



California Fair Political Practices Commission

September 2, 1987

Thomas Angelo
Labor Arbitrator
150 Alta Vista Avenue
Mill Valley, CA 94941

Re: Your Request for Advice
Our File No. I-87-217

Dear Mr. Angelo:

You have written requesting advice under the conflict of interest provisions of the Political Reform Act (the "Act"),^{1/} concerning your duties as a planning commissioner for the City of Mill Valley.

QUESTION

Are you prohibited from participating in a decision about the development of real property adjacent to or within 300 yards of your home?

CONCLUSION

You may not participate in any decision that will have a reasonably foreseeable material financial effect on your real property. However, we do not have sufficient facts to determine whether a decision regarding the general plan will have such an effect on your property.^{2/}

^{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.

^{2/} For this reason, we have elected to treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You are a planning commissioner for the City of Mill Valley. You own your own home, which three years ago was worth \$350,000. Your home is adjacent to or within 300 yards of five parcels to be considered for development under a revised general plan. A citizens committee has been formed to make recommendations on revisions to the general plan. The citizens committee has recommended to the planning commission that a plan with two options for development of the parcels be included in the general plan.

Under the first option, nine houses would be built on parcels adjacent to your property, some of which you could see from your house. Their owners would use the same street you use for access to their homes.

The second option would allow a joint venture to build 20 houses on one parcel. The owners of only three of these houses would use the same street you use for access. The joint venture would donate much of its land for open space and you would have limited visibility of the development.

The planning commission will be considering whether to adopt the "option" plan and how many homes may be built. You do not know what the market value of the new houses would be nor do you know the possible effect on the market value of your house.

ANALYSIS

Section 87100 prohibits a local public official from making, participating in making, or in any way using his official position to influence a governmental decision in which he has a financial interest. A member of a planning commission is a public official. (Sections 82048, 87200.) You are a public official even if the planning commission only makes recommendations to the city council.

Material Financial Effect

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on real property in which an owner has an interest of \$1,000 or more. (Section 87103(b).) To determine if the decision's effect will be material, you should consider:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to 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.

Regulation 18702(b)(2)(A) and (B).

At the moment, you do not know the present market value of your house nor do you know how development of the adjacent property will affect your property's value. Consequently, we cannot advise you whether the effect of the decision would be material enough to disqualify yourself. We, however, can offer you some guidance in making this determination.

An effect of \$10,000 or more on the fair market value of an official's real property is material. Depending on the value of the property, an effect between \$1,000 and \$10,000 may be material. (Regulation 18702(b)(2)(B).) An effect below \$1,000 is not material. (Regulation 18702(b)(2)(B).)

If you assume that the present market value of your house is \$450,000, one half of one percent of \$450,000 is \$2,250. Thus, if the decision's effect would increase or decrease the fair market value of your home by \$2,250 or more, the effect would be material.

In your case, it may be difficult to calculate the monetary effect of the decision. Nevertheless, a decision's effect may

Thomas Angelo
September 2, 1987
Page 4

be material if it has a significant effect on the use and enjoyment of your property. (Regulation 18702(a).) For instance, you mentioned that the road might be traveled more heavily and you might see more houses. These changes might have a significant economic effect on your property.

You want to know if you need to hire an appraiser to determine whether the decision's effect is material. To determine the economic effect of the decision, you do not have to hire an appraiser. A city or county tax assessor or a real estate broker probably can provide that type of information. (See Legan Opinion (1985) 9 FPPC 1; Advice Letter to Thomas Toomey, A-81-137, copies enclosed.)

Reasonably Foreseeable Effect

An effect on an official's economic interest is foreseeable when there is a substantial likelihood that it ultimately will occur as a result of a governmental decision. An effect does not have to be certain to be foreseeable; however, if an effect is a mere possibility, it is not foreseeable. (Thorner Opinion (1975) 1 FPPC Ops. 198; see Witt v. Morrow (1977) 70 Cal. App. 3d 817.) If there is a likelihood that the value of your property will increase or decrease materially, the test for foreseeability is met.

Effect Distinguishable from that on General Public

To require disqualification, the decision's effect on your economic interest must be distinguishable from that on the general public. (Regulation 18703.) If the decision's effect on your economic interest is material and will be different from that on the general public or a "significant segment" of the public, you must disqualify yourself.

Of course, you may be able to participate in decisions regarding other elements of the general plan -- elements that have nothing to do with the discussion of the lots near your house.

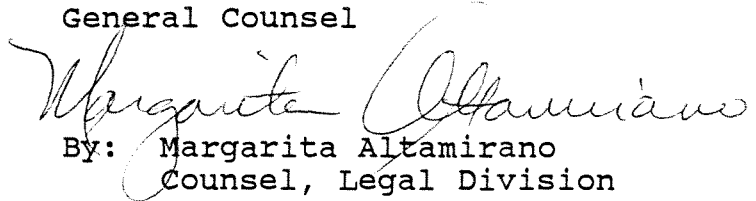
I hope the preceding guidelines will be useful to determine whether disqualification is necessary. We will be glad to give you more specific advice if you provide us with additional information about the property's market value and the financial effect of development of the adjacent lots. Otherwise, please

Thomas Angelo
September 2, 1987
Page 5

call me at (916) 322-5901, if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:plh

F P P C
AUG 10 8 33 AM '87

Thomas Angelo
Labor Arbitrator
150 Alta Vista Avenue
Mill Valley, California 94941
(415) 381-1701

August 3, 1987

Diane Griffiths
General Counsel
Fair Political
Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Griffiths:

I am writing to request your advice and guidance regarding a potential conflict of interest.

I am a Planning Commissioner for the City of Mill Valley, appointed to a five year term by the City Council in July, 1986. Presently the City is revising its General Plan and is deciding what restrictions should be placed on the development of certain properties throughout the City. The process involves the preparation of recommendations by a Citizens Group which are to be forwarded to the Planning Commission. The Planning Commission will make recommendations to the City Council, and the General Plan will be adopted following discussion and vote by the City Council.

Certain of the parcels in question are adjacent to my residence or within 300 yards of my home. The Citizens Committee has proposed the General Plan contain two options and the Planning Commission will consider both when our deliberations begin in early September. Option #1 would permit the development of up to nine (9) homes on the parcels adjacent or in close proximity to my residence. Option #2 would permit the property owners to enter into a joint venture and develop up to twenty (20) homes on one of the five parcels involved.

Under Option #1 access to the various homes would be over streets I now use for my home. Also, the homes would be visible from my property. Under Option #2, only three (3) of the homes would have access through my neighborhood, and there would be limited visibility of the development from my home. Further, under the latter Option, the property owners would donate much of their property to the City as open space. Finally, while both options limit development to single family homes, their size and design will not be determined at this time. Accordingly, the only questions before the Planning Commission will be whether to adopt the "Option" approach and the number of homes to be permitted on the parcels in question.

I have been unable to determine whether and to what extent the fair market value of my home will be affected by these Options. For example, the deleterious effect of increased traffic may be cancelled out by the expected improvement in access roads. Similarly, the adverse visual impact of the new homes may be offset by the fact they will be expensive homes will a tendency to increase the "price" of my home.

I obviously want to insure I am in compliance with all conflict of interest laws and am therefore requesting your advice and guidance regarding the following questions:

- 1) Does it matter, for conflict of interest purposes, that the Planning Commission's role in this process is limited to making recommendations to the City Council?
- 2) If not, I am considering the use of a real estate appraiser to provide me an opinion as to the probable effect of the Options on the fair market value of my home. In your opinion, would this approach be sufficient in order to determine my responsibilities under the law?
- 3) If so, does the law recognize a conflict of interest based on a "possible" change in the fair market value of my home, or does there have to be some sort of "probability"?
- 4) If the appraiser cannot make any definitive statements on the impact of the Options on the fair market value of my home, what are my options at that point? For example, the financial impact on my home may be identifiable only when the nature of the homes are known, something that is not before the Commission at this time.
- 5) Finally, what are the guidelines for determining whether a conflict exists either because of an increase or decrease in the fair market value of my home.

I would, of course, welcome any further suggestions you may have regarding resolution of this matter. As indicated above, I anticipate the Planning Commission will begin deliberations sometime in early September and would appreciate your response in advance of that time.

If you need further information, please let me know.

Sincerely yours,


Thomas Angelo