



California Fair Political Practices Commission

October 2, 1990

Ronald E. Moe, City Attorney
City of Woodland
City Hall
Woodland, CA 95695

Re: Your Request for Advice
Our File No. A-90-580

Dear Mr. Moe:

You are seeking advice on behalf of City of Woodland Councilmembers Elaine Timothy and Joe Crescione regarding their duties and responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Pursuant to Regulation 18329 (copy enclosed), we provide you with advice as the authorized representative of Councilmembers Timothy and Crescione.

The following advice is based upon the facts provided in your letter of September 4, 1990 and in your office's prior telephone conversations with this agency.

QUESTION

A forthcoming decision before the city council will concern a proposed development project, inclusive of housing, open space, a park and a lake. Councilmember Timothy and Councilmember Crescione both own real property located within 2500 feet of the proposed project. Can they participate in city council decisions concerning this project?

CONCLUSION

Councilmember Timothy may participate in forthcoming city council decisions concerning the development project provided the decisions will not have a foreseeable material financial impact on her property.

Councilmember Crescione may participate in forthcoming city council decisions concerning the development project provided the

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.

decisions will not have a foreseeable material financial impact on his property.

FACTS

The Woodland City Council will be making various decisions concerning a proposed development project, the "Taormino Project." The developer has proposed 260 single family homes on lot sizes of up to 20,000 square feet, as well as a small lake, a park, and significant open space recreational areas. The proposal also provides for an architectural review committee to uphold and monitor design standards to be included in a proposed "CC&R" (covenants, conditions and restrictions). At this time the proposed development is in early stages of consideration.

Councilmember Elaine Timothy owns her home at 703 Rubicon Court, within 2,500 feet of the proposed development. Councilmember Joe Crescione owns his home at 1614 Donner Way, within 2,500 feet of the proposed development.

You have provided an analysis from a professional real estate appraiser which concludes that the proposed development will have no financial impact on the neighborhoods in which the homes of Councilmembers Timothy and Crescione are located, and instead will have an overall affect on all similarly-priced homes in the city. You have also provided an analysis from a real estate company which states that the current range in housing prices for the neighborhoods is from \$160,000 to \$185,000, and that the homes in the neighborhoods have increased approximately 30 percent in value during the past 12 months.

Finally, you have indicated that action by the city council on the proposed development has been suspended pending receipt of advice from this agency on the question of whether a disqualifying conflict of interest exists with respect to Councilmembers Timothy and Crescione.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. (Section 87100.) A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of official's immediate family, or on any real property in which the official has a direct or indirect interest worth one thousand (\$1,000) or more. (Section 87103(b).)

Because they are elected members of the city council, Ms. Timothy and Mr. Crescione are public officials. (Section 82048.) It is understood that each has an interest in their

respective properties that is worth one thousand dollars or more. Therefore, both Ms. Timothy and Mr. Crescione must disqualify themselves from any city council decision which will have a reasonably foreseeable material financial effect on them or on their real property interests that is distinguishable from the effect on the public generally. (Section 87103(b).)

Foreseeable Material Financial Effect

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. While certainty is not required, an effect that is merely a possibility is not reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal.App.3d 983; In re Thorner (1975) 1 FPPC Ops. 198.)

In order to determine whether the foreseeable effect of a decision is material as to real property in which an official has an interest, the Commission has adopted Regulation 18702.3 (copy enclosed). You have informed us that both Ms. Timothy and Mr. Crescione own property located within 2,500, but more than 300, feet from the site of the proposed development. For projects between 300 and 2,500 feet from an official's property, the effect of the decision will be considered material if it 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.

(Regulation 18702.3(a)(3)(A) and (B).)

Whether the effect of the decision is positive or negative is of no consequence under the Act. (Young Advice Letter, A-89-149, copy enclosed.)

A professional appraiser has determined that the impact on either Ms. Timothy's or Mr. Crescione's property resulting from the city's decisions on the proposed development will not meet the requisite threshold amounts as provided in Regulation 18702.3(a)(3), and - in fact- will not specifically impact the market value of their properties at all. The appraiser has instead determined that the resulting impact from the decisions on the proposed development will effect all similarly priced homes in the city.

Ms. Timothy and Mr. Crescione's participation in decisions on the proposed development is permitted if the impact of the city council's decisions on their respective properties falls below the financial thresholds specified in the regulation. You have provided the opinion of a professional appraiser that suggests that the financial thresholds will not be met. Because the Commission

does not act as a finder of fact,² we are unable, and therefore decline, to evaluate the accuracy of this opinion. However, we do wish to draw your attention to Regulation 18702.3(d). This regulation provides some factors to consider in determining the magnitude of the financial impact on both councilmembers' properties.³ We note that none of the factors provided in this regulation are addressed in the appraiser's opinion.

The "Public Generally" Exception

If it is your conclusion that the requisite financial impact as provided for in Regulation 18702.3(a)(3) is not present, it is unnecessary to determine whether the impact on Ms. Timothy and Mr. Crescione is distinguishable from the effect on the public generally. If the financial impact is present, Ms. Timothy and Mr. Crescione may not participate in the development project decision if the effect of the decision on their interests is distinguishable from the effect on the public generally. (Section 87103.)

The financial effect of the council's decision on Ms. Timothy and Mr. Crescione is distinguishable from the effect on the public generally unless the decision will affect their properties in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703; Jorgensen Advice Letter, No. A-90-017; In re Legan (1985) 9 FPPC Ops. 1; In re Owen (1976) 2 FPPC Ops. 77, copies enclosed.)

The "public generally" is comprised of the entire jurisdiction of the agency in question, particularly when the agency in question is an elected body, as all of the residents are constituents of the various elected members. (In re Legan, supra.) Regulation 18703 also permits the application of the "public generally" exception when a decision affects the official's interests in substantially the same manner as it will affect a significant segment of the public. However, other than the appraiser's opinion mentioned previously, you have not provided any facts to indicate how the financial effect of the development project decision will affect either all city residents or a significant segment of the city's residents. For that reason, we are

² Because the Commission does act as a finder of fact, the advice provided in this letter is applicable only to the extent the facts provided are correct and that all material facts have been presented. (In re Oglesby, (1975) 1 FPPC Ops. 77, copy enclosed.)

³ Such factors include the proximity of the properties and the magnitude of the proposed project in relationship to the councilmembers' properties, whether it is reasonably foreseeable that the decision on the development project will affect the development potential or income producing potential of the councilmember's properties, and whether it is reasonably foreseeable that the development project decision will result in a change of the character of the neighborhood including, but not limited to, the effect on traffic, view, privacy, intensity of use, noise levels, air emissions or similar traits.

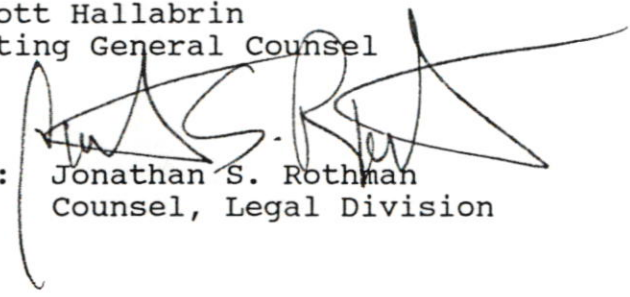
unable to provide you with advice on whether the "public generally" exception applies in this situation.⁴

This general advice is limited to the forthcoming decisions before the city council concerning the proposed development. Because you have indicated that the decision-making process is at an early stage, it is possible that subsequent, more specific decisions concerning the proposed development would require the same analysis for Ms. Timothy's and Mr. Crescione's properties: the same analysis applying the thresholds of Regulation 18702.3(a)(3) would be required to determine whether they were able to participate in the subsequent decisions. Should these decisions impact Ms. Timothy's or Mr. Crescione's properties at or above the requisite threshold amounts, their participation in the decision would be prohibited. To the extent that it is relevant, the appraiser's opinion that you have provided is applicable to the current phase of the proposed development's decision making.

I hope this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel

By: 
Jonathan S. Rothman
Counsel, Legal Division

SH:JSR:plh

Enclosures

⁴ The factors discussed previously in Regulation 18702.3(d) would be relevant in any consideration of whether the public generally exception would apply. Also, a group that is large in number and heterogeneous in quality can constitute a significant segment of the public for the purposes of the public generally exception. (In re Ferraro (1978) 4 FPPC Ops. 62.) To assist you in evaluating the "public generally" exception, I have enclosed copies of other Commission advice letters which have addressed the issue. Enclosed are: West Advice Letter, No. A-89-243; Scher Advice Letter, No. A-88-479; Flynn Advice Letter, No. I-88-430.