



California Fair Political Practices Commission

January 10, 1991

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

Re: Your Request for Advice
Our File No. A-90-757

Dear Mr. Moe:

In a previous letter (Moe Advice Letter, No. A-90-580, copy enclosed), we responded to your request for 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 You had inquired whether the two councilmembers, who own real property located within 2500 feet of a proposed development project, could participate in council decisions concerning the project.

In the prior letter, we indicated that Ms. Timothy and Mr. Crescione's participation in decisions on the proposed development was permitted if the impact of the city council's decisions on their respective properties falls below the financial thresholds specified in Regulation 18702.3(a)(3)(A) and (B); that is, either \$10,000 or more on the fair market value of, or \$1,000 or more per twelve month period in rental value for, the councilmembers' real property.

Although you had provided the opinion of a professional appraiser suggesting that the financial thresholds would not be met, we were unable to provide you with a definitive response because the factors to be considered in determining the magnitude

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.

of the financial impact on the councilmembers' properties, as specified by Regulation 18702.3(d), were not addressed in the appraiser's opinion or in your letter requesting advice.²

We are now in receipt of your letter of December 10, 1990, in which you have enclosed a report from the appraiser in which the elements enumerated in Regulation 18702.3(d) are specifically addressed. The following advice is premised upon the facts provided in your most recent letter, the appraiser's report, and your previous communications with this agency.

QUESTION

May two councilmembers who own real property located within 2500 feet of a proposed development project, participate in decisions concerning the project?

CONCLUSION

On the basis of the information provided, both councilmembers may participate in present city council decisions concerning the needs analysis regarding the development project because it does not appear that the decisions will have a foreseeable material financial impact, distinguishable from the public generally, on their properties at this time.

FACTS

The Woodland City Council will be making various decisions concerning a proposed development project, the "Taormino Project." At this time the proposed development is in early stages of consideration. Previously, the council appointed a committee to retain a consultant who would prepare a "needs analysis" for the project. The council, now reevaluating the desirability of the project altogether, has before it the specific decision of whether or not to go forward with the needs analysis.

The developer's proposal calls for 260 single family homes on lot sizes of up to 20,000 square feet, as well as significant open space recreational areas. A proposed "CC&R" (covenants, conditions and restrictions), to be administered by an architectural review committee, is also included.

² As you recall, these 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.

Councilmember Elaine Timothy owns her home at 703 Rubicon Court, within 2,500 feet of, but more than 300 feet from, the proposed development. Councilmember Joe Crescione owns his home at 1614 Donner Way, within 2,500 feet of, but more than 300 feet from, the proposed development.

An analysis by a professional real estate appraiser 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. The analysis also concludes that the proposed development will have little impact on the traffic, noise, views, air quality, and property values on the nearby neighborhoods in which the councilmembers' homes are located.

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

A public official may not make, participate in making, or use 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 financial interest in a decision exists when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the public official, a member of the official's immediate family, or on any real property in which the official has a direct or indirect interest worth one thousand dollars (\$1,000) or more. (Section 87103(b).)

As 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 real property 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

If there is a substantial likelihood that an effect of a decision will occur, the effect is reasonably foreseeable. 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.)

The Commission has adopted Regulation 18702.3 (copy enclosed) to assist in determining whether the foreseeable effect of a decision is material as to real property in which an official has an interest. Because both Ms. Timothy and Mr. Crescione own property located within 2,500 feet, but more than 300 feet, from the site of the proposed development, 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 affect all similarly priced homes in the city.

The appraiser's conclusion that the proposed development will not impact the councilmembers' properties by the requisite threshold amounts provided in Regulation 18702.3(a)(3) is supported by the appraiser's analysis of the specific considerations requested by A-90-580. The appraiser has evaluated the traffic, noise, views, and air quality impacts on the surrounding neighborhood and concluded that any impact on the councilmembers' properties will be minimal, if any.

Because the Commission does not act as a finder of fact,³ we decline to evaluate the accuracy of the appraiser's conclusions. To the extent the conclusions are premised on an accurate factual assessment, it would appear that Ms. Timothy and Mr. Crescione's participation in decisions on the proposed development would be permitted because the impact of the present city council's decisions on their respective properties falls below the financial thresholds specified in the regulation.

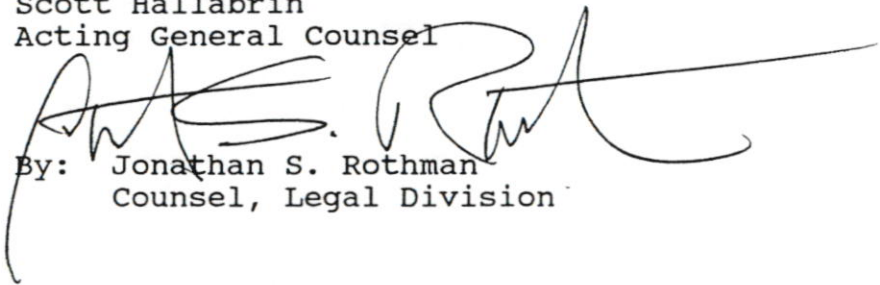
If the requisite financial impact as provided for in Regulation 18702.3(a)(3) is not present, it is unnecessary to determine whether the impact on Ms. Timothy and Mr. Crescione is distinguishable from the effect on the public generally.

This advice is limited in its application to the forthcoming decisions concerning the proposed development, and specifically the council vote on whether to proceed with the needs analysis. Because you have indicated that the decision-making process is at an initial stage, it is conceivable that subsequent and more specific decisions concerning the proposed development that come before the council would require a similar assessment of the factors described in Regulation 18702.3(d) and an analysis of whether the thresholds of Regulation 18702.3(a)(3) were met, so as to determine whether the councilmembers may participate in the subsequent decisions. While the appraiser's analysis may be pertinent for purposes of assessing the impact of decisions for the current stage of the proposed development, the analysis may or may not continue to remain relevant as the development progresses. In other words, the appraiser's analysis that you have provided, and the advice provided in this letter, is applicable, but limited, 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

Enclosures

³ 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.)