



California Fair Political Practices Commission

May 22, 1989

Louis B. Green
City Attorney, City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94086-3707

Re: Your Request for Advice
Our File No. A-89-214

Dear Mr. Green:

You have requested advice on behalf of Mr. Van Freidin, a member of the Sunnyvale Planning Commission, regarding application of the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Is a planning commissioner precluded from participating in decisions relating to the downtown development plan project area because he owns residential property within the current redevelopment project area and within 300 feet of the downtown project area?

CONCLUSION

The planning commissioner is not precluded from participating in all decisions relating to the downtown development plan project area, because most of the decisions will affect him in a manner which is not distinguishable from the public generally. He is disqualified from participating in certain decisions which directly affect his property and which result in improvements to his property.

¹ 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.

FACTS

The City of Sunnyvale is considering a development program which consists of a series of actions to implement a conceptual land use plan and to encourage continued development of downtown Sunnyvale. The major goal of the program would be to establish the downtown as the cultural, retail, financial and entertainment center of the community.

The proposed program would involve a series of actions on the part of the planning commission. A key element of the program would be the establishment of land use controls including adoption of a precise land use plan defining permitted land uses and standards for development. Also contemplated are amendments to the existing General Plan, zoning ordinance and redevelopment plan to ensure consistency with the proposed precise plan. Another element of the program would involve the disposition of city-owned properties to facilitate the redevelopment of the Town & Country shopping center. Finally, the proposed project would involve limited public improvements such as utility upgrades and installation of landscaping and lighting. An environmental impact report is being prepared and will be certified as part of the process.

Commissioner Freidin's house is located on South Frances Street. It is just outside the boundaries of the downtown development plan project area, the area in which changed land uses are contemplated. The Commissioner's house is within the redevelopment project area, as well as the general downtown study area. One recommendation of the proposed project is the installation of a cul-de-sac on Frances Street to reduce traffic. Frances Street is also an historic area and the project may involve street lighting and signage improvements to reflect that. The proposed plan also calls for high density residential development in an area located only a short distance from Commissioner Freidin's home.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have 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 the effect on the public generally, on the official or any member of his or her immediate family, or on "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).)

Commissioner Freidin is a public official within the meaning of the Act. For the purposes of this analysis we will assume that his ownership interest in his residence is worth \$1,000 or more.

Therefore, he would have to disqualify himself with respect to any governmental decisions which would have a reasonably foreseeable material financial effect on his real property interest, distinguishable from the effect on the public generally.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).)

The decisions before the planning commission will determine the type of development activity which will occur in the downtown project area. While Commissioner Freidin's property is located just outside the proposed project area boundary, it is located within the current redevelopment project area and within the general downtown study area. One of the intended effects of redevelopment is to improve the value of property located in the redevelopment area. (Downey Cares v. Downey Development Com., supra.) It is reasonably foreseeable that the series of decisions to be made will have an effect on the value of the commissioner's property. It is then necessary to determine whether the effect of the decisions is material.

Material Financial Effect

The Commission has adopted a series of regulations to determine whether a financial effect is material. In order to apply the regulations with respect to real property interests, it is necessary to look to the type of decision to be made.

1. Adoption of a Precise Plan.

The planning commission will be adopting a precise plan establishing permitted land uses and standards of development within the downtown development plan project area. Commissioner Freidin's property is located outside the southern boundary of this area, and the commission's decisions will not involve a change in the use of his property. Any effect upon his property resulting from adoption of the precise plan would be indirect. Whether or not an indirect effect upon the commissioner's property is deemed material depends upon the distance between his property and the property that is the subject of the decision.

Regulation 18702.3 (copy enclosed) provides, in part, as follows:

- (a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not

including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

(b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or proposed boundaries) of the property which is the subject of the decision; unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a)(3)(A) or (a)(3)(B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the real property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

According to the information that you have provided, Commissioner Freidin's property is well within 300 feet of the southern boundary of the downtown development plan project area. Therefore, if the precise plan is voted on as a single unit, the decision will be material unless it will have no financial effect upon his real property interest.

You have indicated that it is possible for the planning commission to take separate action on uses in the various areas rather than vote on the precise plan as a unit. For example, the commission could take separate action on each block in making recommendations to the city council. You have asked if the distance limitations set forth in Regulation 18702.3 would then be measured from each individual block rather than from the exterior of the entire development plan project area.

The Commission has previously recognized that, in certain limited circumstances, complex decisions may be divided into separate decisions when an individual has a disqualifying interest in one component of the decisions which is not interdependent upon other components. The official may participate in the components in which he has no financial interest. (Huffaker Advice Letter, No. A-86-343; Casey Advice Letter, No. A-87-048, copies enclosed.) However, because of the necessary interrelationship of land use planning, an official may participate as to other areas only if the decision on any specific property will not have a reasonably foreseeable material financial effect on his interests. (Huffaker Advice Letter, supra.)

Unlike the foregoing situations, Commissioner Freidin's property is not directly subject to any of the land use decisions. Certain decisions are material to him only because they are in close proximity to his own property. Under these circumstances, the distance limitations of Regulation 18702.3 could be measured from the boundaries of the various areas within the project area, so long as decisions on each area can be made separately and independently.

2. Amendments to the Redevelopment Plan.

The test for material financial effect is different when dealing with amendments to the redevelopment plan. Commissioner Freidin's property is located within the current redevelopment

project area. Regulation 18702.1, provides, in part, as follows:

(a) The effect of a decision is material if any of the following applies:

(3) Interest in Real Property--

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(2) Although disqualification would otherwise be required under subsection (a)(1), (a)(2), or (a)(3) the decision will have no financial effect on the person or business entity who appears before the official or on the real property.

(Emphasis added, copy enclosed.)

Therefore, any decision to make a significant change in the redevelopment plan will be deemed to materially affect Commissioner Freidin's property, unless the decision will have no financial effect on his property.

3. Approval of Various Public Improvements within the Downtown Development Plan Project Area such as Improvements to the Utilities and Infrastructure to Serve New Land Uses within that Area.

Commissioner Freidin's property would not be directly affected by the decisions concerning improvements within the Downtown Plan Project Area, since he is outside the downtown project area. Therefore, the analysis here would be similar to that set forth under number 1, above.

4. Approval of Proposed Public Improvements throughout the Downtown Area such as Improved Street Lighting and Street Landscaping.

Any public improvements in the downtown area, such as street lighting or landscaping, which will result in new or substantially improved services to Commissioner Freidin's property, will be deemed material. (Regulation 18702.3(a)(2).) With respect to public improvements not directly involving his property, the distance measurements of Regulation 18702.3 would control as to materiality, unless the decisions were so interrelated with decisions regarding the commissioner's property that they could not be dealt with separately and independently. Any decisions involving improvements to the historical area in which he lives would appear to be interrelated. This would include such things as decisions regarding the special lighting and signage for the historical section.

5. Negotiations with the Owners of Town & Country Village for Disposition of City-Owned Property and Development of the Site.

The city is engaged in preliminary negotiations with the owners of the Town and Country Village, a boutique-type shopping center located in the northwest portion of the downtown project area. The goal of the negotiations would be to reach agreement for the disposition of city-owned property in the area to allow for private redevelopment of the shopping center into a commercial and cultural center, including a publicly-owned performing arts theater.

A public official participates in the making of a governmental decision when he negotiates with a governmental entity or private person regarding the decision. (Regulation 18700(c)(1), copy enclosed.) Therefore, the commissioner may not participate in the negotiations if the decision will have a material effect on his property. However, the distance from the center to the commissioner's property appears to be in excess of 2,500 feet. Therefore, the effect would probably not be deemed material, unless one of the exceptions set forth under Regulation 18702.3(b), supra, apply.

6. Certification of the EIR for the Project.

The environmental impact report for the project would encompass the entire downtown development project area. Since Commissioner Freidin's residence is located within 300 feet of the area boundary, the certification of the report would be deemed to have a material effect unless the decision would have no financial effect upon his property. (Regulation 18702.3(a)(1).)

Even those decisions which would otherwise not be deemed to have a material financial effect on the planning commissioner's property might require his disqualification if they are so interrelated to material decisions that they cannot be considered

separately and independently. (Miller Advice Letter, No. A-82-119, copy enclosed.) For example, a decision regarding development of a downtown development plan project parcel located more than 2500 feet from Commissioner Freidin's property is unlikely to have a material financial effect on his property, whereas a decision on property within 300 feet will have a material financial effect. However, if the development of the nearby parcel was contingent upon the development of the more distant parcel, both decisions would be considered material. The commissioner would be disqualified from participating in both decisions.

"Public Generally" Exception

Even if you ascertain that the effects of decisions on Commissioner Freidin's real property will be material, the commissioner may still be able to vote if the effect on his property is not distinguishable from the effect on the public generally. (Section 87103.) Regulation 18703 (copy enclosed) provides, in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

The "public" is all the persons residing, owning property, or doing business in the jurisdiction of the agency in question. (In re Legan, (1985) 9 FPPC 1, copy enclosed.) In the case of the planning commission, this would be the entire city. Consequently, for the public generally exception to apply, any decision would have to affect a significant segment of the City of Sunnyvale in substantially the same manner as it would affect the commissioner. (Dowd Advice Letter, No. A-88-214; Burnham Advice Letter, No. A-86-210, copies enclosed.)

The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order to apply the public generally exception, the population affected must be large in number and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops 62; Flynn Advice Letter, No. I-88-430, copies enclosed.)

In In re Owen (1976) 2 FPPC Ops 77, copy enclosed, the issue was whether certain planning commissioners had conflicts of interest with respect to a 23-block downtown core development program in the City of Davis. One of the planning commissioners owned residential property across the street from the boundary of the core area in a neighborhood deemed inextricably tied to the core

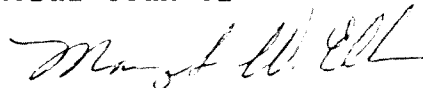
area in terms of planning considerations. The Commission concluded that residential homeowners within and in the immediate vicinity of the core area constituted a significant segment of the public. Therefore, the planning commissioner was not disqualified merely because he owned a home near the core area. Moreover, there was no indication that the plan would have any peculiar impact on the value of the planning commissioner's property. The Commission cautioned, however, that he might be required to disqualify himself with respect to a matter before him if further evidence emerged in the planning process which distinguished the effect of the plan or a portion of it upon his property interest. (Owen, supra, at p. 81.)

You have not provided specific figures as to the number of owners of single-family residential property in the City of Sunnyvale. For the purpose of this analysis, we will assume that the number is significant. However, unlike Owen, where there was no indication that the public official was affected any differently than other residential property owners, there is such evidence here. Direct improvements to Commissioner Freidin's property are projected. High-density residential space is targeted within 100 feet of his property, which could significantly affect his property values. Most of the major development decisions involving the downtown plan project would appear to affect his property in a manner that is distinguishable from other residential property further removed from the project area. To the extent that his property is affected differently than other residential property in the area, the public generally exception would not apply. (See, Benjamin Advice Letter, No. A-86-182; Thorson Advice Letter, No. A-85-221, copies enclosed.)

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

Sincerely,

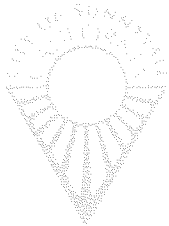
Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED:MWE:aa

Enclosures



CITY OF SUNNYVALE

P.O. BOX 3707 • SUNNYVALE, CALIFORNIA 94086-3707 • (408) 730-7464

Office of the City Attorney

April 10, 1989

EXPRESS MAIL

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Advisory Letter
Pursuant to Government Code §83114(b)

Dear Ms. Griffiths:

I am writing on behalf of Mr. Van Freidin to request a written advisory letter pursuant to Government Code §83114(b) and Title 2, California Administrative Code §18329. Mr. Freidin is a member of the Sunnyvale Planning Commission. His mailing address is 519 South Frances Street, Sunnyvale, California 94086.

Mr. Freidin has expressly authorized me to make this request on his behalf. The request relates to a pending decision before the Sunnyvale Planning Commission.

The City of Sunnyvale is engaged in a planning effort to determine the future development goals of the downtown area of the City. The downtown area now consists generally of a regional shopping center known as Town Center, a Town & County Village boutique type shopping center, assorted commercial uses, and primarily single family residential uses. The development program being considered by the City consists of a series of actions to implement a conceptual land use plan and to encourage the continued development and private redevelopment of downtown Sunnyvale. If adopted, the major goal of the program would be to establish the downtown as the cultural, retail, financial and entertainment center of the community.

Commissioner Freidin owns a single family home in the downtown area in proximity to the area under consideration. The purpose of this letter is to request an advisory opinion as to whether or not Commissioner Freidin may participate in the various decisions which may come before the Planning Commission, or whether he is disqualified from participating pursuant to Government Code §87100. In particular, with respect to various items which will come before the Planning Commission, is it reasonably foreseeable that the decision will have a material financial effect pursuant to Government Code §87103? If

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so, is that effect distinguishable from the effect on the public generally, or does Commissioner Freidin's situation fall within the scope of the Owen opinion, 2 FPFC 77? If Commissioner Freidin is disqualified from participating in any of the particular actions before the Planning Commission, or by reason of specific actions required, may Commissioner Freidin act upon other distinct actions which come before the Planning Commission?

The proposed downtown program consists of a series of actions designed to guide and promote the future development of the downtown area. The key element of the program would be the establishment of various land use controls governing private development or redevelopment of property in the downtown area. Most or all of the development contemplated would be private. Actual City involvement would generally be limited to improving public utilities and infrastructure, potential disposition of City-owned land for development, and installation of various City improvements such as landscaping and lighting in the public rights of way.

The contemplated actions include adoption of a precise land use plan for the core downtown area, defining permitted land uses and standards for development within the downtown area. Amendments to the existing General Plan, zoning ordinance and redevelopment plan are contemplated in order to ensure their consistency with the proposed precise plan. A third element of the program would involve the disposition of City-owned properties to facilitate the redevelopment of a local shopping center known as the Town & Country shopping center. Finally, the project, if it proceeds, would involve certain fairly limited public improvements such as utility upgrades and installation of landscaping and lighting. An environmental impact report is being prepared and will be certified as part of the process.

To assist in your review of this matter, I am enclosing three documents which will help define the project. Ones I have labeled as Exhibits "A" and "B" are area maps taken from the draft environmental impact report for the project. Exhibit "A" is a general area map which defines the different study areas. Exhibit "B" is a map of the same area but more specifically delineating contemplated land uses under the proposed precise plan. Finally, I am enclosing a copy of the draft environmental impact report which may provide more detailed information regarding the project should you need it. I would note that this draft report is still subject to public comment and has not yet been certified pursuant to the California Environmental Quality Act.

On Exhibit "A" I have marked several relevant features of the existing land uses and proposed plan. Commissioner Freidin's home is located on Frances Street toward the bottom of the map. The parcel on which it is located is colored red.

The Sunnyvale Downtown Development Plan Project Area boundary shown on the map and outlined in blue is the boundary of the core area for which a precise plan is being considered. That is the area within which we will be specifying new land uses and other development standards. The overall downtown study area is also shown on the map and highlighted in green. This is the overall study area. However, areas within the downtown area but outside of the development plan project area boundary are not being considered for changes in land use. Those areas may be considered for some public improvements such as added landscaping and street lighting. Development design guidelines may also be proposed for those areas. However, no basic changes in land use are contemplated.

I have outlined the City's current redevelopment project area in black. Most of the proposed study area is within the City's redevelopment project area. The project currently contemplates amendments to the existing redevelopment plan primarily to make uses permitted in the development plan consistent with those specified in the proposed precise plan. The project as a whole is designed to encourage private development and is not proposed to be carried out as a major redevelopment project.

The area which is cross-hatched in red is an existing regional shopping center which would remain under the plan with possible additional development on the site. The area cross-hatched in blue is the existing Town & Country shopping center area. The City is engaged in preliminary negotiations with the owners of the Town & Country shopping center, the goal of which would be to arrive at an agreement for the disposition of City-owned property in the area to allow private redevelopment of the shopping center into a commercial and cultural center, as has been proposed by the private property owners.

The frontage along Mathilda Avenue currently is developed for commercial uses. The area to the south of the Town Center regional shopping center is developed primarily as single family residential, with some increasing commercial development in areas close to the regional shopping center. Areas beyond the downtown study area to both the east and west are primarily single family in nature.

Exhibit "B" is a more detailed diagram of the downtown development plan project area. It indicates the preliminary proposed uses for the various sections of the study area as contemplated in the precise plan. As you can see, each block is segregated and discussed in the plan separately with respect to the various uses contemplated.

Commissioner Freidin's house at 519 South Frances is located just outside the boundaries of the downtown development plan project area. His house is the second one in from the street which forms

the boundary of that project area. That project area, as noted above, is the area in which changed land uses are contemplated. Therefore, Commissioner Freidin's house is located in proximity to but not within that area being considered for changes in land use. Commissioner Freidin's house is located within the redevelopment project area, as well as the general downtown study area.

May Commissioner Freidin participate in the various actions which are brought to the Planning Commission, which will be required to make recommendations to the City Council on the various aspects of the program? In particular, are the reasonably foreseeable effects of the following decisions material as to Commissioner Freidin's interest in his home located at 519 South Frances Street:

1. Adoption of a Precise Plan Establishing Permitted Land Uses and Development Standards within the Downtown Development Plan Project Area. With respect to materiality as it relates to a recommendation on the precise plan, does the determination of materiality vary depending on whether the precise plan is voted on as a single unit or whether the Planning Commission makes recommendations on uses in various areas as could easily be done as shown on Exhibit "B"? In other words, would the distance limitations established by Title 2 California Administrative Code §18702.3 be measured from the exterior of the overall study area or would they be measured from each individual block within that study area if the Commission took separate actions on each block in making recommendations to the City Council?

2. Amendments to the Redevelopment Plan.

3. Approval of Various Public Improvements within the Downtown Development Plan Project Area such as Improvements to the Utilities and Infrastructure to Serve New Land Uses within That Area.

4. Approval of Proposed Public Improvements throughout the Downtown Area such as Improved Street Lighting and Street Landscaping.

5. Negotiations with the Owners of Town & Country Village for Disposition of City-Owned Property and Development of the Site as a Commercial and Cultural Center, including Development of a Publicly Owned Performing Arts Theater.

6. Certificates of the EIR for the Project.

If the reasonably foreseeable effects of the various actions are material as to Commissioner Freidin, is he nonetheless permitted to act on these various items as a member of a significant segment of the public? Without limiting the inquiry, does Commissioner Freidin fall within the scope of the Owen opinion, 2 FPPC 77? That

opinion would appear to be directly on point with respect to Commissioner Freidin's circumstances.

That opinion did note that specific circumstances of a project which result in the public official being affected differently than most surrounding properties could render that opinion inapplicable in a specific case. In order to ensure the fullest possible disclosure for your consideration, I have listed those elements of the proposed project which, as best I can determine, might have some specific applicability to Commissioner Freidin as a member of a smaller group than the entire surrounding residential area. In reviewing these, I would appreciate it if you could not only determine whether any of these take Commissioner Freidin out of the scope of the Owen opinion, but if so whether Commissioner Freidin can simply refrain from acting on those particular portions of the project but still act on the major elements.

1. Installation of Cul-de-Sacs. Current traffic levels on Taaffe, Frances and Murphy Streets are high due to the location between the Town Center regional shopping center and El Camino Real, a major thoroughfare. Commissioner Freidin resides on Frances Street. For a number of years, residents of those neighborhoods have requested traffic improvements to reduce traffic on those streets. One recommendation of the proposed project is the installation of cul-de-sacs on Taaffe and Frances Streets. This would prevent through traffic and discourage the use of these residential streets by commercial traffic. Two decisions will have to be made. One is whether to install such cul-de-sacs. The other is the location along those streets where they should be installed. Do these actions so specifically affect Commissioner Freidin so that he is not permitted to participate in those recommendations regardless of the Owen opinion? If so, since those decisions are not integral to the overall planning effort, can Commissioner Freidin refrain from participating in those particular decisions but still participate in the other more fundamental decisions being made such as adoption of the precise plan and the amendments to the redevelopment and general plans?

2. Lighting and Landscaping Improvements. One element of the proposed project is a recommendation that upgraded street landscaping and distinctive street lighting be installed throughout the downtown area. This would affect all persons owning property within the downtown area but not beyond that. Is the downtown area sufficiently large so that Commissioner Freidin would fall within the Owen opinion with respect to the decision as to whether or not to make such public improvements? It might be noted that Commissioner Freidin lives within a several block area which is generally considered to be a historic area and the nature of improvements such as street lighting and signage may reflect that fact. If these decisions are so specific as to Commissioner Freidin as to prevent the application of the Owen opinion, can Commissioner Freidin refrain from participating on these

particular decisions while participating on the other more fundamental decisions relating to the downtown planning as to which he is not affected differently from the broader downtown and surrounding areas?

3. Proximity to Proposed Development. I am not familiar with the physical nature of the proposed downtown improvement plan at issue in the Owen opinion. The current proposal for the Sunnyvale downtown plan would call for high density residential development in that area of the project area located only a short distance from Commissioner Freidin's home. Does the intensity of the proposed use in proximity to Commissioner Freidin's property constitute a distinguishing factor or is this similar to the circumstance in the Owen opinion? If the proximity of Commissioner Freidin's property to proposed intense development in the project area does prohibit his participation with respect to that development, can he refrain from participating only on the recommendations relating to that property in proximity to his property, while participating in other actions such as recommending proposed land uses for areas within the study area not in such close proximity to his property?

I recognize the complexity of the particular planning process which we are undertaking and the magnitude of the review which you will be required to undertake. Unfortunately, we are under fairly severe time constraints and anticipate the first items coming to Planning Commission by the beginning of May. Therefore, I would appreciate whatever efforts you can make to expedite a response to this inquiry. I would be happy to provide whatever assistance I can in terms of additional information or discussing the matter with you or your staff personally. Given the complexity of the process involved, I think a meeting on the item could be helpful for purposes of clarification. I would be happy to meet with you or members of your staff at your offices at your convenience in order to discuss this request.

Please let me know if you need any additional information.

Very truly yours,



Louis B. Green
City Attorney

LBG:ff
cc: Commissioner Freidin



California Fair Political Practices Commission

April 14, 1989

Louis B. Green
City Attorney
P.O. Box 3707
Sunnyvale, CA 94086-3707

Re: Letter No. 89-214

Dear Mr. Green:

Your letter requesting advice under the Political Reform Act was received on April 11, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

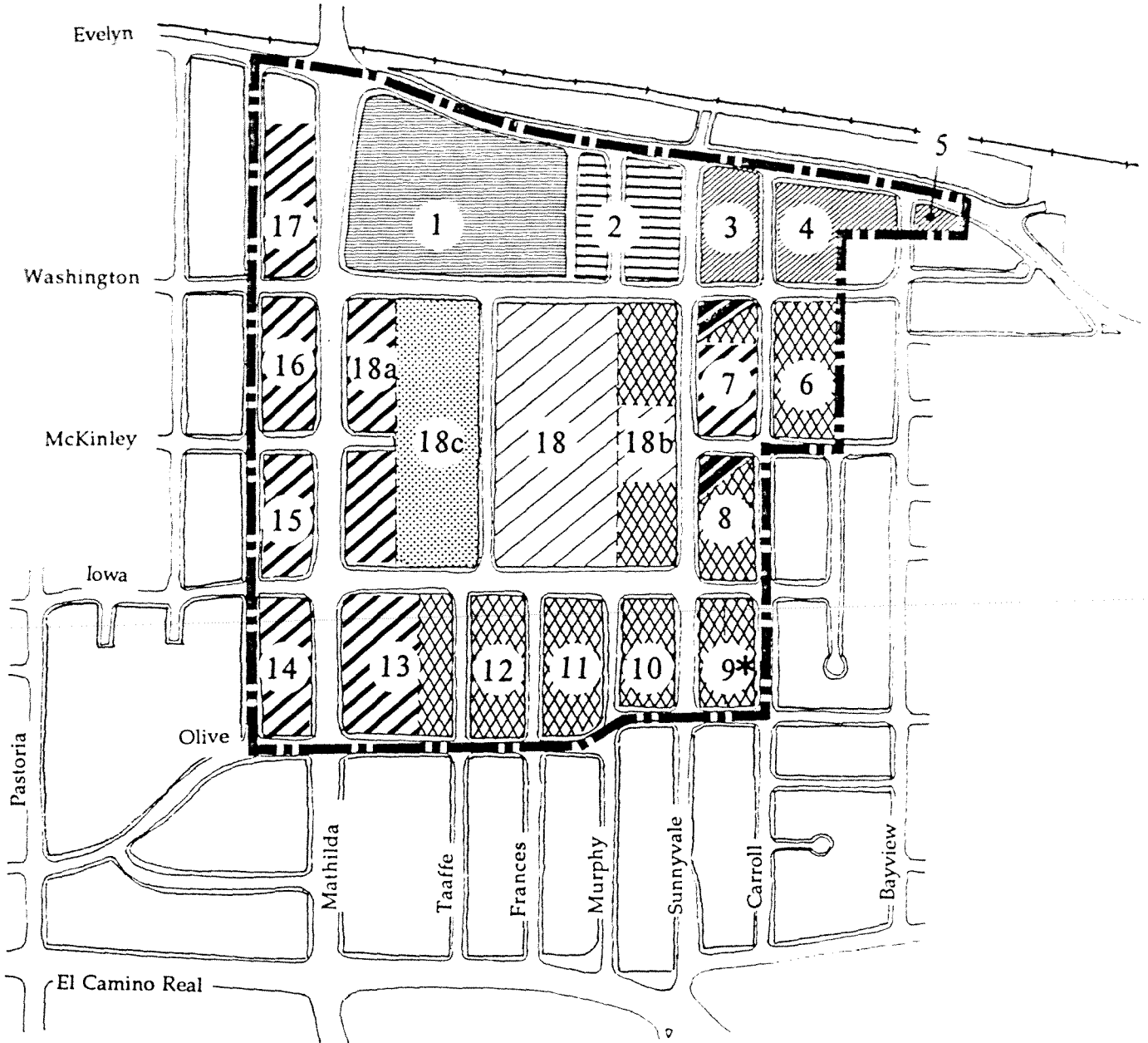
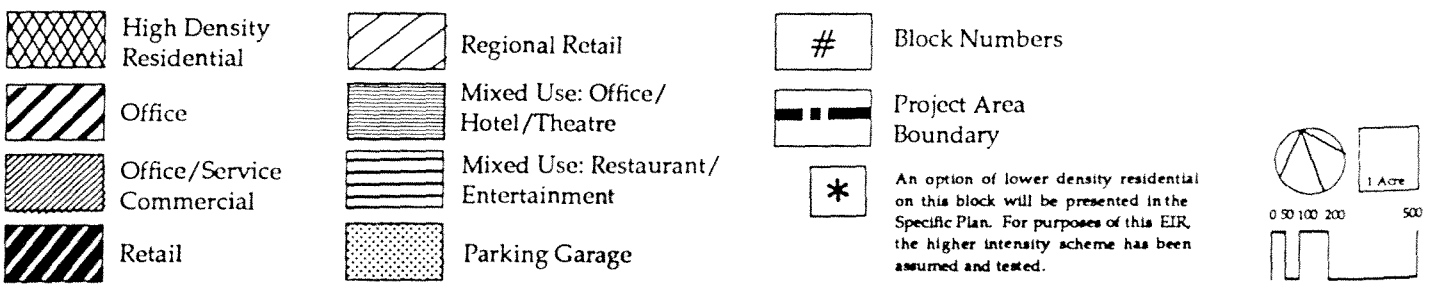


Figure 3-4

Proposed Land Use By Block



Downtown Sunnyvale EIR

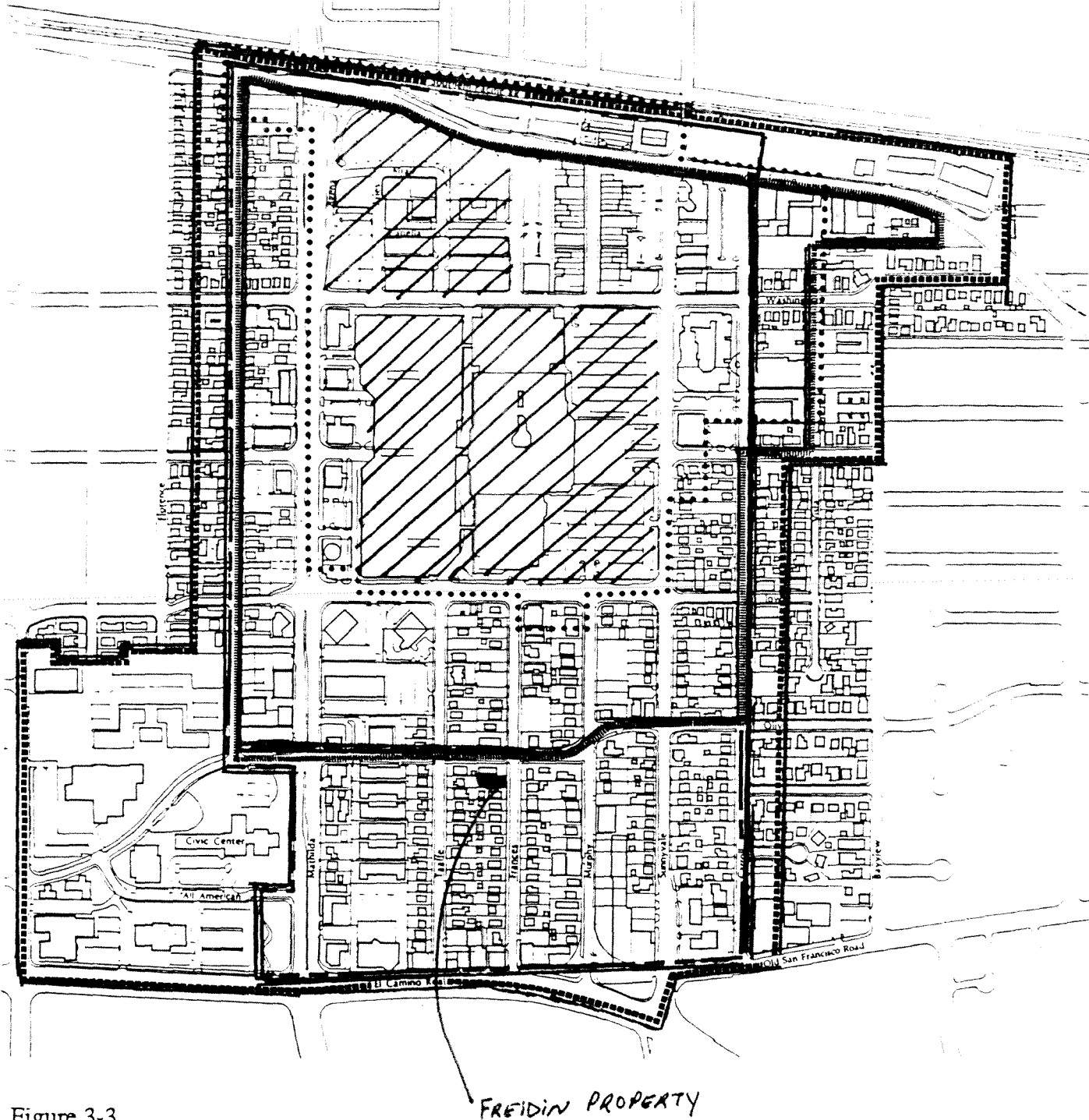

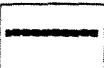
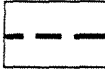

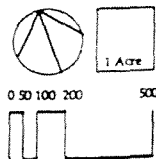


Figure 3-3

Project Area Boundaries

-  Sunnyvale Downtown Development Plan Project Area Boundary (*)
-  Downtown Boundary
-  Redevelopment Project Area Boundary
-  Parking District Boundary



* Urban design guidelines will be provided for selected areas outside of this boundary but within the downtown boundary

Downtown Sunnyvale EIR

ANALYSIS OF POTENTIAL FUTURE
CONFLICTS OF INTEREST

Involving

PLANNING COMMISSIONER VAN FREIDIN
and
THE DOWNTOWN SUNNYVALE SPECIFIC PLAN

Prepared for

LOUIS B. GREEN, CITY ATTORNEY
CITY OF SUNNYVALE

NOVEMBER 6, 1989

Prepared by

APPRAISAL RESEARCH COMPANY



APPRAISAL RESEARCH COMPANY

APPRAISALS CONSULTATION ACQUISITION REAL ESTATE ECONOMICS

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November 6, 1989

Mr. Louis B. Green
City Attorney
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94086

Dear Mr. Green;

Pursuant to instructions contained in your letter dated October 18, 1989, we hereby submit to you our economic and appraisal analysis of the potential conflict of interest involving Mr. Van Freidin, a Planning Commissioner for the City of Sunnyvale.

The City of Sunnyvale has prepared a Draft Specific Plan for the Downtown Area and a Draft Environmental Impact Report for the project. If the Specific Plan is adopted, there would also be necessary amendments to the City's General Plan, Zoning Ordinances and Redevelopment Plan to conform to the Specific Plan.

Mr. Van Freidin owns and resides in a single family residence located at 519 South Frances Street, approximately 100 feet south of the southwest corner of Frances Street and Olive Avenue.

The Draft Specific Plan contains four distinct areas which are to be considered separately by the City Council and the appropriate City commissions.

We have conducted a separate analysis of each area to measure appraisal and economic impact of that portion of the project on Mr. Van Freidin's residence.

The four distinct areas of the Draft Specific Plan are as follows:

1. The "North of Washington Area" which includes the Town and Country Shopping Center, the Murphy Avenue Heritage Commercial District and the East Evelyn Area. This area includes blocks 1, 2, 3, 4 & 5 as identified in the Draft Downtown Sunnyvale Specific Plan.
2. The Mathilda Avenue Corridor, encompassing blocks 13, 14, 15, 16, 17 and 18A, located along both sides of Mathilda Avenue between Olive and Washington and along the West side of Mathilda between Washington and Evelyn.
3. The Town Center Mall which includes blocks 18, 18B and 18C.
4. The proposed multi-residential district located between Iowa and Olive Avenues and along Sunnyvale Avenue. This district includes blocks 6, 7, 8, 8A, 9, 9A, 10, 11, 12, 13A.

We have physically toured all of the Specific Plan area and surrounding neighborhoods. In addition, we have reviewed the Draft Downtown Sunnyvale Specific Plan, the Draft Environmental Impact Report, the General Plan, current zoning and the Redevelopment Plan.

We have also reviewed the memorandum agreement with Town and Country, the letter of instructions for this assignment from Mr. Louis B. Green, City Attorney and various opinion letters from the California Fair Political Practices Commission relating to Sunnyvale and other cities.

We have not interviewed or spoken to any member of the City Council, Planning Commission or other official of the City of Sunnyvale with the exception of the City Attorney and Mr. William E. Powers, Director of Community Development.


Our instructions for the preparation of this report are derived solely from the letter dated October 18, 1989 from Louis B. Green, City Attorney to Appraisal Research Company, a copy of which is included in this report.

No employee of Appraisal Research Company has any financial interest in any property in downtown Sunnyvale.

Please call me if you have any questions concerning our analysis.

Yours Truly,

APPRAISAL RESEARCH COMPANY


Albert A. Schlarmann


Kara Woods

SUMMARY OF FINDINGS AND CONCLUSIONS

ACTION

FINDINGS

North of Washington Area

Land sale transactions	no conflict of interest
Land use approvals	no conflict of interest
Certification of Environmental Impact Report	no conflict of interest

Mathilda Avenue Corridor

Adoption of Specific Plan and any necessary amendments to General Plan	no conflict of interest
Certification of Environmental Impact Report	no conflict of interest

Town Center Mall

Adoption of Specific Plan and any necessary amendments to General Plan	no conflict of interest
Certification of Environmental Impact Report	no conflict of interest

High-Density Residential

Adoption of Specific Plan and any necessary amendments to General Plan	conflict of interest
Certification of Environmental Impact Report	conflict of interest
Location of street closures	conflict of interest

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- Plat Map
- Comparable Sales Table
- Statistical Profile of Subject Neighborhood
- Statistical Profile of Subject Area
- Statistical Profile of Control Area
- Statistical Profile of Base Area
- City Attorney's Letter
- California Fair Political Practices Commission Advice Letter

STATEMENT OF PURPOSE

This report has been made to determine if Planning Commissioner Van Freidin has a conflict of interest with decisions regarding the redevelopment of downtown Sunnyvale because of the location of his residence. Through economic and appraisal analysis, conflict of interest has been determined on a project area basis. In our opinion, the specific project areas are not interdependent and each could proceed without the others.

DESCRIPTION OF THE SUBJECT PROPERTY AND NEIGHBORHOOD

The subject property, owned by Mr. & Mrs. Van Freidin, is located at 519 Frances Street between W. Olive Avenue and El Camino Real, second from the southwest corner of W. Olive and Frances. The parcel is 6,500 square feet and improved with a 1,768 square foot, 7 room, 4 bedroom, 1 1/2 bath, 2 story single family residence. Mr. & Mrs. Freidin have owned the property since 1977.

The subject is within the Taaffe-Frances Heritage Neighborhood. This historical neighborhood is comprised of the one block sections of Taaffe and Frances between W. Olive Avenue and El Camino Real. The homes in the neighborhood are not designated Historical Landmarks though are protected by the Heritage Commission.

Based on readily available real estate data, it is determined by the appraiser that the subject property has a fair market value of approximately \$350,000, as of October 30, 1989. This estimation is made without benefit of formal appraisal or inspection of the property.

PROJECT AREAS

The Specific Plan discusses four distinct geographical areas of the Redevelopment Area which can be analyzed separately:

1. North of Washington Area. The main portion of development in this area will consist of the redevelopment of the Town & Country site into a mixed use area. A theatre and hotel are planned in addition to office, retail and residential land uses.
2. Mathilda Avenue Corridor. 4-5 story office buildings are planned for this area of Mathilda between Olive and Evelyn.
3. Town Center Mall. The existing Town Center Mall will be upgraded to meet the desired architectural style of the redevelopment area. There is a possibility that McKinley will be developed into a through street.
4. High-Density Residential. A multi-residential neighborhood with a density of 45 to 55 dwelling units per acre is planned for the area located between Iowa and Olive and along Sunnyvale Avenue. Building heights will be 2 to 4 stories.

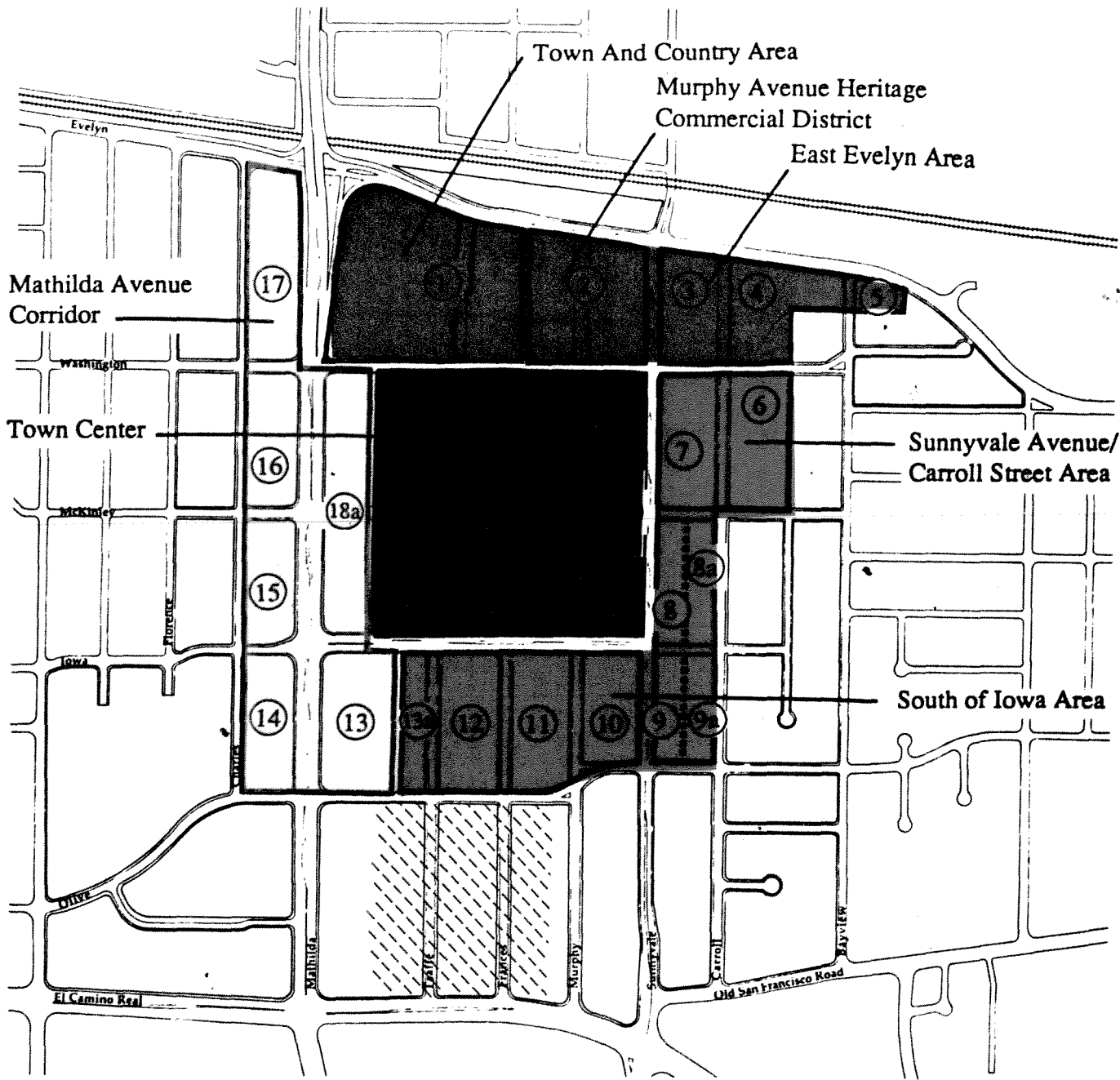
DEFINITION OF A CONFLICT OF INTEREST

An official has a conflict of interest with regard to participating 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 any real property in which the public official has an interest worth \$1,000 or more.

Materiality is determined by both distance and financial terms. If the real property is located within 300 feet of the proposed project boundaries, materiality is assumed unless it can be said that it will have no impact on the value whatsoever. If the real property is within 2,500 feet of the proposed project boundaries, the effect of a decision is material if the decision will have a reasonably foreseeable financial effect of \$10,000 or more on the fair market value of the real property in which the official has an interest.

Mr. Freidin's property lies within 300 feet of the High-Density Residential Area and within 2,500 feet of the other three project areas.

PROJECT AREAS



PROJECT AREA 1



PROJECT AREA 2



PROJECT AREA 3



PROJECT AREA 4



TAAFFE-FRANCES
HERITAGE NEIGHBORHOOD

AREAS OF POTENTIAL CONFLICT OF INTEREST

There appear to be seven major decisions regarding the four redevelopment areas before the planning commission which pose a potential conflict of interest for Mr. Freidin:

1. Land sale transaction of Town & Country area.
2. Land use approvals for Town & Country area.
3. Certification of Environmental Impact Report for Town & Country area.
4. Adoption of Specific Plan and any necessary amendments to the General Plan and/or Redevelopment Plan for Mathilda Avenue Corridor.
5. Adoption of Specific Plan and any necessary amendments to the General Plan and/or Redevelopment Plan for High-Density Residential area.
6. Adoption of Specific Plan and any necessary amendments to the General Plan and/or Redevelopment Plan for Town Center Mall.
7. Certification of Environmental Impact Report for Mathilda Avenue Corridor, High-Density Residential area and Town Center Mall.

METHODOLOGY OF THE APPRAISAL RESEARCH STUDY

The City of Sunnyvale has completed a major Redevelopment of its downtown area which included large scale public acquisition, demolition and clearance of properties. New developments in the downtown included the Town and Country Shopping Center and the Town center Mall, a regional center.

Because the City of Sunnyvale completed in early 1980 one major Redevelopment Project downtown in close proximity to Mr. Van Freidin's property, we have the opportunity to test how Mr. Van Freidin's property appreciated as compared to single family residences City wide in the years since 1980.

The Specific Plan is a follow-on to major public investment which was incorporated in the previous Redevelopment effort. We believe that immediately surrounding single family residential values will over the next ten years behave very much like they did over the last nine years since completion of the Town Center Mall.

To determine whether or not values of single family residences in close proximity to these major public expenditures in the downtown grew at a greater rate than those in the City as a whole, we gathered data on residential values City wide for testing purposes.

Base Area

The base area includes most of the residential areas of Sunnyvale. All residences within Thomas Brothers Map grids page 52, E6-F6; page 53, A3-A6; page 59, E1-F1; page 60, A1 are included.

Control Area

A residential district south of El Camino Real was chosen as a control area. This neighborhood is sufficiently removed from the downtown so as not to be directly impacted by new downtown developments, but should reflect any general benefits which accrue to the City as a whole.

Subject Area

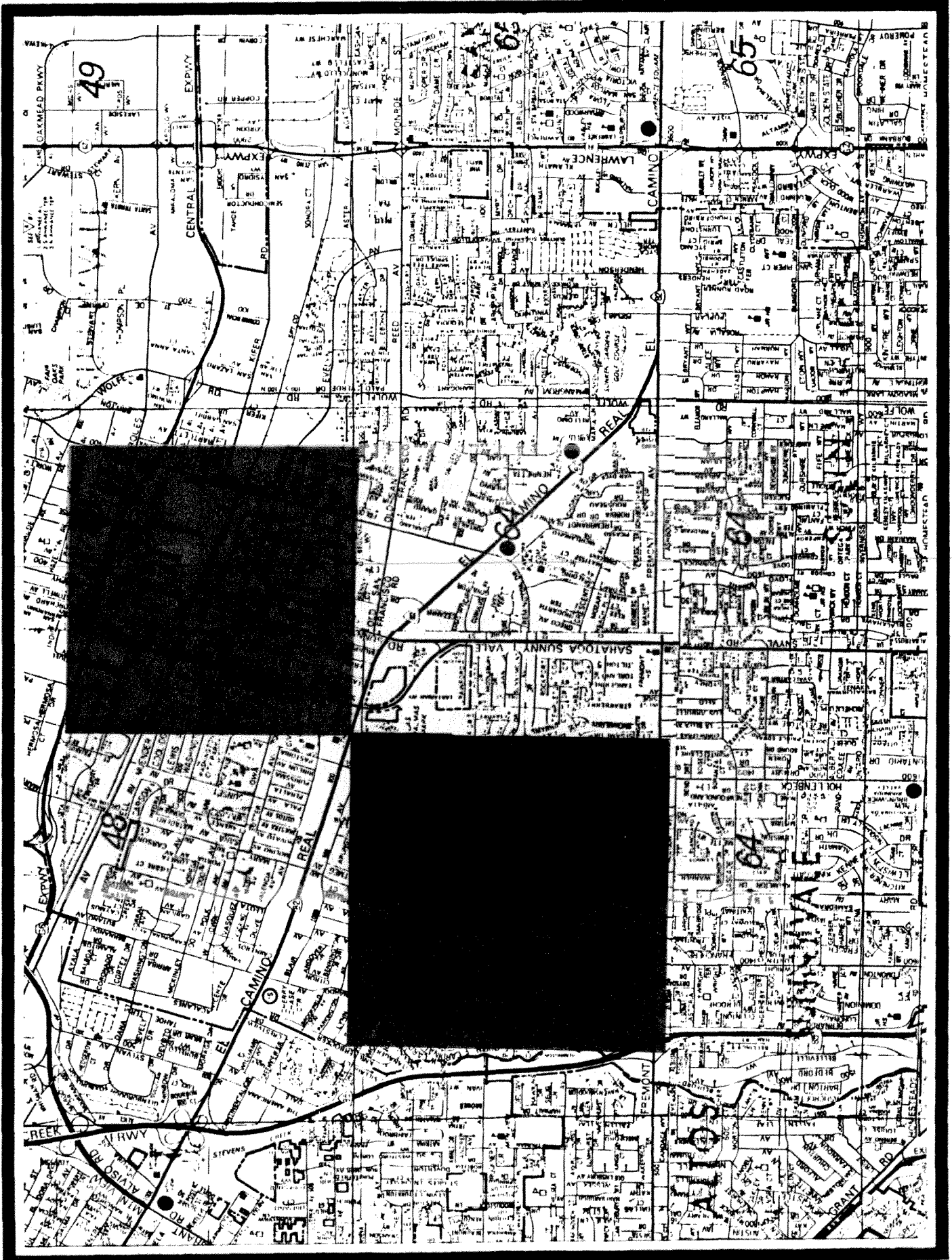
All of the residential neighborhoods bordering the downtown on the south and east are included in this area. Mr. Van Freidin's residence is located in this area.

A ten year statistical analyses was developed for each area which showed among other things, average and median sale prices of single family residences for each of the past ten years.

From this data we developed charts to show the average rate of change in value for each area per year and for the entire period.

We then compared the data for each area to determine whether or not the subject area experienced value changes different from the other areas.

Because the Town Center Mall was completed in the early 1980's, any impact on surrounding residential values should be reflected as a difference among the subject area, the control area and the base area.



Base Area
 Control Area
 Subject Area

SALES PRICE ANALYSIS

A sales price analysis was performed to determine if close proximity to the downtown area has affected market sales prices of single family residences in the immediately surrounding area. Over the past ten years, the downtown area has experienced retail and commercial growth which could affect the value of these homes. It is assumed that the continued development of the downtown area would affect the subject properties in a similar manner.

Annual Compound Rate of Increase

The annual compound rate of increase in median price over the nine year period of 1980 through 1988 shows a 8.35 % increase per year in sales price for the subject area, an 8.50 % increase per year for the control area and a 7.91 % increase for the base area.

The increase for the control area is 0.15 % higher than the subject area. This slight difference is statistically insignificant.

The base area shows a lower increase than both the subject and control areas (0.44 % and 0.59 % respectively). This variation is attributed to an unavoidable inconsistency in sample size.

Conclusion

There seems to be no marked difference between the two neighborhoods in the annual rate of increase. The behavior of the base area closely resembles both the subject and control areas, confirming that both areas are stable Sunnyvale neighborhoods.

This indicates that location adjacent to the downtown area has not affected property values of single family residences through either an increase or decrease in sales price.

Assuming further development in the downtown area would continue to affect downtown residential neighborhoods in a similar manner, it is determined that property values would not be swayed by future downtown development, but would instead move with city wide trends.

SUNNYVALE NEIGHBORHOOD SALES PRICE ANALYSIS

	MEDIAN SALES PRICE		
	<u>Subject Area</u>	<u>Control Area</u>	<u>Base Area</u>
1989*	\$ 213,363	\$ 323,000	\$ 321,767
1988	180,608	289,770	275,499
1987	147,083	229,679	221,910
1986	144,902	217,213	203,639
1985	123,500	188,125	173,078
1984	113,797	174,865	163,857
1983	127,458	161,611	164,767
1982	108,750	152,800	168,430
1981	136,541	157,850	166,551
1980	95,053	150,862	149,789
Compound Annual Rate of Increase 1980 - 1988	8.35 %	8.50 %	7.91 %

* 1989 data is current through March.
 Partial 1989 data was not used in
 Compound Annual Rate of Increase calculation.

Original data obtained from DAMAR Corporation, a real estate
 information service.

APPRAISAL RESEARCH COMPANY

HERITAGE PRESERVATION

The Heritage Preservation District was created to provide protection of historically and culturally significant buildings or areas within the City of Sunnyvale. The Heritage Commission is comprised of seven qualified persons appointed by the City Council, none of which may hold any paid office or be employed by the City. Any decisions directly affecting a landmark or landmark district must first be presented and approved by the Heritage Commission before final approval by the City Council, with City Council having the authority to override any decisions made by the Heritage Commission.

The Taaffe-Frances Heritage Neighborhood is protected by the Heritage Commission. Any proposed zone changes or street improvements brought forth as a result of the Redevelopment Project which directly affect the Taaffe-Frances Heritage Neighborhood would be brought before the Heritage Commission, and then to the City Council for final approval. The Planning Commission would have no decision making power and thus, Mr. Freidin would have no influence upon his property beyond that of a homeowner.

ZONING AND STREET IMPROVEMENTS

With a zoning change to high-density residential north of Olive, the Taaffe-Frances neighborhood becomes an island of low-density residences between commercial and high-density uses. When a one block low-density area is sandwiched between two high-density uses, it is reasonable to assume that the minor area would eventually conform to a higher density use.

Mr. William Powers, Director of Community Development, has confirmed that there is no reasonable probability of a proposed zone change for the neighborhood over the life of the redevelopment project.

Possible street improvements in the Taaffe-Frances neighborhood could include distinctive signage, historical lighting, street furniture or sidewalk improvement. Widening the sidewalks or street is highly unlikely.

There is a reasonable probability that a proposal for other, less substantial improvements will be brought before the Heritage Commission in connection with the redevelopment project.

NORTH OF WASHINGTON AREA

Proposed Action

The existing Town & Country will be redeveloped to a mixed use area of retail, residential and office space with building heights ranging from 3 to 9 stories. In addition, the Town & Country site will have a performing arts theatre and hotel. The Murphy Avenue Heritage Commercial District is currently undergoing revitalization and will continue to serve as downtown's restaurant and entertainment center. The East Evelyn Area will be the

entertainment center. The East Evelyn Area will be the professional office and commercial service district of downtown with building heights of 2 to 4 stories. Surface parking is also proposed. Residential uses are allowed in the East Evelyn Area.

Appraisal and Economic Impact

Through the Sales Price Analysis it was determined that the market value of homes in the subject neighborhood has followed the overall city wide growth trend. Although a decline in growth was observed during construction of the Town Center Mall, the neighborhood bounced back to normal values after completion. There is a possibility that construction in the downtown area could hamper the growth rates in downtown neighborhoods for a short time due to the inconvenience and confusion. If this does occur, the past behavior of the neighborhood shows that the growth rate and value will normalize when construction is completed.

If the benefits of this area of the project include an increase in market value for homes in Sunnyvale, it is concluded that homes in the subject neighborhood will not increase at a measurably different rate than other Sunnyvale neighborhoods.

The increased traffic and congestion brought about by this project are unavoidable. With the exception of Mathilda Avenue, the North of Washington area and the subject neighborhood do not have common thoroughfares.

Table 4-12 of the Environmental Impact Report shows Frances south of Olive as having an existing traffic volume of 700 vehicles per day and a total capacity for 2,000 vehicles per day. With buildout of the Specific Plan, traffic would increase by 100 vehicles per day, for a total of 800. The EIR states, "An increase of 100 to 300 vehicles per day would probably not be noticeable by residents on those streets, ..." (page 4-30).

Though the subject neighborhood may feel the affects of increased traffic and congestion more acutely than other neighborhoods in Sunnyvale, it is an immeasurable and therefore nonmaterial amount.

Mr. Freidin does not have a conflict of interest with regard to participating in decisions regarding the North of Washington project area. It is not reasonably foreseeable that the decisions will have a material financial effect, distinguishable from its effect on the public generally, on Mr. Freidin's property located at 519 Frances Street.

MATHILDA AVENUE CORRIDOR

Proposed Action

Mathilda Avenue will be developed into an office corridor. This will be downtown Sunnyvale's highest concentration of office space comprised of mid-rise buildings of high quality and distinct architectural style. Buildings will be 4 to 5 stories in height will parking generally required below grade.

Appraisal and Economic Impact

It has been concluded that greater development of the downtown area will not have an affect the subject neighborhood exceptional to that of the city as a whole. The proposed Mathilda Avenue Corridor will bring increased traffic and congestion to the downtown area. Mathilda Avenue is a major arterial for the subject neighborhood and the neighborhood will be affected to a greater degree than Sunnyvale neighborhoods further from the downtown area. Parking is to be provided by underground facilities in the project area. The subject neighborhood should not feel an increase in parking. The inconvenience of increased traffic and congestion cannot be quantified into a measurable change in value and, therefore, is not material.

Mr. Freidin does not have a conflict of interest with regard to participating in decisions regarding the Mathilda Avenue Corridor project area. It is not reasonably foreseeable that the decisions will have a material financial effect, distinguishable from its effect on the public generally, on Mr. Freidin's property located at 519 Frances Street.

TOWN CENTER MALL

Proposed Action

The existing Town Center Mall is located in the center of downtown. To integrate the mall with the remainder of downtown, buildings are encouraged on the edges of the Town Center block. This would result in an area with more pedestrian appeal. An extension of McKinley Avenue to Town Center Lane is also proposed to relieve the internal congestion of downtown and create a more open environment.

Appraisal and Economic Impact

The market value of homes in the subject area will not be affected by further development of the Town Center Mall area.

Some existing surface parking is proposed to be replaced by retail buildings. This would limit parking and overflow to street parking would be expected. The subject neighborhood is two blocks south of the mall area and would not be acutely affected by the extra parkers.

Increased traffic and congestion on Mathilda can be expected with the completion of the mall. The extension of McKinley Avenue would relieve some traffic on Iowa, which would divert traffic away from the subject area. The net effect of the traffic condition will have no measurable affect on the value of the property, and is considered immaterial.

Mr. Freidin does not have a conflict of interest with regard to participating in decisions regarding the Town Center Mall project area. It is not reasonably foreseeable that the decisions will have a material financial effect, distinguishable from its

effect on the public generally, on Mr. Freidin's property located at 519 Frances Street.

HIGH-DENSITY RESIDENTIAL

Proposed Action

The blocks of Taaffe, Frances and Murphy between Iowa and Olive are deemed downtown Sunnyvale's new residential neighborhood. Iowa Avenue will be redeveloped with high-density residential (45-55 DU/Ac) buildings with neighborhood commercial on the ground floor. Building heights are proposed at 3 to 4 stories, with a transition to 2 stories on Olive to accommodate the subject neighborhood. The southern boundary of this area is within 300 feet of the Freidin's residence.

Mr. William Powers, Sunnyvale Community Development Director, stated that the parking ratio for this area would be 2.25, with the majority of it below grade. The EIR gives a recommended parking rate of 2.0 per dwelling unit (page 4-34).

Street closures are proposed for Taaffe, Frances and Murphy, creating cul-de-sacs. These closures would occur either just north or south of Olive.

A garden street is planned for Frances Street within this project area to provide open space.

Appraisal and Economic Impact

The very high density of the proposed residential developments will bring increased traffic and congestion to all streets in the project area and to Mathilda and Sunnyvale Avenues as well. The arterials which serve the project area also serve the subject neighborhood. Proposed street closures would restrict through traffic in the neighborhood.

This increase in traffic will be significantly felt by the subject neighborhood, though the actual increase in traffic on the 500 block of Frances may be minimal.

Even with the proposed parking ratios, some tenant and guest parking may still spill over onto the street. This will cause a shortage of street parking and inconvenience the residents of the subject neighborhood.

The market place generally perceives the introduction of multi-residential development into a single family neighborhood as an adverse influence. There is a reasonable probability that the subject neighborhood may experience a slower rate of appreciation after the proposed multi-residential development is completed.

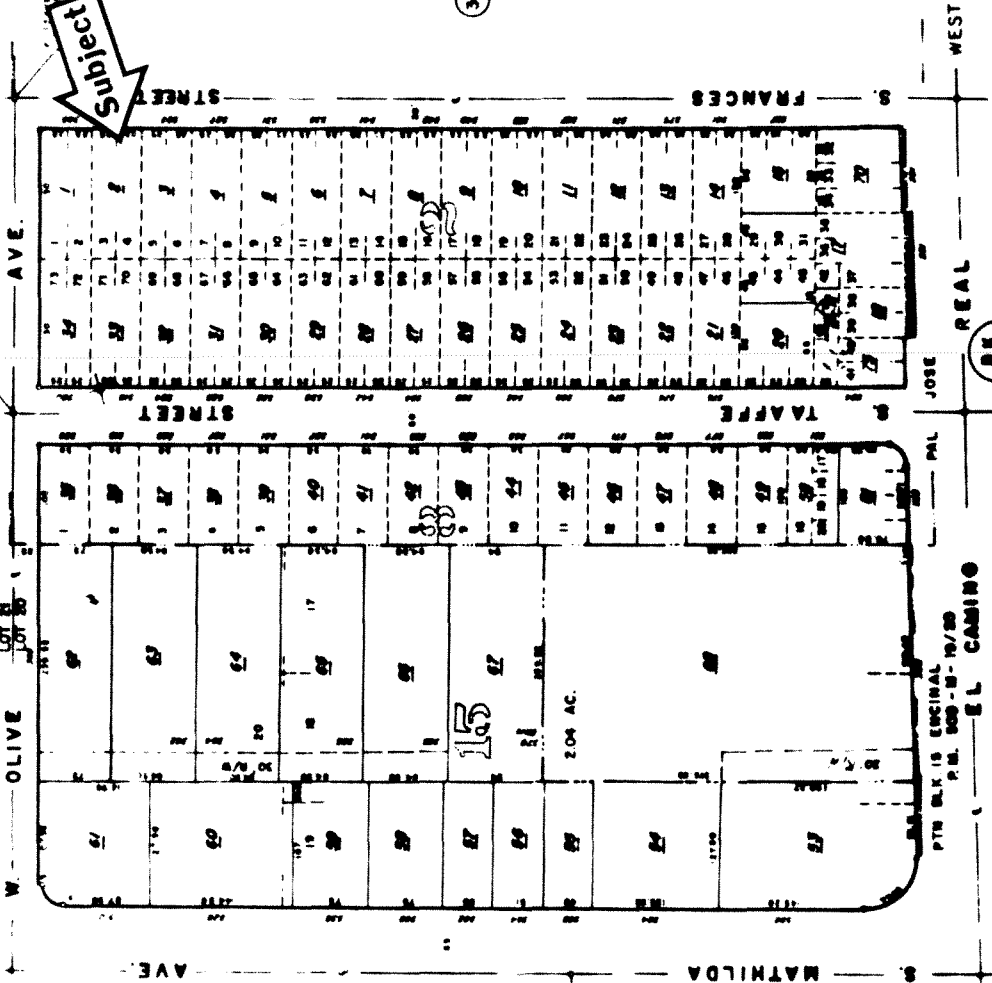
Mr. Freidin has a conflict of interest with regard to participating in decisions regarding the High-Density Residential project area. It is reasonably foreseeable that the decisions will have a material effect, distinguishable from its effect on the public generally, on Mr. Freidin's property located at 519 Frances Street.

ADDENDUM

OFFICE OF COUNTY ASSESSOR SANTA CLARA COUNTY, CALIFORNIA

BOOK 209 PAGE 29

Subject



Plat Map

COMPARABLE SALES

<u>Address</u>	<u>Sales Price</u>	<u>Closing Date</u>	<u>Bed/Bath/Size</u>
563 S. Taaffe Street	\$315,000	10/5/89	3/2/1,500 sf
542 S. Taaffe Street	\$320,000	8/25/89	3/1.5/1,567 sf
537 S. Taaffe Street	\$305,000	4/20/89	3/1.5/1,460 sf

All comparables considered inferior to the subject property.
Information obtained from the Sunnyvale Real Estate Board.

Appraisal Research Company

 A S A P Report
 Area Sales Analysis Profile

County: SANTA CLARA CA

Page/Grid: 52-F4

Total Sales 64
 Total Resales 2
 Total New Home Sales (sold within one year of construction) 2
 Average Living Area Size 1264
 Average Year Built 1940
 Average Lot Area 6167
 Average Number of Rooms 5.37
 Average Number of Bedrooms 2.60
 Average Number of Baths 1.30

Pool= View= Central Air= Waterfront= Floodzone=39%

Price Range 1988-1989* \$130,000 to \$299,500 Predominant Value \$238,500
 Age Range (entire sample) 3 yrs to 70 yrs Predominant Age 50 yrs

Distribution of Sales (in Thousands of \$) for 1988-1989*
 21- 30 31- 40 41- 50 51- 60 61- 70 71- 80 81-100 101-125 126-150
 16% 16% 11% 16% 5% 5% 27%
 151-175 176-200 201-225 226-250 251-275 276-300 301-350 351-400 401-450
 51-500 501-600 601-700 701-800 801-900 901-1000 >1000

Type Loan for 1988-1989*
 Conventional 22% FHA VA Assumable Creative Other

Living Area in Square Feet (entire sample):
 200- 400 401- 600 601- 800 801-1000 1001-1200 1201-1500 1501-1750
 9% 29% 15% 21% 9%
 1751-2000 2001-2500 2501-3000 3001-3500 3501-4000 4001-5000 over 5000
 4% 6% 1% 1%

Year built: Pre-1900 01-20 21-30 31-40 41-50 51-60 61-70 71-80 81-90
 4% 12% 37% 30% 9% 1% 3%

Year	A V E R A G E Total Sales	S A L E S Average Price	D A T A Average Cashdown	(B y Y e a r) Average Loan	Living Area	\$ Per Sq Ft	Median Price
1989*	2	\$231,250		\$187,600	1,109	\$208.42	\$235,000
1988	16	\$184,875		\$148,740	1,256	\$147.08	\$181,000
1987	10	\$149,800	24%	\$116,339	1,073	\$139.53	\$145,000
1986	13	\$182,038		\$128,991	1,408	\$129.23	\$175,000
1985	11	\$153,318	58%	\$114,816	1,306	\$117.34	\$133,000
1984	5	\$129,090	26%	\$72,500	1,182	\$109.13	\$125,950
1983	1	\$151,000	28%	\$108,300	1,351	\$111.76	\$151,000
1982	1	\$120,000	10%	\$43,000	1,258	\$95.38	\$120,000
1981	1	\$137,250	22%	\$107,000	1,208	\$113.61	\$137,250
1980	4	\$94,750	19%	\$72,950	1,360	\$69.66	\$99,000

A S A P Report
Area Sales Analysis Profile

County: SANTA CLARA CA Page/Grid: 52-(F4,F3),53-(A3,A4)

Total Sales 262
Total Resales 11
Total New Home Sales (sold within one year of construction) 5

Average Living Area Size 1149
Average Year Built 1941
Average Lot Area 6409
Average Number of Rooms 5.27
Average Number of Bedrooms 2.63
Average Number of Baths 1.19

Pool= 1% View= Central Air= Waterfront= Floodzone=44%

Price Range 1988-1989* \$121,000 to \$352,000 Predominant Value \$232,000
Age Range (entire sample) 2 yrs to 80 yrs Predominant Age 44 yrs

Distribution of Sales (in Thousands of \$) for 1988-1989*

21- 30	31- 40	41- 50	51- 60	61- 70	71- 80	81-100	101-125	126-150
							3%	14%
51-175	176-200	201-225	226-250	251-275	276-300	301-350	351-400	401-450
27%	19%	14%	10%	2%	3%			
51-500	501-600	601-700	701-800	801-900	901-1000	>1000		

Type Loan for 1988-1989*
 Conventional 13% FHA 7% VA Assumable 1% Creative Other

Living Area in Square Feet (entire sample):

200- 400	401- 600	601- 800	801-1000	1001-1200	1201-1500	1501-1750
		12%	26%	26%	18%	7%
751-2000	2001-2500	2501-3000	3001-3500	3501-4000	4001-5000	over 5000
2%	2%					

Year built: Pre-1900 01-20 21-30 31-40 41-50 51-60 61-70 71-80 81-90
 4% 8% 22% 44% 12% 1% 1%

Year	A V E R A G E		S A L E S		(B y Y e a r)		
	Total Sales	Average Price	Average Cashdown	Average Loan	Living Area	\$ Per Sq Ft	Median Price
1989*	11	\$212,681		\$173,709	1,036	\$206.15	\$213,363
1988	69	\$185,318	27%	\$144,590	1,147	\$162.29	\$180,608
1987	48	\$154,704	21%	\$122,376	1,169	\$132.41	\$147,083
1986	41	\$149,644		\$115,008	1,119	\$134.25	\$144,902
1985	32	\$134,201	30%	\$105,991	1,150	\$116.60	\$123,500
1984	21	\$116,278	22%	\$80,196	1,091	\$106.56	\$113,797
1983	17	\$127,023	12%	\$95,715	1,206	\$105.48	\$127,458
1982	4	\$112,500	18%	\$82,000	1,313	\$85.76	\$108,750
1981	6	\$128,541	15%	\$93,583	1,392	\$92.85	\$136,541
1980	13	\$92,453	17%	\$72,481	1,127	\$83.63	\$95,053

* 1989 data current through MARCH

 A S A P Report
 Area Sales Analysis Profile

County: SANTA CLARA CA Page/Grid: 52-(D5,E5,E6,D6)

Total Sales 785
 Total Resales 33
 Total New Home Sales (sold within one
 year of construction) 23

Average Living Area Size 1653
 Average Year Built 1959
 Average Lot Area 14406
 Average Number of Rooms 6.60
 Average Number of Bedrooms 3.43
 Average Number of Baths 1.98

Pool=12% View= Central Air= 1% Waterfront= Floodzone=49%

Price Range 1988-1989* \$158,000 to \$500,000 Predominant Value \$331,000
 Age Range (entire sample) 2 yrs to 88 yrs Predominant Age 31 yrs

Distribution of Sales (in Thousands of \$) for 1988-1989*

21- 30	31- 40	41- 50	51- 60	61- 70	71- 80	81-100	101-125	126-150
51-175	176-200	201-225	226-250	251-275	276-300	301-350	351-400	401-450
	4%	8%	9%	12%	19%	22%	11%	4%
51-500	501-600	601-700	701-800	801-900	901-1000	>1000		

Type Loan for 1988-1989*

Conventional	FHA	VA	Assumable	Creative	Other
12%	6%		1%		1%

Living Area in Square Feet (entire sample):

200- 400	401- 600	601- 800	801-1000	1001-1200	1201-1500	1501-1750
751-2000	2001-2500	2501-3000	3001-3500	3501-4000	4001-5000	over 5000
	17%	14%	2%	1%		
			4%	12%	23%	20%

Year built: Pre-1900 01-20 21-30 31-40 41-50 51-60 61-70 71-80 81-90

					53%	38%	1%	2%
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Year	Total Sales	Average Price	Average Cashdown	Average Loan	Living Area	\$ Per Sq Ft	Median Price
1989*	25	\$324,399		\$241,791	1,502	\$216.98	\$323,000
1988	159	\$296,637	14%	\$232,155	1,692	\$176.61	\$289,770
1987	156	\$232,889	21%	\$177,585	1,645	\$142.26	\$229,679
1986	136	\$227,451	25%	\$171,375	1,752	\$130.26	\$217,213
1985	96	\$192,150	23%	\$148,851	1,585	\$121.33	\$188,125
1984	67	\$178,690	18%	\$139,723	1,596	\$112.10	\$174,865
1983	45	\$161,861	27%	\$112,997	1,611	\$101.79	\$161,611
1982	20	\$149,820	20%	\$99,188	1,587	\$95.48	\$152,800
1981	30	\$164,896	31%	\$85,232	1,600	\$102.56	\$157,850
1980	51	\$150,017	25%	\$106,746	1,658	\$90.73	\$150,862

* 1989 data current through MARCH

A S A P Report
Area Sales Analysis Profile

County: SANTA CLARA CA Page/Grid: 52-(E3-F6), 53-(A3-A6), 59-(E1-F1), 60-(A1)

Total Sales 1469
Total Resales 60
Total New Home Sales (sold within one year of construction) 62

Average Living Area Size 1593
Average Year Built 1958
Average Lot Area 10984
Average Number of Rooms 6.49
Average Number of Bedrooms 3.32
Average Number of Baths 1.90

Pool=11% View= Central Air= 2% Waterfront= Floodzone=48%

Price Range 1988-1989* \$96,500 to \$572,000 Predominant Value \$325,000
Age Range (entire sample) 2 yrs to 88 yrs Predominant Age 32 yrs

Distribution of Sales (in Thousands of \$) for 1988-1989*

21- 30	31- 40	41- 50	51- 60	61- 70	71- 80	81-100	101-125	126-150	3%
51-175	176-200	201-225	226-250	251-275	276-300	301-350	351-400	401-450	3%
7%	4%	5%	6%	12%	16%	19%	13%		
51-500	501-600	601-700	701-800	801-900	901-1000	>1000			

Type Loan for 1988-1989*

Conventional	FHA	VA	Assumable	Creative	Other
15%	5%		1%		

Living Area in Square Feet (entire sample):

200- 400	401- 600	601- 800	801-1000	1001-1200	1201-1500	1501-1750
		2%	7%	9%	21%	23%
751-2000	2001-2500	2501-3000	3001-3500	3501-4000	4001-5000	over 5000
13%	14%	2%				

Year built: Pre-1900 01-20 21-30 31-40 41-50 51-60 61-70 71-80 81-90
2% 4% 13% 26% 39% 6% 3%

Year	A V E R A G E		S A L E S		D A T A		(B y Y e a r)	
	Total Sales	Average Price	Average Cashdown	Average Loan	Living Area	\$ Per Sq Ft	Median Price	
1989*	43	\$314,255		\$233,423	1,493	\$210.54	\$321,767	
1988	335	\$275,221	19%	\$210,181	1,573	\$174.51	\$275,499	
1987	274	\$223,718	24%	\$168,366	1,626	\$137.16	\$221,910	
1986	247	\$208,393	20%	\$156,996	1,622	\$128.82	\$203,639	
1985	159	\$177,859	24%	\$136,936	1,494	\$118.63	\$173,078	
1984	113	\$164,845	21%	\$129,326	1,540	\$106.94	\$163,857	
1983	96	\$159,005	21%	\$114,856	1,590	\$100.37	\$164,767	
1982	43	\$161,910	27%	\$100,943	1,677	\$96.75	\$168,430	
1981	53	\$166,116	30%	\$90,466	1,696	\$98.07	\$166,551	
1980	106	\$148,764	27%	\$104,153	1,667	\$89.19	\$149,789	

* 1989 data current through MARCH

CITY OF SUNNYVALE

P.O. BOX 3707 • SUNNYVALE, CALIFORNIA 94086-3707 • (408) 730-7464

Office of the City Attorney

October 18, 1989

Mr. Albert A. Schlarmann
Appraisal Research Company
1929 The Alameda
San Jose, California 95126

Dear Mr. Schlarmann:

This letter will confirm that the City wishes to retain the services of your company to provide economic and appraisal analysis in connection with our evaluation of a potential conflict of interest situation involving a Planning Commissioner, Mr. Van Freidin. I understand that your services will be billed in accordance with the hourly fee schedule you provided which is to remain in effect until January 1, 1990.

The City is undertaking a substantial planning effort to guide the future development of the downtown area. This effort could result in a series of actions including, but not limited to, a land sale transaction between the City and Town & Country Associates to allow the redevelopment of the Town & Country area, amendments to the Redevelopment Plan, General Plan and zoning ordinances, and adoption of a Specific Plan to provide unique development standards for the area. When we met last Tuesday I provided you with copies of the current Draft Specific Plan for the Downtown Area and the Draft Environmental Impact Report for the project. Per our conversation I am including with this letter copies of the City's Redevelopment Plan, the Memorandum of Understanding between the City and Town & Country Associates which outlines the proposed development on the site, and a copy of the Fair Political Practices Commission's Advice Letter to Commissioner Freidin.

Planning Commissioner Van Freidin owns and resides in a single family residence located at 519 South Frances Street. It is located on the west side of the street and, I believe, is the second house in from Olive Avenue. No change in land use is being considered for Commissioner Freidin's property. However, its proximity to the project area raises questions as to whether or not he has a conflict of interest and will be required to disqualify himself from participation in the various decisions. The answer will depend upon the degree of foreseeable impact the decisions will have on the value of his property and whether or not a significant segment of single family homeowners in the City will be similarly affected. It is those questions with respect to which we are seeking your expertise.

For purposes of applying the conflict of interest laws, the City can divide a project into distinct parts and act on them separately so that an official who may have a conflict of interest as to a portion of the project may participate on those portions

where no conflict exists; provided, that the distinct parts of the project are not interdependent so that a decision on one influences the outcome on another. In reviewing the project and discussing it with our Community Development Department staff, it appears there are three distinct geographical areas which can be treated and analyzed separately. One is the area generally defined as the "north of Washington area". The proposals in this area are predominated by the possible redevelopment of the Town & Country shopping center and the surrounding area into an office, retail and residential development, along with the development of a community theater and related facilities. This proposed development is consistent with current zoning and General Plan designations and, therefore, does not require amendments to those documents, or adoption of a Specific Plan to allow development. The primary City involvement would be a land sale transaction with the City conveying its property in the areas to Town & Country Associates in return for development in accordance with the standards set forth and various other compensation. The actual development would be subject to normal land use approvals which would go before the Planning Commission. The City Council has already separated this aspect of the original project out into a separate project. The Environmental Impact Report will be certified separately for this particular area. Also, the processing and time frames for this area as opposed to the remainder of the downtown are now on different tracks. This was done for a variety of reasons including the fact that amendments to various land use regulations would not be required, that this was an area in which the City would have some form of active role rather than simply zoning for future development and that there was an existing developer interested in proceeding with the project.

The remainder of the program consists primarily of adoption of a Specific Plan, along with any necessary amendments to the General Plan and Redevelopment Plan, to establish desired land uses and development standards for the areas other than the Town & Country development site. According to our Community Development staff, this remaining downtown area can be divided into two distinguishable areas not interdependent upon each other. One is what is referred to as the Mathilda Avenue Corridor which is identified in the Draft Specific Plan and calls for higher density Class A office space to be developed along Mathilda Avenue.

The second distinct area is the remainder of the project area generally located between Iowa Avenue and Olive Avenue and along Sunnyvale Avenue. This is the area tentatively designated for higher density residential development. I am advised by our Community Development staff that these two areas can be considered, acted upon and developed independent of action on the other. Given this breakdown, we will require your economic analysis as to all three of these distinct areas.

An official has a conflict of interest with regard to participating 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 any real property in which the public official has an interest worth \$1,000 or more. To apply this law, two determinations need to be made with respect to the project and Commissioner Freidin's property. The first is whether it is reasonably foreseeable that the decision will have a material financial effect on Commissioner Freidin's property.

"Materiality" is defined in Regulation 18702.3 promulgated by the Fair Political Practices Commission (FPPC). A copy of that regulation is enclosed. It establishes

both distance and financial standards. If the property in which the official has an interest is located more than 2500 feet from the project area, it is presumed not to have a material effect. Please note that Commissioner Freidin's property is not located more than 2500 feet from the boundaries of any of the three identified areas, contrary to the statement in the opinion letter from the FPPC stating that his property is located more than 2500 feet from the Town & Country site. Therefore, he is not automatically excluded from any material effect.

Conversely, Commissioner Freidin's property is located within 300 feet of the proposed residential areas located between Iowa Avenue and Olive Avenue. This establishes a presumption of materiality as to that aspect of the project unless it can be said that it will have no impact on the value of his property. I don't see that determination being made and therefore, with respect to this residential area, I believe we must assume that the impact of any decisions made will be material under the regulations.

Assuming that the distance standards are not determinative, an economic analysis needs to be made. Under the regulation, the effect of a decision is material if the decision will have a reasonably foreseeable financial effect of \$10,000 or more on the fair market value of the real property in which the official has an interest. My first request, therefore, would be for you to determine, based upon your analysis of the project and Mr. Freidin's property, whether it is reasonably foreseeable that the decisions on the area north of Washington or the Mathilda Avenue Corridor will affect the value of Mr. Freidin's property by \$10,000 or more, in either direction.

Please note that the analysis should be based on the effect of the decisions on current market value, not projected impacts in the future, although presumably current value will depend to some extent upon likely changes in the future. Also, the relevant standard is any change in the total market value of the land and improvements, not any reallocation of value between land and improvements.

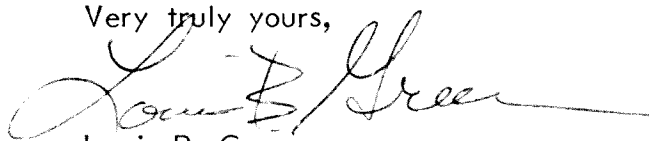
If the effects of the proposed decisions on Mr. Freidin's property are material, a second level of analysis is necessary to determine whether he must disqualify himself from participation. Even if material, a conflict of interest only exists if the effect of the decision is distinguishable from its effect on the "public generally". The FPPC has also adopted regulations defining "public generally". A copy of Regulation 18703 is enclosed. That regulation generally states that the effect of a decision is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect "all members of the public" or a "significant segment of the public". The FPPC has issued a number of opinions defining a "significant segment of the public". In cases such as these, the FPPC generally has looked at the number of single family homeowners similarly affected as a percent of all single family homeowners in the city and determined whether or not that percent is significant. For example, if a decision affects Commissioner Freidin's property in a manner indistinguishable from the effect on on a given percent of single family homeowners in the City, a determination may be made that he can still participate due to that being a significant segment of the public if the percent is high enough.

Albert A. Schlarmann
October 18, 1989
Page 4

As to any of the development areas where the effect of decisions could be material on Commissioner Freidin's property, I would like you to analyze the geographic boundaries of the area in which those effects on single family properties is indistinguishable from the effect on Commissioner Freidin's property. For example, is the effect of development in a particular area in accordance with the proposal going to affect housing prices city-wide, in a defined geographic area, or simply on abutting properties. This may depend on a number of factors such as whether the effects are merely general market effects city-wide due to different development in the downtown, whether they have effects solely within a limited geographic area around downtown due, for example, to improved desirability of housing in that area, or whether the effects are only on properties in the immediate area due to things such as traffic and visual impacts. In short, once the impact on Commissioner Freidin's property is identified with respect to the three different project areas, the geographic areas within which those same effects will occur must be defined. This is the second element of analysis which I would ask you to perform if possible.

I hope this adequately defines the scope of work which we would like you to perform. Feel free to give me a call if you need additional information or definition. Please do keep in touch regarding the progress of the work. Once you have completed your economic and appraisal analysis, I will need to use those results to render an opinion to Commissioner Freidin as to whether or not he can participate on various of the projects.

Very truly yours,



Louis B. Green
City Attorney

LBG:ff
Encl.

cc: Van Freidin
Bill Powers



California Fair Political Practices Commission

May 22, 1989

Louis B. Green
City Attorney, City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94086-3707

Re: Your Request for Advice
Our File No. A-89-214

Dear Mr. Green:

You have requested advice on behalf of Mr. Van Freidin, a member of the Sunnyvale Planning Commission, regarding application of the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Is a planning commissioner precluded from participating in decisions relating to the downtown development plan project area because he owns residential property within the current redevelopment project area and within 300 feet of the downtown project area?

CONCLUSION

The planning commissioner is not precluded from participating in all decisions relating to the downtown development plan project area, because most of the decisions will affect him in a manner which is not distinguishable from the public generally. He is disqualified from participating in certain decisions which directly affect his property and which result in improvements to his property.

¹ 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.

FACTS

The City of Sunnyvale is considering a development program which consists of a series of actions to implement a conceptual land use plan and to encourage continued development of downtown Sunnyvale. The major goal of the program would be to establish the downtown as the cultural, retail, financial and entertainment center of the community.

The proposed program would involve a series of actions on the part of the planning commission. A key element of the program would be the establishment of land use controls including adoption of a precise land use plan defining permitted land uses and standards for development. Also contemplated are amendments to the existing General Plan, zoning ordinance and redevelopment plan to ensure consistency with the proposed precise plan. Another element of the program would involve the disposition of city-owned properties to facilitate the redevelopment of the Town & Country shopping center. Finally, the proposed project would involve limited public improvements such as utility upgrades and installation of landscaping and lighting. An environmental impact report is being prepared and will be certified as part of the process.

Commissioner Freidin's house is located on South Frances Street. It is just outside the boundaries of the downtown development plan project area, the area in which changed land uses are contemplated. The Commissioner's house is within the redevelopment project area, as well as the general downtown study area. One recommendation of the proposed project is the installation of a cul-de-sac on Frances Street to reduce traffic. Frances Street is also an historic area and the project may involve street lighting and signage improvements to reflect that. The proposed plan also calls for high density residential development in an area located only a short distance from Commissioner Freidin's home.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have 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 the effect on the public generally, on the official or any member of his or her immediate family, or on "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).)

Commissioner Freidin is a public official within the meaning of the Act. For the purposes of this analysis we will assume that his ownership interest in his residence is worth \$1,000 or more.

Therefore, he would have to disqualify himself with respect to any governmental decisions which would have a reasonably foreseeable material financial effect on his real property interest, distinguishable from the effect on the public generally.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).)

The decisions before the planning commission will determine the type of development activity which will occur in the downtown project area. While Commissioner Freidin's property is located just outside the proposed project area boundary, it is located within the current redevelopment project area and within the general downtown study area. One of the intended effects of redevelopment is to improve the value of property located in the redevelopment area. (Downey Cares v. Downey Development Com., supra.) It is reasonably foreseeable that the series of decisions to be made will have an effect on the value of the commissioner's property. It is then necessary to determine whether the effect of the decisions is material.

Material Financial Effect

The Commission has adopted a series of regulations to determine whether a financial effect is material. In order to apply the regulations with respect to real property interests, it is necessary to look to the type of decision to be made.

1. Adoption of a Precise Plan.

The planning commission will be adopting a precise plan establishing permitted land uses and standards of development within the downtown development plan project area. Commissioner Freidin's property is located outside the southern boundary of this area, and the commission's decisions will not involve a change in the use of his property. Any effect upon his property resulting from adoption of the precise plan would be indirect. Whether or not an indirect effect upon the commissioner's property is deemed material depends upon the distance between his property and the property that is the subject of the decision.

Regulation 18702.3 (copy enclosed) provides, in part, as follows:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not

including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

(b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or proposed boundaries) of the property which is the subject of the decision; unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a)(3)(A) or (a)(3)(B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the real property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

According to the information that you have provided, Commissioner Freidin's property is well within 300 feet of the southern boundary of the downtown development plan project area. Therefore, if the precise plan is voted on as a single unit, the decision will be material unless it will have no financial effect upon his real property interest.

You have indicated that it is possible for the planning commission to take separate action on uses in the various areas rather than vote on the precise plan as a unit. For example, the commission could take separate action on each block in making recommendations to the city council. You have asked if the distance limitations set forth in Regulation 18702.3 would then be measured from each individual block rather than from the exterior of the entire development plan project area.

The Commission has previously recognized that, in certain limited circumstances, complex decisions may be divided into separate decisions when an individual has a disqualifying interest in one component of the decisions which is not interdependent upon other components. The official may participate in the components in which he has no financial interest. (Huffaker Advice Letter, No. A-86-343; Casey Advice Letter, No. A-87-048, copies enclosed.) However, because of the necessary interrelationship of land use planning, an official may participate as to other areas only if the decision on any specific property will not have a reasonably foreseeable material financial effect on his interests. (Huffaker Advice Letter, supra.)

Unlike the foregoing situations, Commissioner Freidin's property is not directly subject to any of the land use decisions. Certain decisions are material to him only because they are in close proximity to his own property. Under these circumstances, the distance limitations of Regulation 18702.3 could be measured from the boundaries of the various areas within the project area, so long as decisions on each area can be made separately and independently.

2. Amendments to the Redevelopment Plan.

The test for material financial effect is different when dealing with amendments to the redevelopment plan. Commissioner Freidin's property is located within the current redevelopment

project area. Regulation 18702.1, provides, in part, as follows:

(a) The effect of a decision is material if any of the following applies:

(3) Interest in Real Property--

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(2) Although disqualification would otherwise be required under subsection (a)(1), (a)(2), or (a)(3) the decision will have no financial effect on the person or business entity who appears before the official or on the real property.

(Emphasis added, copy enclosed.)

Therefore, any decision to make a significant change in the redevelopment plan will be deemed to materially affect Commissioner Freidin's property, unless the decision will have no financial effect on his property.

3. Approval of Various Public Improvements within the Downtown Development Plan Project Area such as Improvements to the Utilities and Infrastructure to Serve New Land Uses within that Area.

Commissioner Freidin's property would not be directly affected by the decisions concerning improvements within the Downtown Plan Project Area, since he is outside the downtown project area. Therefore, the analysis here would be similar to that set forth under number 1, above.

4. Approval of Proposed Public Improvements throughout the Downtown Area such as Improved Street Lighting and Street Landscaping.

Any public improvements in the downtown area, such as street lighting or landscaping, which will result in new or substantially improved services to Commissioner Freidin's property, will be deemed material. (Regulation 18702.3(a)(2).) With respect to public improvements not directly involving his property, the distance measurements of Regulation 18702.3 would control as to materiality, unless the decisions were so interrelated with decisions regarding the commissioner's property that they could not be dealt with separately and independently. Any decisions involving improvements to the historical area in which he lives would appear to be interrelated. This would include such things as decisions regarding the special lighting and signage for the historical section.

5. Negotiations with the Owners of Town & Country Village for Disposition of City-Owned Property and Development of the Site.

The city is engaged in preliminary negotiations with the owners of the Town and Country Village, a boutique-type shopping center located in the northwest portion of the downtown project area. The goal of the negotiations would be to reach agreement for the disposition of city-owned property in the area to allow for private redevelopment of the shopping center into a commercial and cultural center, including a publicly-owned performing arts theater.

A public official participates in the making of a governmental decision when he negotiates with a governmental entity or private person regarding the decision. (Regulation 18700(c)(1), copy enclosed.) Therefore, the commissioner may not participate in the negotiations if the decision will have a material effect on his property. However, the distance from the center to the commissioner's property appears to be in excess of 2,500 feet. Therefore, the effect would probably not be deemed material, unless one of the exceptions set forth under Regulation 18702.3(b), supra, apply.

6. Certification of the EIR for the Project.

The environmental impact report for the project would encompass the entire downtown development project area. Since Commissioner Freidin's residence is located within 300 feet of the area boundary, the certification of the report would be deemed to have a material effect unless the decision would have no financial effect upon his property. (Regulation 18702.3(a)(1).)

Even those decisions which would otherwise not be deemed to have a material financial effect on the planning commissioner's property might require his disqualification if they are so interrelated to material decisions that they cannot be considered

separately and independently. (Miller Advice Letter, No. A-82-119, copy enclosed.) For example, a decision regarding development of a downtown development plan project parcel located more than 2500 feet from Commissioner Freidin's property is unlikely to have a material financial effect on his property, whereas a decision on property within 300 feet will have a material financial effect. However, if the development of the nearby parcel was contingent upon the development of the more distant parcel, both decisions would be considered material. The commissioner would be disqualified from participating in both decisions.

"Public Generally" Exception

Even if you ascertain that the effects of decisions on Commissioner Freidin's real property will be material, the commissioner may still be able to vote if the effect on his property is not distinguishable from the effect on the public generally. (Section 87103.) Regulation 18703 (copy enclosed) provides, in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

The "public" is all the persons residing, owning property, or doing business in the jurisdiction of the agency in question. (In re Legan, (1985) 9 FPPC 1, copy enclosed.) In the case of the planning commission, this would be the entire city. Consequently, for the public generally exception to apply, any decision would have to affect a significant segment of the City of Sunnyvale in substantially the same manner as it would affect the commissioner. (Dowd Advice Letter, No. A-88-214; Burnham Advice Letter, No. A-86-210, copies enclosed.)

The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order to apply the public generally exception, the population affected must be large in number and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops 62; Flynn Advice Letter, No. I-88-430, copies enclosed.)

In In re Owen (1976) 2 FPPC Ops 77, copy enclosed, the issue was whether certain planning commissioners had conflicts of interest with respect to a 23-block downtown core development program in the City of Davis. One of the planning commissioners owned residential property across the street from the boundary of the core area in a neighborhood deemed inextricably tied to the core

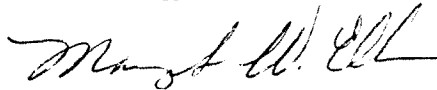
area in terms of planning considerations. The Commission concluded that residential homeowners within and in the immediate vicinity of the core area constituted a significant segment of the public. Therefore, the planning commissioner was not disqualified merely because he owned a home near the core area. Moreover, there was no indication that the plan would have any peculiar impact on the value of the planning commissioner's property. The Commission cautioned, however, that he might be required to disqualify himself with respect to a matter before him if further evidence emerged in the planning process which distinguished the effect of the plan or a portion of it upon his property interest. (Owen, supra, at p. 81.)

You have not provided specific figures as to the number of owners of single-family residential property in the City of Sunnyvale. For the purpose of this analysis, we will assume that the number is significant. However, unlike Owen, where there was no indication that the public official was affected any differently than other residential property owners, there is such evidence here. Direct improvements to Commissioner Freidin's property are projected. High-density residential space is targeted within 100 feet of his property, which could significantly affect his property values. Most of the major development decisions involving the downtown plan project would appear to affect his property in a manner that is distinguishable from other residential property further removed from the project area. To the extent that his property is affected differently than other residential property in the area, the public generally exception would not apply. (See, Benjamin Advice Letter, No. A-86-182; Thorson Advice Letter, No. A-85-221, copies enclosed.)

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED:MWE:aa

Enclosures