



California Fair Political Practices Commission

March 25, 1988

Maurice F. O'Shea
City Attorney
City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90706-5494

Re: Your Request for Advice;
Our File No. A-88-087

Dear Mr. O'Shea:

You have written requesting advice on behalf of Bellflower City Councilmember Kenneth Cleveland.

QUESTION

May Councilmember Cleveland participate in a series of land use decisions on a parcel of property located 132 feet from a parcel of property in which he owns a one-half interest?

CONCLUSION

Councilmember Cleveland may not participate in the land use decisions on the parcel.

FACTS ^{1/}

Councilmember Cleveland has a 50% ownership interest in real property improved with an office structure, zoned M-1, which is leased to the Immigration and Naturalization Service. The value of the property is approximately \$900,000. The monthly rental income is approximately \$13,000. Four years presently remain on a five-year lease.

Councilmember Cleveland's property is situated on a street in the commercial area of Bellflower. Surrounding land uses are commercial, office and retail. The subject parcel is in the same block, but fronting on another street. Your enclosed diagram shows that the two parcels are situated within 132 feet of each other, corner to corner. The subject parcel is currently zoned R-3, which allows for multiple residential

^{1/} You provided the facts in your original letter and in a subsequent telephone conversation on March 17. That conversation responded to my letter requesting additional facts, dated March 14.

dwellings. The maximum density is 22 units per acre. The subject parcel is less than one acre in size.

The developer of the subject parcel is seeking a zone change to a planned unit development zone for a 51-unit senior citizen and handicapped apartment complex. This change would result in a substantial increase in the permitted density over the current R-3 zoning. In addition, the developer is seeking variances to allow the following:

1. An increase in the height of the structure from the otherwise permitted 35 feet to 42 feet;
2. A reduction in the required amount of private open space for patios and balconies;
3. A reduction in the amount of required landscaping;
4. A reduction in required parking from 2-1/2 spaces per unit to only 1 space per unit;
5. A reduction in the minimum square feet per unit from 700 sq.ft. to 600 sq.ft.; and
6. A change in the required wall setback variation.

Finally, the developer is seeking a use permit to allow construction of the large scale senior citizen housing project.

ANALYSIS

The Political Reform Act (the "Act")^{2/} provides that no public official shall make, participate in making or use his official position to influence a governmental decision in which he 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 the effect on the public generally, on the official or a member of the official's immediate family or on:

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

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

Councilmember Cleveland is a public official. (Section 82048.) He has an interest in his property worth more than \$1,000. The question is whether the reasonably foreseeable effect of these land-use decisions on his real property interest will be material and distinguishable from the effect on the public generally. Because of the close proximity of his property to the subject parcel, we conclude that the effect will be distinguishable from the effect on the public generally. Previously, the Commission issued an opinion which considered this issue.

Individuals owning real property and having investments in the area affected by the rezoning decision do not constitute the public generally or a significant segment thereof.

In re Gillmor (1977) 3 FPPC
Opinions 38, 43, fn. 5.

In Gillmor, the Commission considered a situation which, like this case, involved the rezoning of a parcel to permit construction of a senior citizen housing complex. The Commission concluded it was reasonably foreseeable that Mayor Gillmor's real property interest and other interests situated in close proximity to the proposed project would be materially affected. Although the applicable regulation has changed in the interim, we conclude that the result is the same in Councilmember Cleveland's situation.^{3/}

The current version of the regulation provides the following monetary guidelines for determining whether the effect of a decision on real property is considered material:

^{3/} At the time of the Gillmor Opinion, the applicable regulation, Regulation 18702 was worded differently; the Commission elected not to apply the monetary guidelines in subdivision (b)(2), but instead applied subdivision (a). (See fn. 4 in Gillmor, copy enclosed.) We have chosen to apply the monetary guideline in this case; however, the "significant" standard contained in the re-worded subdivision (a) could also be applied to Councilmember Cleveland's circumstances. We believe that the result would be the same under either standard.

(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)

The close proximity of the two properties, combined with the significance of the requested land use changes, leads to the conclusion that the value of Councilmember Cleveland's property is likely to be affected by at least \$4,500 (one-half of one percent) by such a development. (Regulation 18702(b)(2)(B).)

You have asked whether Councilmember Cleveland is disqualified from participating in all of the related land use decisions. Some of the requested variances, standing alone, would not appear to require disqualification if they are severable from the major decisions. However, the requested variances appear to be integral components of the overall request. If the variances are denied, the project would obviously need to be redesigned, which might lead to its demise. Consequently, we advise that Councilmember Cleveland is disqualified from participating in each of the decisions. However, if you determine that some of the decisions are severable, some of the variance requests are not likely to affect the value of his property unless they affect viability of the overall project. For example, the requests for


Maurice F. O'Shea
March 25, 1988
Page 5

variances such as the variation in wall set back or private open space may be decisions in which he may participate.

I trust that this letter adequately responds to your request for advice. Should you have questions regarding it, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DGM:REL:jaj

Enclosure



F P P C
FEB 26 2 18 PM '88
CITY OF
BELFLOWER

16600 CIVIC CENTER DRIVE
BELFLOWER, CALIFORNIA 90706-5494
(213) 804-1424

M. G. "MIKE" BRASSARD
MAYOR
KENNETH J. CLEVELAND
MAYOR PRO TEMPORE
JOHN ANSDALL
COUNCILMAN
JOSEPH E. CVETKO
COUNCILMAN
WILLIAM J. PENDLETON
COUNCILMAN

February 23, 1988

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Request For Advice

Dear Commission:

This is a request for advice on behalf of Councilman Kenneth Cleveland of the City of Bellflower.

Councilman Cleveland has a 50% ownership of real property improved with an office structure, Zoned M-1 which is leased to the Immigration & Naturalization Service. The value of the property is approximately \$900,000.00 and the monthly rental income is approximately \$13,000.00. INS presently has a five year lease with four years remaining.

A property owner-developer within approximately 150 feet of Cleveland's property is seeking a zone change to a Planned Development Zone for a 51 unit Senior Citizen and Handicapped Housing Project. The property is presently zoned R-3. The Planned Development would allow an increase in the density above the R-3. In order to develop a senior/handicapped project, the developer is also seeking variances to:
1) increase the height of structure from permitted 35 feet to 42 feet; 2) allow less private open space for patios and balconies; 3) less landscaping than standards require; 4) less parking, Code requires 2½ spaces per unit, variance seeks 1 parking space per unit; 5) units will be a minimum 600 sq. ft. per unit, Code requires 700 sq. ft. per unit; 6) Code requires a variation in wall set back of 80 ft., request is a wall set back of 92.8 ft. to 96 ft. variation.

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FAIR POLITICAL PRACTICES COMMISSION
FEBRUARY 23, 1988
Page two

A Conditional Use Permit is also required to permit a Large-Scale Senior Housing Project.

It is undetermined whether the proposed development will affect the value of Mr. Cleveland's property.

The Zone Change, Variances, and the Conditional Use Permit are now before the City Council for Public Hearing. The Public Hearing was continued at Mr. Cleveland's request, pending an opinion from the Fair Political Practices Commission. The Hearing was continued to March 28, 1988.

Mr. Cleveland, as a property owner is in the notification area for Zone Change, Variances and CUP.

Mr. Cleveland is not a Fortune 500 Company.

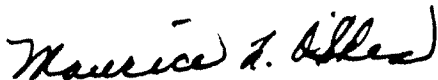
I enclose a basic property location diagram for reference.

Mr. Cleveland seeks your opinion as to whether he has a conflict of interest in participating/voting in the Zone Change, Variance and CUP and whether he is disqualified therefrom.

As City Attorney, I represent that I was formally directed and authorized by Councilman Cleveland to seek your opinion.

My office phone number is 213-630-5913.

Very truly yours,



MAURICE F. O'SHEA
City Attorney
City of Bellflower

MFO/jb

Enclosure

cc: Councilman Kenneth Cleveland

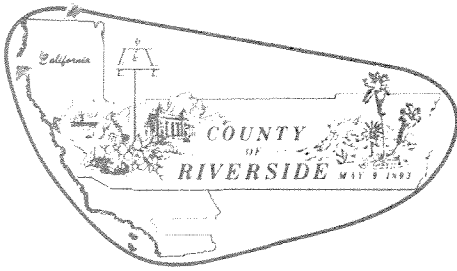
STREET

COUNCILMAN
CLEVELAND'S
PROPERTY

← 132' →

ZONE CHANGE
CUP
VARIANCES
FOR SENIOR/
HANDICAPPED HOUSING
PROJECT

STREET



REGISTRAR OF VOTERS

4175 Main Street, Riverside, California 92501

(714) 787-2921

88-086
COUNTY OF RIVERSIDE

ROBERT G. MORGAN
REGISTRAR

FRANK K. JOHNSON
ASSISTANT REGISTRAR

February 24, 1988

Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Attention: Bruce Robeck, Technical Assistance

Dear Mr. Robeck:

We are requesting an answer to the following question:

What is the campaign disclosure filing deadline for a committee formed to support the qualification of a county initiative? Specifically, is the "date of notification that the measure has qualified" as used in Government Code Section 84200.5(f)(2) the same as the date on which the proponent is notified of the sufficiency of the petition (Elections Code Section 3708(d))?

The county initiative in question was filed with the Registrar of Voters on January 28. Signatures were examined, and on February 19 the proponents were notified of the sufficiency of the petition under Elections Code Section 3711. The certificate of sufficiency will be submitted to the Board of Supervisors at their meeting on March 1, at which time the Board will take one of the several options provided under Sections 3711 and 3705.5: (1) Pass the ordinance petitioned for without an election; or (2) order an election to be held on the June Primary Election date; or (3) request an impact report, to be presented no more than 45 days later, and after receipt of the report, order an election to be held on the November General Election date.

It is expected that the Board will choose the third option. In this event, and if February 19 is considered to be "the date of notification that the measure has qualified," then the filing deadline for the campaign statement will be March 25.

Please let us know as soon as possible if this is the correct conclusion.

Very truly yours,

ROBERT G. MORGAN
Registrar of Voters

By Barbara Myers, Deputy

F P P C
FEB 26 2 07 PM '88



California Fair Political Practices Commission

February 29, 1988

Robert G. Morgan
Registrar of Voters
4175 Main Street
Riverside, CA 92501

Re: 88-086

Dear Mr. Morgan:

Your letter requesting advice under the Political Reform Act was received on February 26, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

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,

Jeanne Pritchard
Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh



California Fair Political Practices Commission

March 25, 1988

Maurice F. O'Shea
City Attorney
City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90706-5494

Re: Your Request for Advice;
Our File No. A-88-087

Dear Mr. O'Shea:

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QUESTION

May Councilmember Cleveland participate in a series of land use decisions on a parcel of property located 132 feet from a parcel of property in which he owns a one-half interest?

CONCLUSION

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FACTS 1/

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Maurice F. O'Shea

March 25, 1988

Page 3

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I trust that this letter adequately responds to your request for advice. Should you have questions regarding it, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DGM:REL:jaj

Enclosure



California Fair Political Practices Commission

March 14, 1988

Maurice F. O'Shea
City Attorney
City of Bellflower
16600 Civic Center Drive
Bellflower, CA 90706-5494

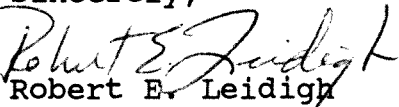
Re: Your Request for Advice
Our File No. A-88-087

Dear Mr. O'Shea:

I have reviewed your letter requesting advice on behalf of Councilmember Kenneth Cleveland. In order to respond, I need some additional facts. What are the land uses surrounding the property which is the subject of the land use request? The enclosed newspaper clipping indicates that the surrounding uses are quite different from the proposed use. Also, what is the use which is allowed under the current R-3 zoning?

Lastly, your letter states that Councilmember Cleveland's property is "within approximately 150 feet" of the subject property. Your diagram shows a distance of 132 feet from corner to corner. The newspaper clipping states that the subject property "is about 175 feet" from the parcel that the councilmember owns. Which figure is correct? If possible, please provide a map of the area to scale.

Please contact me as soon as possible to provide the requested information so that I may complete the analysis of your question and provide you with a timely response. I may be reached at (916) 322-5901.

Sincerely,

Robert E. Leidigh
Counsel, Legal Division

REL:jj

Enclosure



F P P C
FEB 26 4 38 PM '88

CITY OF BELLFLOWER

16600 CIVIC CENTER DRIVE
BELLFLOWER, CALIFORNIA 90706-5494
(213) 804-1424

M. G. "MIKE" BRASSARD
MAYOR
KENNETH J. CLEVELAND
MAYOR PRO TEMPORE
JOHN ANSDALL
COUNCILMAN
JOSEPH E. CVETKO
COUNCILMAN
WILLIAM J. PENDLETON
COUNCILMAN

February 23, 1988

Fair Political Practices Commission
428 J Street, Suite 800
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FAIR POLITICAL PRACTICES COMMISSION
FEBRUARY 23, 1988
Page two

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Mr. Cleveland is not a Fortune 500 Company.

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As City Attorney, I represent that I was formally directed and authorized by Councilman Cleveland to seek your opinion.

My office phone number is 213-630-5913.

Very truly yours,



MAURICE F. O'SHEA
City Attorney
City of Bellflower

MFO/jb

Enclosure

cc: Councilman Kenneth Cleveland

STREET

COUNCILMAN
CLEVELAND'S
PROPERTY

← 132' →

ZONE CHANGE
CUP
VARIANCES
FOR SENIOR/
HANDICAPPED HOUSING
PROJECT

STREET



California Fair Political Practices Commission

February 29, 1988

Maurice F. O'Shea
Bellflower City Attorney
16600 Civic Center Drive
Bellflower, CA 90706-5494

Re: 88-087

Dear Mr. O'Shea:

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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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

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: Councilmember Kenneth Cleveland