

California Fair Political Practices Commission

April 13, 1988

Allen E. Sprague
City Attorney
City of Fremont
City Government Building
39700 Civic Center Drive
Fremont, CA 94537

Re: Your Request for Advice
Our File No. I-88-093

Dear Mr. Sprague:

You have written seeking our guidance on the application of 2 California Code of Regulations Section 18700.1 to situations which you expect will arise if a proposed architectural review board is established by the city. Your questions are somewhat general in nature and do not relate to any specific official or any pending decision. Therefore, we treat your request as one for informal assistance.^{1/}

QUESTIONS

You have asked three related questions. Each seeks an interpretation of subdivision (b) of 2 California Code of Regulations Section 18700.1 as it applies to an architect serving on an architectural review board:

1. What are the limitations on what the architect may discuss with the board staff?
2. Is the architect similarly limited in communicating with regular city staff if the architectural review board has its own assigned staff?
3. May a sole practitioner, who is a member of an architectural review board, present his or her architectural drawings to a planning commission or city council?

^{1/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. The architect may respond to specific inquiries from the city staff assigned to the board which are necessary for the staff to do its normal work in processing and evaluating the application. If the drawings and renderings are not sufficient to answer the assigned staff's questions and to allow the assigned staff to complete its review, the architect may respond to the questions which the assigned staff raises.

2. In the case of an architectural review board whose function is to make recommendations to the city staff, the city staff would come within the meaning of "other agency" in the regulation. Consequently, communications to those staff are subject to the limitation that the architect may not purport to speak on behalf of the board.

3. The architectural review board does not appoint either the city staff, the planning commission or the city council, nor does it have budgetary control over any of those agencies. Consequently, the architect may appear before, or communicate with, these agencies to influence their decisions. However, the architect could not purport to represent the architectural review board in his or her communications with these other agencies.

FACTS

You are the city attorney for the City of Fremont. The city council has asked that you seek guidance with regard to the restrictions which would apply to an architect who might be appointed to an architectural review board the council is considering establishing. The draft ordinance establishing such a board would require that the board include architects.

It is very likely that from time to time a member of the board would have a project he or she had prepared which would come before city staff and the board for review. It may subsequently be reviewed by the planning commission or the city council.

As presently drafted, the ordinance provides that the architectural review board would be advisory to the city staff. However, staff will incorporate the board's recommendation in the staff's reports to the planning commission and the city council.

ANALYSIS

The Political Reform Act (the "Act")^{2/} provides that no public official shall make, participate in making or use his or her official position to influence any 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 the 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.

(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.

Section 87103.

In the case of an architect sitting on an architectural review board, the most likely financial effects of decisions of the board would be on the architect's own business or on the architect's clients. The firm is a source of income to the architect. In addition, if the architect is a part owner of his or her firm, the firm is an investment interest of the

^{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.

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architect. If the architect owns 10% or more of the firm, then clients of the firm are sources of income to the architect on a pro rata basis. (Section 82030(a).) Consequently, disqualification would be required as to decisions made by the board which would materially affect the firm or the client. In addition, Regulation 18702.1(a) requires disqualification in situations in which the source of income is the applicant in the proceeding.

Your questions assume that disqualification has occurred, as required. Your questions focus on the extent to which the architect may be permitted to step down from the board and present his or her work, either before the board, in communications with city staff, or before other hearing bodies such as the planning commission or city council.

Because the statute prohibits an official from using his or her official position to influence governmental decisions, there are some limitations on what the architect may do along these lines. These limitations are contained in Regulation 18700.1 (copy enclosed).

The regulation generally restricts the types of communications which an official may make to his or her own agency and to any agency subject to the budgetary or appointive powers of his or her own agency. Thus, the city council members would be restricted from using their official positions to influence decisions by the planning commission or the architectural review board to a much greater degree than architectural review board members are restricted when attempting to influence the city council.

Subdivision (a) of Regulation 18700.1 provides that the architect may not present his client's project before the architectural review board or before any other agency which is subject to the appointive power or budgetary control of the board. Since the architectural review board does not have those powers with respect to other agencies, the practical effect is that subdivision (a) applies only to appearances before the board. Subdivision (b) of the regulation contains a series of exceptions to the general rule of subdivision (a). As a result, subdivision (b) is only applicable if the conduct would otherwise be proscribed by subdivision (a). In pertinent part, subdivision (b) provides as follows:

(b) Notwithstanding subsection (a) an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by subsection (a) if the official:

(4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any the agency. However, this provision applies only if the official has no other direct oral or written contract with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.

(5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

(A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency:

(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner.

City Staff and Board Staff

Your first two questions can best be addressed in tandem. A review of the proposed ordinance and council minutes indicates that the architectural review board will be assigned its own staff person, who also will probably be an architect. Contact with that staff person would be limited to only that contact which is necessary for the architect to respond to questions which have arisen in the course of the board staff person's review of the architect's drawings or submissions. (Regulation 18700.1 (b)(4)).

Allen E. Sprague
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The city staff which is not assigned to the board is not considered agency staff for the board. Consequently, regular city planning staff would be considered staff of an "other agency" to which the board makes recommendations, within the meaning of subdivisions (a) and (b)(5)(A) of Regulation 18700.1. As a result, the architect would be permitted to appear before the board to present his or her project if he or she is a sole practitioner, since the board makes recommendations to another agency and the ordinance requires architects on the board. (Regulation 18700.1 (b)(5)(B) and (C).)

In addition, the architect could interact in the normal manner with other city staff, subject to the restrictions of subdivision (c) of Regulation 18700.1. Under those restrictions, he or she may not purport to act on behalf of the architectural review board.

City Council and Planning Commission


Because the city council and the planning commission are not subject to the architectural review board's powers, subdivision (a) does not apply to them. Since appearances before the city council and planning commission are not proscribed by subdivision (a), those appearances are not governed by the limited exceptions of subdivision (b).

However, with regard to appearances before the city council or planning commission, or other attempts to influence those bodies, the architect would be subject to subdivision (c) of Regulation 18700.1. It proscribes the architect from purporting to act on behalf of the board in the course of representing his or her client before any other agencies. The proscription includes using board stationery.

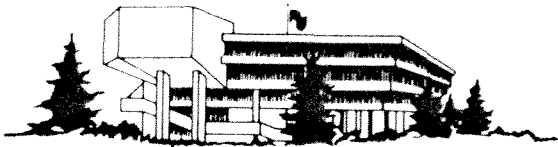
I trust that this letter adequately responds to your questions. If you have questions regarding its content, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosure



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City of Fremont

City Government Building
39700 Civic Center Drive
Fremont, California 94537

March 1, 1988

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

RE: City of Fremont - Architectural Review Board

I have been directed by the Fremont City Council to request your advice concerning potential conflict of interest questions which may arise from the establishment of an architectural review board. (A draft of the proposed ordinance is enclosed. It will be revised before adoption is considered but the revisions to be made do not affect the questions posed herein.) The proposed function of the architectural review board is to make recommendations to the City staff on the architectural aspects of development proposals, those recommendations to be considered by staff in connection with their reports to the Planning Commission and subsequently to the City Council. The board is to consist of five to seven architects or engineers. The City's own rules provide that members of City boards must be residents of the City. There are approximately fifteen architects who reside in Fremont, some of whom practice from local offices and others who practice from offices outside the City. Thus, it can be seen that there is a fairly small group of architects, as compared to engineers, who are available to be appointed to this board. It is quite likely that there will be occasions when the professional services of a board member will be retained by a land developer/applicant.

The primary regulation involved (aside from Section 87100 of the Government Code) is set forth in Section 18700.1 of the California Administrative Code. Subsection (a) generally defines what constitutes a violation of the mandate that officials not use their official position to influence any governmental decisions; "Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client or customer."

Subsection (b) provides certain exceptions to the foregoing, with subparagraphs (4) and (5) being pertinent to my inquiry. Subparagraph (4) is somewhat more general than subparagraph (5). Subparagraph (4) permits an engineer or architect who is a City official to submit plans to be used in a City proceeding (including proceedings before an architectural review board,



planning commission, or city council) but does not authorize such professionals to appear before the City staff "except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submission prepared by the official." My first question relates to the nature of the "contact" the official professional makes with City staff. Are there rules or interpretations that would better define what is meant by "processing or evaluation of the drawings or submissions?" It seems certain that in the prohibited area would be active lobbying for the approval of whatever application is involved and, in other words, acting as a principal project proponent on behalf of a client applicant. But, it gets more fuzzy when the inquiry or the influence may (arguably) be somewhat related to "processing or evaluation" but also (arguably) on the borderline of advocacy.

Other questions arise out of subparagraph (5), which deals specifically with architectural review committees or similar bodies. For the purposes of my questions, it will be noted that the review committee includes architects and the officials are appointed to fulfill this requirement [Criteria (B)], and it will be assumed the official is a sole practitioner [Criteria (C)]. The first question relates to Criteria (A) which states that the "review committee's sole function is to review architectural engineering plans or designs and to make recommendations concerning these plans or designs to a planning commission or other agency". Does the reference to "other agency" include the agency staff? The proposed Fremont ordinance provides that the board shall be advisory to City staff only. Although the term "agency" is a broad generic term, there may be some implication in the language of Criteria A that the "other agency" would have to be the City Council, for example, or some other "body", and not the staff.

Another question relates to the "sole practitioner". Under subparagraph (5), a sole practitioner may appear before the Architectural Review Board of which he is a member, but apparently may not, under subparagraph (4), make any subsequent appearance before the Planning Commission or City Council, even if that architect is the only one that is able to explain the designs that he has prepared. (Although under the proposed ordinance the board is only advisory to City staff, staff will incorporate board recommendations in staff reports to the Planning Commission and City Council, at whose hearings the architect would normally be expected to be available to make presentations or to answer questions.) This seems to be a paradox in which the sole practitioner is allowed to "influence" his own Board, of which he is a member, and where a conflict of interest would otherwise be clearly apparent, but prohibited from appearing before the Planning Commission or City Council where his "influence" would appear to be less effective. Perhaps this apparent paradox can be explained by an implicit rationale that fellow professionals on the Architectural Review Board can be expected to not be overpersuaded by the professional expertise of their colleague, but that ordinary planning commissioners and city councilmembers might be hoodwinked. Your observation would be appreciated on this point. A follow-up question: If not allowed to "present" before a planning commission or city council, may the official/architect be available to answer questions for the commission or council?

There might be other points that you would see that we should be giving careful consideration to and it would be appreciated if you would add that to your responses to the inquiries that we have made, which I'll repeat here in this final paragraph:

1. In subparagraph (4), what are the limitations on the phrase, "processing or evaluation" in terms as to what the design professional is able to discuss with agency staff?
2. In subparagraph (5)(A), does the reference to "other agency" to whom recommendations are to be made include the agency staff?
3. Under both subparagraphs (4) and (5), may a sole practitioner, who is a member of an architecture review committee (and allowed to present architectural drawings to the committee), be allowed to present architectural drawings to a planning commission or city council (or if not allowed to "present", to at least be able to answer questions)?



ALLEN E. SPRAGUE
City Attorney
(415) 790-6623

AES:sm
cao-1341

Enc.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FREMONT ADDING A NEW ARTICLE 13 TO CHAPTER 3 OF TITLE II OF THE FREMONT MUNICIPAL CODE, AND ADDING A NEW ARTICLE 19.3 TO CHAPTER 2 OF TITLE VIII OF THE FREMONT MUNICIPAL CODE, ESTABLISHING A DESIGN REVIEW BOARD, PRESCRIBING ITS COMPOSITION, QUALIFICATIONS FOR MEMBERSHIP, POWERS AND DUTIES

THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 3 of Title II of the Fremont Municipal Code hereby is amended by the addition of Article 13 thereto, reading as follows:

ARTICLE 13. DESIGN REVIEW BOARD

Sec. 2-31300. Definitions.

As used in this article, the following words, phrases, and terms shall have the following meanings:

(a) "Architect" means a person who is licensed to practice architecture in this state under the authority of Chapter 3 of Division III of the California Business and Professions Code.

(b) "Civil engineer" means a person who is registered as a civil engineer in this state under the authority of Chapter 7 of Division III of the California Business and Professions Code.

(c) "Fine arts" means paintings, sculptures, drawings, works of graphic arts (including etchings, lithographs, offset prints, silk screens, or works of graphic arts of like nature), works of calligraphy, or works in mixed media (including collages, assemblages, or combinations of the foregoing art media).

(d) "Landscape architect" means a person who holds a certificate to practice landscape architecture in this state under the authority of Chapter 3.5 of Division III of the California Business and Professions Code.

Section 2-31301. Creation and composition.

There is hereby created a design review board which shall consist of five members.

Sec. 2-31302. Special qualifications of members.

(a) In addition to the qualifications set forth in section 2-3102 of this code, the members of the design review board shall have the following qualifications:

(1) Not less than three members shall be either architects, landscape architects, or any combination thereof.

(2) One member shall be a civil engineer who, in the judgment of the mayor and the city council, has significant education, background, training and experience in grading and excavation on real property in conjunction with its physical development.

(3) One member shall be a person who, in the judgment of the mayor and the city council, has significant education, background, training and experience in the fine arts.

(b) Subparagraphs (1), (2), and (3) constitute discrete categories of membership on the design review board. Whenever a person is selected as a member of the board, the category within which such person is selected shall be designated. No person shall be selected within more than one such category, regardless of his or her qualifications.

Sec. 2-31303. Powers and duties.

The powers and duties of the design review board shall be as prescribed in Chapter 2 (Zoning Ordinance) of Title VIII of this code.

Sec. 2-31304. Ex officio members: Director of community development and building official.

The director of community development and the building official shall be nonvoting ex officio members of the design review board. They shall not be subject to the regulations prescribed in section 2-3102 of this code.

Section 2. Chapter 2 of Title VIII of the Fremont Municipal Code hereby is amended by the addition of Article 19.3 thereto, reading as follows:

ARTICLE 19.3. DESIGN REVIEW BOARD

Sec. 8-21930. Purpose.

The purpose of this article is to assure the superiority of design and quality of buildings, landscaping, and other site features and amenities within certain significant development projects not subject to the review of the historical architectural review board. These projects are significant due to their location, type, scale, or a combination of such factors. To assure superiority of design and quality it is essential that these projects be initially reviewed by a board composed of persons with special expertise in architecture, landscape architecture, and aesthetic appreciation and sensitivity before the otherwise applicable development review process commences. The purposes of such review are

(a) To enhance the orderly and harmonious development of the city;

(b) To enhance the human living and working environment within the city; and

(c) To promote visual environments which are of high aesthetic quality.

Sec. 8-21931. Powers and duties.

(a) Except as provided in subsection (b), the design review board shall have the duty of reviewing and making recommendations to the director of planning and the site plan and architectural approval agency (development organization) regarding the appropriateness of exterior architectural features of buildings and structures, including such features as signs, landscaping and other exterior features for development projects consisting of construction of new buildings and alterations, enlargements or rebuilding of existing buildings affecting the exteriors of such existing buildings, and construction, alteration and replacement of signs, landscaping and other exterior features

(1) in all P districts, including all major changes to precise site plans in P districts;

(2) on all lands designated Hill Face Open Space or Ridgeline in the general plan;

(3) in all development projects on lots abutting major and minor thoroughfares, major collector streets, freeways, and parkways, as designated in the general plan;

(4) in the Central Business District;

(5) in all projects consisting of construction of multiple dwellings consisting of five or more dwelling units;

(6) in all single family residential developments involving construction of twenty or more new dwelling units.

(b) The design review board shall not review or make recommendations as to any project which would otherwise be subject to review by the historical architectural review board pursuant to Article 19.1.

Sec. 8-21932. Review by design review board a prerequisite to further review.

No development project described in section 8-21931(a) shall be reviewed or considered by the director of planning, site plan and architectural approval agency (development organization), commission, or city council until an application shall have been made for review of such project by the design review board, and (a) such board shall have either made its recommendation as to such project pursuant to this article, or (b) the time within which such recommendation is required to be made as to such project shall have expired.

Sec. 8-21933. Applications and submittals.

Applications shall be filed with the design review board by the property owner or his agent on a form designated by the board. Photos and drawings to scale shall be submitted to the board to indicate the following:

(a) the siting of all structures on the subject site;

(b) use of walls or fencing for screening purposes;

(c) the proposed appearance, including colors and building materials, or all exterior elevations of the buildings, structures or signs under consideration;

(d) landscaping and/or fencing of yards and setback areas, and use of landscaping and/or walls for screening purposes;

(e) the character of the buildings on any lot abutting the subject site.

Sec. 8-21934. Guidelines for recommendations by board.

In addition to all other applicable regulations and policies, the design review board shall give important consideration to the

guidelines set forth in sections 8-22706, 8-22707, and 8-22707.5 of this code.

Sec. 8-21935. Time within which board must act; duty to specify reasons for negative recommendations.

(a) The board shall act upon each application for review within a period of forty-five days from and after its filing or the board shall be deemed to have recommended approval of the project as designed; provided, however, the such period may be extended with the written consent of the applicant.

(b) The board may recommend the approval or denial of the project as designed, or recommend approval of such project based upon specific conditions. If the board recommends disapproval of the project or one or more specific design components thereof, it shall make a specific finding as to why it recommended such disapproval.

SECTION 3. SEVERABILITY. In the event any section or portion of this ordinance, or the section or article adopted hereby shall be determined invalid, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days from and after the date of its adoption.

SECTION 5. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061, that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project as provided for under Title 14, California Administrative Code, Section 15061(b)(1), in that it does not have a potential for resulting in a physical change in the environment, directly or ultimately, as provided in Title 14, California Administrative Code, Section 15378(a), and that it is further exempt under the definition of Project in Section 15378(b), in that it concerns general policy

and procedure making. The Council directs that Notice of Exemption be filed with the County Clerk and with the Secretary for Resources.

SECTION 6. PUBLICATION. The City Clerk is directed to cause this ordinance to be published once in The Argus, a newspaper of general circulation published in Alameda County and circulated in the City of Fremont, within fifteen (15) days after its adoption.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Fremont on the ___ day of _____, 1987, and was passed and adopted at a regular meeting of said Council on the _____ day of _____, 1987, by the following called vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor

ATTEST:

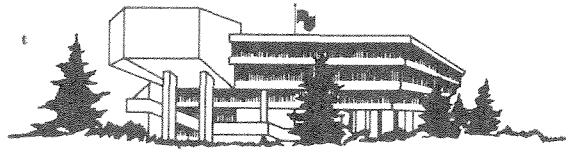
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

88-093



F P P C
MAR 2 9 23 AM '88

City of Fremont

City Government Building
39700 Civic Center Drive
Fremont, California 94537

March 1, 1988

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

RE: City of Fremont - Architectural Review Board

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The primary regulation involved (aside from Section 87100 of the Government Code) is set forth in Section 18700.1 of the California Administrative Code. Subsection (a) generally defines what constitutes a violation of the mandate that officials not use their official position to influence any governmental decisions; "Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client or customer."

Subsection (b) provides certain exceptions to the foregoing, with subparagraphs (4) and (5) being pertinent to my inquiry. Subparagraph (4) is somewhat more general than subparagraph (5). Subparagraph (4) permits an engineer or architect who is a City official to submit plans to be used in a City proceeding (including proceedings before an architectural review board,



planning commission, or city council) but does not authorize such professionals to appear before the City staff "except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submission prepared by the official." My first question relates to the nature of the "contact" the official professional makes with City staff. Are there rules or interpretations that would better define what is meant by "processing or evaluation of the drawings or submissions?" It seems certain that in the prohibited area would be active lobbying for the approval of whatever application is involved and, in other words, acting as a principal project proponent on behalf of a client applicant. But, it gets more fuzzy when the inquiry or the influence may (arguably) be somewhat related to "processing or evaluation" but also (arguably) on the borderline of advocacy.

Other questions arise out of subparagraph (5), which deals specifically with architectural review committees or similar bodies. For the purposes of my questions, it will be noted that the review committee includes architects and the officials are appointed to fulfill this requirement [Criteria (B)], and it will be assumed the official is a sole practitioner [Criteria (C)]. The first question relates to Criteria (A) which states that the "review committee's sole function is to review architectural engineering plans or designs and to make recommendations concerning these plans or designs to a planning commission or other agency". Does the reference to "other agency" include the agency staff? The proposed Fremont ordinance provides that the board shall be advisory to City staff only. Although the term "agency" is a broad generic term, there may be some implication in the language of Criteria A that the "other agency" would have to be the City Council, for example, or some other "body", and not the staff.

Another question relates to the "sole practitioner". Under subparagraph (5), a sole practitioner may appear before the Architectural Review Board of which he is a member, but apparently may not, under subparagraph (4), make any subsequent appearance before the Planning Commission or City Council, even if that architect is the only one that is able to explain the designs that he has prepared. (Although under the proposed ordinance the board is only advisory to City staff, staff will incorporate board recommendations in staff reports to the Planning Commission and City Council, at whose hearings the architect would normally be expected to be available to make presentations or to answer questions.) This seems to be a paradox in which the sole practitioner is allowed to "influence" his own Board, of which he is a member, and where a conflict of interest would otherwise be clearly apparent, but prohibited from appearing before the Planning Commission or City Council where his "influence" would appear to be less effective. Perhaps this apparent paradox can be explained by an implicit rationale that fellow professionals on the Architectural Review Board can be expected to not be overpersuaded by the professional expertise of their colleague, but that ordinary planning commissioners and city councilmembers might be hoodwinked. Your observation would be appreciated on this point. A follow-up question: If not allowed to "present" before a planning commission or city council, may the official/architect be available to answer questions for the commission or council?

There might be other points that you would see that we should be giving careful consideration to and it would be appreciated if you would add that to your responses to the inquiries that we have made, which I'll repeat here in this final paragraph:

1. In subparagraph (4), what are the limitations on the phrase, "processing or evaluation" in terms as to what the design professional is able to discuss with agency staff?
2. In subparagraph (5)(A), does the reference to "other agency" to whom recommendations are to be made include the agency staff?
3. Under both subparagraphs (4) and (5), may a sole practitioner, who is a member of an architecture review committee (and allowed to present architectural drawings to the committee), be allowed to present architectural drawings to a planning commission or city council (or if not allowed to "present", to at least be able to answer questions)?



ALLEN E. SPRAGUE
City Attorney
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(d) "Landscape architect" means a person who holds a certificate to practice landscape architecture in this state under the authority of Chapter 3.5 of Division III of the California Business and Professions Code.

Section 2-31301. Creation and composition.

There is hereby created a design review board which shall consist of five members.

Sec. 2-31302. Special qualifications of members.

(a) In addition to the qualifications set forth in section 2-3102 of this code, the members of the design review board shall have the following qualifications:

(1) Not less than three members shall be either architects, landscape architects, or any combination thereof.

(2) One member shall be a civil engineer who, in the judgment of the mayor and the city council, has significant education, background, training and experience in grading and excavation on real property in conjunction with its physical development.

(3) One member shall be a person who, in the judgment of the mayor and the city council, has significant education, background, training and experience in the fine arts.

(b) Subparagraphs (1), (2), and (3) constitute discrete categories of membership on the design review board. Whenever a person is selected as a member of the board, the category within which such person is selected shall be designated. No person shall be selected within more than one such category, regardless of his or her qualifications.

Sec. 2-31303. Powers and duties.

The powers and duties of the design review board shall be as prescribed in Chapter 2 (Zoning Ordinance) of Title VIII of this code.

Sec. 2-31304. Ex officio members: Director of community development and building official.

The director of community development and the building official shall be nonvoting ex officio members of the design review board. They shall not be subject to the regulations prescribed in section 2-3102 of this code.

Section 2. Chapter 2 of Title VIII of the Fremont Municipal Code hereby is amended by the addition of Article 19.3 thereto, reading as follows:

ARTICLE 19.3. DESIGN REVIEW BOARD

Sec. 8-21930. Purpose.

The purpose of this article is to assure the superiority of design and quality of buildings, landscaping, and other site features and amenities within certain significant development projects not subject to the review of the historical architectural review board. These projects are significant due to their location, type, scale, or a combination of such factors. To assure superiority of design and quality it is essential that these projects be initially reviewed by a board composed of persons with special expertise in architecture, landscape architecture, and aesthetic appreciation and sensitivity before the otherwise applicable development review process commences. The purposes of such review are

(a) To enhance the orderly and harmonious development of the city;

(b) To enhance the human living and working environment within the city; and

(c) To promote visual environments which are of high aesthetic quality.

Sec. 8-21931. Powers and duties.

(a) Except as provided in subsection (b), the design review board shall have the duty of reviewing and making recommendations to the director of planning and the site plan and architectural approval agency (development organization) regarding the appropriateness of exterior architectural features of buildings and structures, including such features as signs, landscaping and other exterior features for development projects consisting of construction of new buildings and alterations, enlargements or rebuilding of existing buildings affecting the exteriors of such existing buildings, and construction, alteration and replacement of signs, landscaping and other exterior features

(1) in all P districts, including all major changes to precise site plans in P districts;

(2) on all lands designated Hill Face Open Space or Ridgeline in the general plan;

(3) in all development projects on lots abutting major and minor thoroughfares, major collector streets, freeways, and parkways, as designated in the general plan;

(4) in the Central Business District;

(5) in all projects consisting of construction of multiple dwellings consisting of five or more dwelling units;

(6) in all single family residential developments involving construction of twenty or more new dwelling units.

(b) The design review board shall not review or make recommendations as to any project which would otherwise be subject to review by the historical architectural review board pursuant to Article 19.1.

Sec. 8-21932. Review by design review board a prerequisite to further review.

No development project described in section 8-21931(a) shall be reviewed or considered by the director of planning, site plan and architectural approval agency (development organization), commission, or city council until an application shall have been made for review of such project by the design review board, and (a) such board shall have either made its recommendation as to such project pursuant to this article, or (b) the time within which such recommendation is required to be made as to such project shall have expired.

Sec. 8-21933. Applications and submittals.

Applications shall be filed with the design review board by the property owner or his agent on a form designated by the board. Photos and drawings to scale shall be submitted to the board to indicate the following:

(a) the siting of all structures on the subject site;

(b) use of walls or fencing for screening purposes;

(c) the proposed appearance, including colors and building materials, or all exterior elevations of the buildings, structures or signs under consideration;

(d) landscaping and/or fencing of yards and setback areas, and use of landscaping and/or walls for screening purposes;

(e) the character of the buildings on any lot abutting the subject site.

Sec. 8-21934. Guidelines for recommendations by board.

In addition to all other applicable regulations and policies, the design review board shall give important consideration to the

guidelines set forth in sections 8-22706, 8-22707, and 8-22707.5 of this code.

Sec. 8-21935. Time within which board must act; duty to specify reasons for negative recommendations.

(a) The board shall act upon each application for review within a period of forty-five days from and after its filing or the board shall be deemed to have recommended approval of the project as designed; provided, however, the such period may be extended with the written consent of the applicant.

(b) The board may recommend the approval or denial of the project as designed, or recommend approval of such project based upon specific conditions. If the board recommends disapproval of the project or one or more specific design components thereof, it shall make a specific finding as to why it recommended such disapproval.

SECTION 3. SEVERABILITY. In the event any section or portion of this ordinance, or the section or article adopted hereby shall be determined invalid, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days from and after the date of its adoption.

SECTION 5. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061, that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project as provided for under Title 14, California Administrative Code, Section 15061(b)(1), in that it does not have a potential for resulting in a physical change in the environment, directly or ultimately, as provided in Title 14, California Administrative Code, Section 15378(a), and that it is further exempt under the definition of Project in Section 15378(b), in that it concerns general policy

and procedure making. The Council directs that Notice of Exemption be filed with the County Clerk and with the Secretary for Resources.

SECTION 6. PUBLICATION. The City Clerk is directed to cause this ordinance to be published once in The Argus, a newspaper of general circulation published in Alameda County and circulated in the City of Fremont, within fifteen (15) days after its adoption.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Fremont on the ___ day of _____, 1987, and was passed and adopted at a regular meeting of said Council on the _____ day of _____, 1987, by the following called vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

AGENDA AND SUMMARY REPORT
FREMONT CITY COUNCIL REGULAR MEETING, JANUARY 12, 1988
CITY GOVERNMENT BUILDING, 7:00 P.M.

1. CALL TO ORDER AND SALUTE TO THE FLAG
2. ROLL CALL
3. APPROVAL OF MINUTES - Regular Meetings of December 8 and December 15, 1987
4. REPORT FROM CITY ATTORNEY

4.1 TRANSMITTAL OF DOCUMENTS

- 4.1.1 BUILDING PERMIT NO. 44828, FREMONT PSYCHIATRIC HOSPITAL, 39001 SUNDALE DRIVE - Cash-in-lieu fee of \$3814.00 (Receipt 112993) for developer's share of costs of traffic signals at Fremont Boulevard and Sundale Drive.

Engineer of Work: Stevenson, Porto & Pierce, Inc.

RECOMMENDATION: Accept the \$3814.00 cash-in-lieu fee and appropriate it into account for 507(PWC).

4.2 SECOND READING OF ORDINANCE

- 4.2.1 AMENDING SECTION 3-21101, CHAPTER 2, TITLE III OF THE FREMONT MUNICIPAL CODE ESTABLISHING PRIMA FACIE SPEED LIMITS FOR DESIGNATED CITY STREETS (Introduced January 5, 1988)

RECOMMENDATION: Adopt ordinance.

5. SCHEDULED ITEMS

- 5.1 PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER A PLANNING COMMISSION REFERRAL OF A CITY-INITIATED AMENDMENT TO THE ZONING ORDINANCE OF THE FREMONT MUNICIPAL CODE TO ESTABLISH AN ARCHITECTURAL REVIEW BOARD (ZT-87-6, EIR-87-86) (CONTINUED FROM DECEMBER 15, 1987 AND JANUARY 5, 1988)

The proposed amendment would not affect the role of the Development Organization in the present site plan and architectural approval process. The Development Organization would continue to review and approve: a) all projects requiring site plan and/or architectural approval in the district regulations, all planned districts, and planned unit developments; b) any use requiring a conditional use permit; c) the remodeling of the exteriors of commercial or industrial buildings; d) buildings moved into or within the city; e) refuse and waste areas; f) public and semipublic swimming pools; and g) signs.

The proposed amendment would require approval by the Director of Planning or Zoning Administrator, after review by ARB, for: a) all zoning administrator permits requiring site plan and architectural approval; and b) any project not subject to Planning Commission review located on lands adjacent to major corridors, or on lands designated Gateway and/or Hill Area on the General Plan. All projects requiring approval by the Planning Commission or City Council under the present ordinance would be subject to review and recommendation by ARB prior to such approval. The recommendation would be to the Director of Planning.

Minor changes in the present ordinance text have been incorporated in the proposed text such as the revision of the application procedure to allow the Development Organization and the Architectural Review Board to designate those materials required for project review, and the clarification and/or revision of the guidelines for review and approval of all applications. A document graphically illustrating these guidelines is currently being prepared by the planning staff, and will be submitted to the Council for review when completed.

EIR: An initial study and draft negative declaration (EIR-87-86) have been prepared. No comments have been received.

Planning Commission Action: On November 19, 1987, the Planning Commission adopted a motion (5-2-0-0) recommending the zoning text amendment (ZT-87-6) to the City Council. The Planning Commission's action included a recommendation that two of the five board members be architects.

Notification: Notification mailed to Architects, Landscape Architects, Architectural firms, Developers and other interested parties on December 4, 1987. Notification published in The Argus on December 4, 1987.

ENCLOSURES. Planning Commission report and unapproved minutes of November 19,



California
Fair Political
Practices Commission

March 3, 1988

Allen E. Sprague
City Attorney
City Government Building
39700 Civic Center Drive
Fremont, CA 94537

Re: 88-093

Dear Mr. Sprague:

Your letter requesting advice under the Political Reform Act was received on March 2, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, 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 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