet, that are leased for office use. A site plan of this property, showing the boundaries of the individual parcels and the location of the existing improvements, is attached as Exhibit D. The value of this property exceeds \$100,000.00.

b. Council Member Hall also owns interests in real property located on California Boulevard in Walnut Creek and commonly known as "Petticoat Lane." This property is approximately 2.39 acres in size, and is composed of four separate but contiguous parcels. It is improved with six one- or two-story buildings totalling approximately 43,500 square feet that are leased to

Mr. Robert Leidigh
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various tenants for commercial use. A site plan of this property showing the individual parcels and the location of the existing improvements is attached as Exhibit E. The value of this property exceeds \$100,000.00.

3. Merle Hall Investments manages the property located at 1534, 1540 and 1544 Third Avenue. This property consists of three parcels zoned M-2 (Multiple Family Residential). It is improved with 3 fourplex residential structures. For the management of this property, Merle Hall Investments receives income in excess of \$1,001 but less than \$10,000 per year. A parcel map of this property, showing the boundaries of the individual parcels, is attached as Exhibit F.

III. QUESTIONS PRESENTED.

A. May Council Member Hall participate in the City Council's deliberations and decision on whether Measure H allows the aggregation and distribution of development rights among contiguous parcels?

1. Is it "reasonably foreseeable" that Council Member Hall's participation on this issue would affect his financial interests?

IV. DISCUSSION.

To assist the Commission in the formulation of its advice, it may be helpful to state the basis for my earlier advice to Council Member Hall and, in addition, the arguments which Council Member Hall has advanced in favor of his participation.

Briefly stated, it was my view that it is reasonably foreseeable that the market value of contiguous parcels under the same ownership would increase if the limited development rights afforded by Measure H could be aggregated and distributed across those parcels without regard to parcel boundaries. Such an interpretation would allow, in at least some cases, the construction of a project of superior design, and would permit efficiencies with regard to the construction and use of common facilities such as parking, stairs and hallways, elevators, HVAC systems and public areas. Although Council Member Hall has no plans to redevelop or sell his interests on Mt. Diablo Boulevard or Petticoat Lane, the Council's decision on the aggregation issue may increase the market value of these properties in the future. Further, it was my view that Council Member Hall's participation on this issue could not be justified under the "public generally" exception.

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Council Member Hall submits the following arguments in favor of this participation:

I agree that an interpretation of Measure "H" that allows aggregation of parcels may improve the value of development rights allowed under Measure "H". However, the nature of my contiguous real property interests is that of assets held for the long term production of income as opposed to land held for development. It is impractical or not feasible to develop my interests any further under the limited development rights allowed under Measure "H", or they are already fully developed to the extent allowed by Measure "H". Therefore, as to my interests, any financial benefit which may result from the decision would be purely speculative and not clear, direct, immediate or measurable and thus not "reasonably foreseeable" within the meaning of the Act.

A. The Mt. Diablo Boulevard Property.

Although Measure "H" would theoretically allow up to 40,000 square feet of building area on these four parcels, it is not practical or feasible to do so because:

1. Separate ownership of 1815 - I am the sole owner of parcels 1-3 on Exhibit "E". I own a 1/3 undivided interest, as Tenant in Common, in parcel 4. That parcel cannot be developed in conjunction with parcels 1-3 unless I acquire the remaining 2/3 interest in it, or enter into a formal development partnership with the other owners. So far I have been unable to do either. My ability to accomplish this in the future is purely speculative as opposed to direct or immediate and therefore not "reasonably foreseeable" under the meaning of the Act.

2. Long term lease of 1821-1825 - Effective January 1, 1986, I entered into a five-year lease of these premises including both buildings and the land. In order to develop the property further the tenant would have to give up the lease.

3. Redevelopment of 1821-1825 not feasible - Even if the lease could be terminated, it would not make economic sense to do so. The present capitalized value of the rent is much greater than the value of the land for a 30,000 sq.ft. project, whether or not it is aggregated. Therefore the "highest and best use" is to retain the property for the production of income.

I concede that some day the buildings may wear out and that a new 30,000 sq. ft. building with a parking structure may attract so much more rent that it would then be economically viable for me to demolish the present buildings and build a new larger one. But, because one of the buildings was remodeled four years ago and the other is only 13 years old the eventuality of this occurring

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could be very remote. In any event it is impossible, at this time, to predict when it could occur or what financial trade-offs would result if aggregation were allowed.

In summary, any potential benefit resulting from aggregation of my property if it is ever re-developed is speculative, long term, undefineable, not immediate or direct and certainly has no bearing on the present capitalized value of the property which is much greater than its value as land for development. Therefore no material financial effect is "reasonably foreseeable" within the meaning of the Act. In the interest of making this presentation as concise as possible, I have omitted the calculations which support my financial arguments. Upon request of the Commission, however, I would be pleased to provide that information.

4. Additional development of 1821-1825 is not feasible. Theoretically, the size of the existing buildings on the three parcels at this location could be increased by approximately 17,000 sq. ft. under Measure H. I concede that if there were no existing lease and if it were feasible to do this that the possibility of siting the expansion in one location by aggregating the parcels may have a financial effect.

However, because of the overall limited size of all the parcels combined, no additional building space can presently be added due to the lack of required parking area. In order to comply with the city's parking requirements, an underground parking structure large enough to handle both the existing and additional spaces would be required.

The cost of building a parking structure to serve 30,000 sq. ft. of building area is too much to justify adding only 17,000 sq. ft. of potential building. Therefore, the capitalized value of the current rent remains greater than the addition allowed under Measure H. This makes it impractical and not feasible to change the current use. Any financial effect of this decision on my interest in this property is not direct or immediate and therefore not "reasonably foreseeable" under the meaning of the Act. Again, I would be pleased to submit financial calculations which support these points upon the Commission's request.

B. Petticoat Lane Property.

This property is currently developed with more building space than would be allowed under Measure H. It is a viable retail center 90% occupied with a capitalized value many times greater than the value of land for a comparable sized project.


The only possible benefit of allowing aggregation of these

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parcels would be to rebuild with a totally different site plan. However, this would not be feasible unless the entire project burned to the ground and was rebuilt with insurance proceeds. This would not be a direct or immediate result of this decision and is therefore not "reasonably foreseeable" under the meaning of the Act.

C. 1534, 1540 and 1544 Third Avenue.


This property, managed by Merle Hall Investments, is zoned M-2 (Multiple Family Residential) which allows up to four residential units per parcel. Although Measure "H" would allow up to 10 units per parcel it does not allow more than the existing zoning density. Accordingly, I believe that this property is also developed to the maximum extent possible under Measure H. Therefore it is not "reasonably foreseeable" that this decision would result in any financial effect on Merle Hall Investments.

By 
MERLE HALL

V. CONCLUSION.

Thank you for your advice on this matter. If you have any questions, please feel free to call me or to call Council Member Hall directly. His number is (415) 933-4000.

Very truly yours,


DAVID BENJAMIN
City Attorney

DB:ct