



California Fair Political Practices Commission

March 19, 1987

Mary Jo Levinger
Town Attorney
P.O. Box 949
Los Gatos, CA 95031

Re: Your Request for Advice
Our File No. A-87-061

Dear Ms. Levinger:

You have requested advice on behalf of Thomas J. Ferrito and Robert L. Hamilton, Councilmembers of the Town of Los Gatos, concerning their duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. May Councilmembers Ferrito and Hamilton participate in decisions concerning the formation of a proposed parking assessment district for the downtown area where their businesses are located?
2. May Councilmembers Ferrito and Hamilton participate in decisions concerning an urgency interim zoning ordinance affecting the area where their businesses are located?

CONCLUSION

Based on the facts you have provided, Councilmembers Ferrito and Hamilton must disqualify themselves from participating in decisions concerning the formation of the parking assessment district and the urgency interim zoning ordinance. If participation of one of the disqualified councilmembers is legally required as to a particular decision, a method of random selection may be used to determine which councilmember may participate.

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

FACTS

The Town of Los Gatos is considering the formation of a \$2 million parking assessment district for the central business area. Under the town's current zoning ordinances, property owners and businesses in that area must provide adequate on-site parking for their customers. There is an urgency interim zoning ordinance in effect which permits properties in the central business area to be nonconforming as to parking. This urgency interim ordinance will expire at midnight on March 23, 1987, although it could be extended by the city council.

The proposed parking assessment district would relieve the property owners in the central business area of their parking deficiency under the zoning ordinance. All property owners in the parking assessment district would be required to pay an assessment to finance improvements to four parking lots in the central business area. Within thirty days after the formation of the assessment district, the property owners would be required to pay the assessment or a lien would be placed on their property. If a lien is placed on the property, the owner would be required to pay off the debt over 25 years at an interest rate of approximately 7.241 percent.

Councilmembers Ferrito and Hamilton operate businesses in the area of the proposed parking assessment district. Councilmember Ferrito is an attorney and leases office space in that area from Wade H. Hover. The proposed parking assessment on Mr. Hover's property is \$27,504.62. The estimated debt service over a 25-year period is \$2,596.89 per year. Councilmember Ferrito's lease has a pass-through provision concerning expenses such as utilities, insurance, taxes and assessments. Under this pass-through provision, Councilmember Ferrito's law office would pay 6 percent of the total parking assessment levied on Mr. Hover's property (i.e., \$155.81 per year).

Councilmember Hamilton operates a retail store in the proposed parking assessment area. Councilmember Hamilton's father owns the property where the store is located and leases part of it to Councilmember Hamilton. There is no written lease or rental agreement. The proposed parking assessment on the property is \$7,223.00. Estimated debt service is \$681.98 per year. Councilmember Hamilton has an oral agreement with his father that any pass-through of assessments would be less than \$1,000 per year.

The decisions pending before the town council involve the formation of the parking assessment district and the extension

of the urgency interim zoning ordinance concerning required on-site parking. If the parking assessment district is not approved and the urgency interim zoning ordinance is not extended, the use of buildings in the central business area would be limited, based on available on-site parking. The building where Councilmember Ferrito's office is located would be affected, but a good portion of the property would be available for use because of existing on-site parking. The building where Councilmember Hamilton's store is located would be severely affected because no on-site parking is available.

The proposed parking assessment district includes 186 parcels. These parcels constitute approximately 2 percent of the town's land area and 12 percent of the land zoned for commercial or office use. There are 520 business licenses issued by the town which show an address within the boundaries of the parking assessment district. This is 26.5 percent of the total business licenses issued by the town, excluding home occupation, contractors and apartments. There are 47 restaurants in the assessment district, which make up 47.5 percent of the total restaurants in the town.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has 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 its effect on the public generally, on the official or a member of his immediate family,^{2/} 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

^{2/} An official's "immediate family" are his spouse and dependent children. (Section 82029.)

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.

Councilmember Ferrito's law practice is an investment interest and a source of income which could be affected by the decisions on the assessment district and the urgency interim zoning ordinance. Because he has a three-year lease for his office space, Councilmember Ferrito also has an interest in real property which could be affected by the decisions.^{3/} Therefore, Councilmember Ferrito must disqualify himself from participating in decisions on the assessment district and the urgency interim zoning ordinance if those decisions would foreseeably and materially affect his law practice or the real property where his office is located in a manner that is distinguishable from the effect on the public generally.

Councilmember Hamilton's store is an investment interest and a source of income which could be affected by the decisions on the assessment district and the urgency interim ordinance. His leasehold interest in the real property where the store is located appears to be a month-to-month tenancy. (Civil Code Section 1943.) A periodic tenancy of one month or less is not an interest in real property for purposes of the Act. (Regulation 18233.) Therefore, Mr. Hamilton does not have an interest in real property which could require his disqualification from town council decisions. However, he must disqualify himself from participating in decisions concerning the assessment district or the urgency interim zoning ordinance if those decisions would foreseeably and materially affect his

^{3/} Section 82033 defines "interest in real property" to include leaseholds with a fair market value of \$1,000 or more. We presume that a three-year lease in downtown Los Gatos fits within this definition.

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store in a manner that is distinguishable from the effect on the public generally.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is a mere possibility, it is not reasonably foreseeable. (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975), copy enclosed.)

The foreseeable effects of the parking assessment district decision are the levy of an assessment on properties within the district and the relief from any parking deficiency under the town's zoning ordinance. The foreseeable effects of a decision to reject the parking assessment proposal are saving the expense of the assessment and limiting the permissible use of property which has insufficient parking.

Councilmember Ferrito's lease agreement specifies that he must pay a portion of the assessment levied on the property where his law office is located. Councilmember Hamilton has no specific agreement as to his liability for a portion of the assessment levied on the property where his business is located. However, he has stated that he has an oral agreement with his father, the owner of the property, that his liability for any assessments would not exceed \$1,000 per year. Based on this oral agreement, we infer that it is reasonably foreseeable that Councilmember Hamilton would be required to pay a portion of the assessment levied on the property where his store is located.

We also must consider the foreseeable effects of the urgency interim zoning ordinance. If the urgency ordinance is not extended, most of the commercial properties in the central business area would be in violation of the town's zoning ordinance regarding on-site parking. The ordinance provides that unless the required on-site parking is provided, the use of the properties would be limited. In many cases, businesses located on those properties would be required to cease operating.

You have informed us that Councilmember Hamilton's business would be severely affected if the urgency ordinance is not extended. There also is a substantial likelihood of limitations on the use of the property where Councilmember Ferrito's office is located. We do not have sufficient facts to determine whether Councilmember Ferrito's business would actually be required to cease or reduce its operations at that location. However, there seems to be a substantial likelihood

that the limitations on the use of the property where his offices are located could affect Councilmember Ferrito's ability to conduct his law practice at that location.

Materiality

We also must determine whether the effects of the decisions on the assessment district and the urgency ordinance will be material as to Councilmembers Ferrito and Hamilton. The effect of a decision is considered material if it is "significant." (Regulation 18702(a).) Regulations 18702, 18702.1 and 18702.2 provide additional guidelines for determining whether the effect of a decision is considered material.

In Councilmember Ferrito's situation, we must analyze the effect of the decisions on (1) the real property in which he has a leasehold interest, and (2) his law practice. With regard to the effect on the real property, Regulation 18702(b)(2) provides that the effect of a decision is material if it will increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;
or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

The formation of the assessment district presumably will increase the fair market value of the real property where Councilmember Ferrito's office is located. The fair market value of that property is \$647,983. It would only take an increase in fair market value of \$3,240 in order for the increase to be material. An increase of at least that amount would appear to be a likely consequence of providing adequate on-site parking to a property valued at well over a half million dollars. Conversely, a decrease of at least that amount certainly appears to be a likely consequence of failing to provide adequate parking.

The decision on the urgency ordinance also will have significant effects on the value of the real property where Councilmember Ferrito's office is located. These effects are difficult to quantify; however, if the urgency ordinance is not extended, the use of the property for commercial purposes will be restricted and the fair market value and the income-producing potential presumably will decrease.

Regulation 18702.2 contains monetary guidelines for determining whether the effect of a decision on Councilmember Ferrito's law practice, a business entity, will be considered material. These guidelines vary with the financial size of the business entity in question. In Councilmember Ferrito's case, it appears that the guidelines in Regulation 18702.2(g) apply. Accordingly, a decision will have a material effect on Councilmember Ferrito's law practice if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 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 \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g).

The formation of the parking assessment district will obviously increase the expenses of Councilmember Ferrito's law practice by \$155.81 per year. Pursuant to Regulation 18702.2(g)(2), this effect is not material. The failure to establish the district could result in more expenses being incurred especially if the councilmember finds it necessary to relocate his practice. It would only take an increase in expenses of \$2,500 in order for the effect to be material. While we cannot say with certainty that this threshold will be met, the decisions concerning the assessment district and the urgency ordinance may have other significant impacts on Councilmember Ferrito's business. As noted above, his business could be forced to relocate or limit its activity at its current location. These effects are difficult to quantify, but they certainly would be significant effects. Accordingly, we conclude that the decisions concerning the assessment district and the urgency ordinance probably would materially affect Councilmember Ferrito's law practice, as well as the real

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property in which he has a leasehold interest. If you have additional factual data which you believe would alter this conclusion, we would be happy to consider it.

For Councilmember Hamilton, we must analyze the effects of the decisions on his retail business. Assuming that Councilmember Hamilton's business would be required to pay a portion of the \$681.98 each year, that effect is not material under Regulation 18702.2(g)(2). However, as we previously discussed with respect to Councilmember Ferrito's business, there are other significant effects that are likely to occur if the assessment district is not formed and the urgency interim zoning ordinance is not extended. The councilmember could incur significant expenses (e.g., exceeding \$2,500) in relocating his business. Relocation could also significantly affect his revenues. Because the failure to act on these decisions could foreseeably have a severe impact on Councilmember Hamilton's ability to operate his business at its current location, we consider the effects to be material.

Public Generally

The next issue is whether the decisions on the parking assessment district and the urgency interim zoning ordinance will affect Councilmembers Ferrito and Hamilton in a manner that is distinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it will affect a significant segment of the public. (Regulation 18703.) For purposes of your question, the "public" is the population of Los Gatos. (See Owen Opinion, 2 FPPC Ops. 77, 81 (No. 76-005, June 2, 1976), copy enclosed.)

The decisions concerning the formation of the parking assessment district would affect approximately one-fourth of the town's businesses. In the Owen Opinion, supra, the Commission considered whether the formation of a downtown "core area" affected an official who operated a retail store in the same manner as it affected the public generally. The Commission held that the population of the entire downtown retail business community in the City of Davis constituted a significant segment of the public. Since virtually all the businesses were affected in the same manner, the Commission held that a significant segment of the public was affected.

Formation of a downtown "core area" in Owen involved a general plan to improve the downtown commercial district in the City of Davis. Among the possible recommendations included in the plan were: expansion of commercial facilities at the

expense of existing low-cost rental units; changes in traffic patterns by designation of one-way streets; and an increase in parking areas. The Commission mentioned increased competition and an increase in customers as potential effects of the plan on retail merchants. There was no indication that the failure to adopt the "core area" plan could have forced particular commercial establishments in the downtown area to relocate. Virtually all businesses were affected in the same manner. Based on the general benefit the "core area" plan would bring to the residents and business community in the City of Davis, the Commission ruled that the plan affected the council-member/retail merchant in substantially the same manner as it affected the public generally.

The facts of the Owen Opinion are distinguishable from the facts here. The residents and members of the business community in Los Gatos would benefit generally from the assessment district, but formation of the district would specifically affect the particular businesses located within the boundaries of the assessment district. Those businesses would be relieved of the adverse effects of the town's zoning ordinance, which requires the property owners and businesses in the downtown area to provide adequate parking for their customers.

A decision which affects only one-fourth of the town's businesses does not affect a significant segment of the town's population. This conclusion is consistent with the Brown Opinion, 4 FPPC Ops. 19 (No. 77-024, Feb. 7, 1978) and the Waggoner Advice Letter, No. A-85-089 (copies enclosed). In Brown, the Commission held that a decision affecting less than 50 percent of the retail business community did not affect a significant segment of the public. In Waggoner, we concluded that 72 percent of a city's businesses was a significant segment of the public. Therefore, Councilmembers Ferrito and Hamilton must disqualify themselves from participating in decisions concerning the formation of the parking assessment district and the urgency interim zoning ordinance.

Legally Required Participation

In your letter, you indicated that certain decisions before the town council require the participation of more than three councilmembers. For example, you stated that decisions to adopt or amend the urgency interim zoning ordinance would require four affirmative votes. You also said that four votes are necessary to proceed with the formation of the assessment district. In these situations, it would be appropriate to apply Section 87101.

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Section 87101 permits an otherwise disqualified official to participate in a decision if his participation is legally required. Regulation 18701(a) (copy enclosed) provides that an official's participation is legally required if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision. The decisions you described could not be made without the participation of at least four of the five councilmembers. Accordingly, the participation of one of the two disqualified councilmembers is legally required for those decisions. (See Hudson Opinion, 4 FPPC Ops. 13 (No. 77-007, Feb. 7, 1978), copy enclosed.) A method of random selection, such as drawing lots, is the preferred method for deciding which of the two disqualified councilmembers may participate in decisions where four or more votes are required. (Hudson, supra, at 18.)

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures



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TOWN of LOS GATOS

Town Attorney
354-6880

Mr. Robert E. Leidigh
Counsel, Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

February 18, 1987

Re: Request for Advice on behalf of Councilmembers
Thomas J. Ferrito and Robert L. Hamilton

Dear Mr. Leidigh:

I have been authorized by Thomas J. Ferrito and Robert L. Hamilton, Councilmembers of the Town of Los Gatos, to seek on their behalf this request for formal written advice pursuant to Government Code Section 83114(b). Councilmember Thomas J. Ferrito's mailing address is 9 Simons Way, Los Gatos, CA 95030. Councilmember Robert L. Hamilton's mailing address is 368 Bella Vista Avenue, Los Gatos, CA 95030. This request seeks guidance on Councilmembers Ferrito's and Hamilton's obligations under the conflict of interest provision of the Political Reform Act of 1976. The facts material to the consideration of the questions presented below are as follows:

I. STATEMENT OF FACTS

A. Formation of the Parking Assessment District - Purpose and Formula for Assessment

The Town of Los Gatos is considering the formation of a \$2 million parking assessment district for the C-2 zone. Once the parking assessment district is formed, property owners and businesses whose property is nonconforming due to a deficiency in the required number of parking spaces based on the zoning ordinance, would be relieved of their parking deficiency.

All properties within the proposed district would pay an assessment. The proposed formula for assessment to be applied to all properties in the proposed district is attached hereto as Exhibit A and incorporated by reference herein. The assessments are due in 30 days after the formation of the district. If not paid the property will be liened. The payout over a 25 year period includes principal and interest. An estimate given the current bond market is included in the estimate attached to the February 17, 1987 Town Council report for agenda item 34. See the blue booklet included with this letter.

B. The Proposed District vs. the Entire Town

The number of properties in the proposed district is 186, primarily commercial properties. The proposed parking district represents approximately 2% of the Town's land area and 12% of the land zoned for commercial or office.

The Town has 1961 business licenses currently issued excluding home occupation, contractors and apartments but including professionals. 520 of these (26.5%) show a downtown address within the boundaries of the proposed parking district. The Town has 99 restaurants and bars with a total of 7661 seats. Downtown restaurants equal 47 (47.5%) with 4051 seats (52.9%).

C. Procedures Relating to the Formation of the Parking District Requiring Council Vote

On February 17, 1987 by a vote of 2-0-2 (abstain)-1 (absent) the Council voted to adopt four resolutions relating to the formation of the proposed parking assessment district. The four resolutions are as follows:

1. Resolution of Preliminary Determination and Directing Preparation of Report under Division 4 of the Streets and Highways Code;
2. Resolution of Intention to make Acquisitions and Improvements;
3. Resolution Preliminarily approving Engineer's Report Under Division 4 of the Streets and Highways Code and Fixing Time and Place of Hearing therein; and
4. Resolution Preliminarily Approving Engineers Report Under Division 12 of the Streets and Highways Code and Setting Public Hearing.

Due to concern that voting on these resolutions might be construed as obligating or committing the agency to a course of action as "making a government decision" under FPPC Regulation 18700(b)(3), upon advice of the Town Attorney that there was a potential conflict of interest based on ownership of businesses located in the district and that the conflict of interest issued was not resolved, Councilmembers Ferrito and Hamilton did not participate on these matters pending receipt of an FPPC advice letter.

The public hearing on formation of the parking assessment district will be held on March 23, 1987 and will consider the adoption of four resolutions as follows:

1. Resolution Overruling Protests;
2. Resolution Ordering Reduction of Assessments (if appropriate);
3. Resolution of Determination Under Division 4 to Proceed with Proceedings for Acquisition and Improvements; and

4. Resolution Adopting Engineers Report, Confirming Assessment and Ordering Levy, etc.

A vote that could occur at the March 23, 1987 Town Council meeting is to proceed with the formation of the district despite the fact that for two (2) parcels the ratio for all previous assessments and the proposed assessment compared to the true value of the parcel exceeds 50%. Four-fifths vote is required to proceed with the district. (Division 4 of the Streets and Highways Code.) If four-fifths vote does not occur, then the resolution set forth in #2 above could be adopted which means the Town would contribute the amount of assessment on these parcels necessary to bring the total assessment ratio under 50%.

Finally, currently set for February 23, 1987, but most likely to be continued to March 23, 1987 due to the anticipated absence of a non-disqualified Councilmember, are the following: 1) the amendments to the general and downtown specific plan (requiring a majority of votes of the body as opposed to a majority of a quorum); 2) ordinances relating to rezonings for the proposed parking district (requiring three affirmative votes - Government Code Section 36936); and 3) an urgency interim zoning ordinance extending the time for properties in the proposed parking district to comply with the Town Zoning Ordinance for required parking (four-fifths vote necessary). The previous extension for compliance expires at midnight on March 23, 1987 so that the last possible date for adoption of the extension ordinance is March 23, 1987 (prior to midnight) to eliminate any gap in the extension of the time for amortization of the nonconformity.

The matters currently set for public hearing on February 23, 1987, most likely to be continued until March 23, 1987 to determine if either or both Councilmember Ferrito or Hamilton may vote, are as follows:

1. Hearing to consider amendments to the General Plan concerning the Downtown Parking Improvement Program - Adoption of Resolution;
2. Hearing to consider amendments to the Downtown Specific Plan concerning the Downtown Parking Improvement Program - Adoption of Resolution;
3. Hearing to consider amendments to the Town Zoning Ordinance concerning rules for properties within a Parking Assessment District - Introduction of Ordinance;
4. Consideration of a change of zone from C-2 (Central Business District Commercial) to R-M:5-12-LHP (Multiple Family Residential - five to twelve dwelling units per net acre). Property located at 349 Massol Avenue - Introduction of Ordinance;
5. Consideration of a change of zone from C-2 (Central Business District Commercial) to R-1D (Single Family Residential, Downtown). Property located at 61 Montebello Way - Introduction of Ordinance;

6. Consideration of a change of zone to C-1 (neighborhood Commercial) for that area of land within the public right-of-way of Los Gatos Boulevard at Main Street - Introduction of Ordinance;
7. Consideration of the approval of plans for the construction of:
 - Parking Lot #3 (surface lot)
 - Parking Lot #4 (decked lot)
 - Parking Lot #9 (surface lot)
 - Parking Lot #15 (surface lot);
8. Consideration of approval of standards to be used in the review of Building Permit Applications for the building facades which face proposed Parking Lot #4 (Elm Street to Grays Lane) - Adoption of Resolution; and
9. Consideration to amend an Urgency Interim Zoning Ordinance to extend the duration of nonconforming status as listed in Section 3.50.050 of the Los Gatos Zoning Ordinance. The hearing is to consider the uses of properties located in the Central Business District which are nonconforming as to Parking - Introduction and Adoption of Ordinance.

Item 1 despite the title is, upon final review by the Planning Commission, not related to the parking assessment district but is simply a "clean up" item for the Land Use Plan, Items 2, 3, 6 and 9 relate to possible conflict of interest issues for Councilmembers Ferrito and Hamilton because they are part of the implementation of the parking assessment district generally. Items 4 and 5 relate to particular parcels whose zoning status must be corrected to reflect current use. Item 7 is approval of plans for construction of the parking lots and structure with details of the project. Voting on this item by Councilmember Ferrito and Hamilton will be in conflict, however, action only requires a simple majority of a quorum. Item 8 approves architectural standards for building modification for particular properties and does not affect the district. Item 9 has a definite impact because each of the buildings where Councilmember Ferrito and Hamilton do business would be declared unlawful if the urgency ordinance is not adopted.

II. COUNCILMEMBER FERRITO'S FINANCIAL INTEREST

Councilmember Ferrito is a lawyer and leases his law office in a building at 103 Church Street. The property is owned by Wade H. Hover. The parcel is #529-28-014. The proposed assessment is \$27,504.62. The estimated debt service over a 25 year period at 7.241% is \$2,596.89 per year. Councilmember Ferrito pays \$1,400.00 per month for rent and has a three year lease until June 14, 1990 with a pass-through provision based on floor area. (See provisions 17 and 35.) Councilmember Ferrito's law office would be charged .06% of that total for assessments. A copy of the lease is attached hereto as Exhibit B and incorporated by reference herein. Councilmember Ferrito is one of several tenants in the building.

III. COUNCILMEMBER HAMILTON'S FINANCIAL INTEREST

Councilmember Hamilton operates a window covering retail store (Los Gatos Shade Shop) at 14 East Main Street. The property is owned of record by Roy F. and Edna M. Hamilton; however, Mrs. Hamilton is recently deceased. Roy Hamilton is Councilmember Hamilton's father. Councilmember Hamilton has no interest in the property nor will he acquire any when Edna Hamilton's estate is finally probated. Her interest will go to Roy Hamilton. The parcel is #529-29-001. The proposed assessment is \$7,223.00. Estimated debt service is \$681.98 per year. Councilmember Hamilton pays \$300.00 rent per month and has no lease or rental agreement. Councilmember Hamilton's store is one of two businesses located on the property at 14 East Main Street. The other property is an insurance agency that also pays \$300.00 per month on a verbal agreement. Councilmember Hamilton indicates that he has a verbal agreement with his father Roy Hamilton that any pass-through of an assessment would be less than \$1,000.00 per year.

It is unclear what the effect of the formation of the district would have on the income of either businesses. The closest lot to Councilmember Ferrito's office is Lot 15, approximately 1600 feet away and the closest lot to Councilmember Hamilton's office is lot 9, approximately 570 feet distance.

IV. QUESTIONS PRESENTED

May Councilmembers Ferrito and Hamilton participate as members of the Town Council, in any or all of the following stages in the process of formation often parking assessment district:

1. The decision to form the district;
2. The decision on the boundaries of the district;
3. The decision on the assessments for each parcel in the district;
4. The decision to form the district despite the fact that two parcels will have an excess of 50% assessment over true value; and
5. The land use matters including amendments to the general plan, downtown specific plan and zoning ordinance relating to the proposed district and its structures; and
6. The extension of the interim urgency zoning ordinance to extend the duration of non-conforming status.

V. DISCUSSION

My comments on this matter are made after reviewing opinions in Owen 2 FPPC 77 (No. 76-005) and Brown 4 FPPC 19 (No. 77-024), and advice letters Benjamin (A-86-182) and Waggoner (A-85-089).

Robert E. Leidigh
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I have provided the above factual information for your consideration of whether it is reasonably feasible that the formation of the parking assessment and related issues will have a material financial effect on an economic interest of either Councilmember. The economic interests to be considered would be both the business as a source of income (Government Code Section 82030) and the leasehold/rental interest as an interest in real property (Government Code Section 82033).

If the parking assessment district is not formed and the urgency interim zoning ordinance not extended, then the use of each buildings would have to be limited the use to the flow area for which parking is provided. The building at 103 Church Street (where Councilmember Ferrito's office is located) would be impacted but would have a good portion of the property available if limited to existing on-site parking. The building at 14 East Main Street (where Councilmember Hamilton's business is located) would be severely impacted because no on-site parking is available.

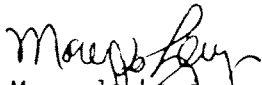
Should you determine that it is reasonably foreseeable that either Councilmember's economic interest would be materially affected, the analysis of whether the Councilmembers are affected differently from the public in general, or a significant segment thereof then follows. Not only would the businesses of the Councilmembers be affected by failure to form the parking district, but most businesses in the downtown would be closed down as non-conforming due to failure to provide requisite parking. If these businesses would have to move, their goodwill and customer base would be affected. Forming the parking district preserves the status quo.

Furthermore, if the downtown business district is so affected, there will be a deleterious fiscal effect on the Town of Los Gatos because it benefits from sales tax as a significant source of revenue to provide services to its citizens.

A copy of the staff report with the Engineer's Report, resolutions adopted February 17, 1986, maps and diagram is forwarded with this letter in the blue notebook included herein. If there is any further information which will assist you, please do not hesitate to call me at 408-354-6880.

I request your attention to this matter at your earliest possible availability. Your response prior to March 23, 1987 is urgently requested.

Very truly yours,


Mary Jo Levinger
Town Attorney

MJL/bb
Enclosures

cc: Councilmember Thomas L. Ferrito
Councilmember Robert L. Hamilton



California Fair Political Practices Commission

February 24, 1987

Mary Jo Levinger
Town Attorney
P.O. Box 949
Los Gatos, CA 95031

Re: 87-061

Dear Ms. Levinger:

Your letter requesting advice under the Political Reform Act was received on February 20, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Thomas J. Ferrito
Robert L. Hamilton