



California Fair Political Practices Commission

April 16, 1992

T. Brent Hawkins
McDonough, Holland and Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-92-070

Dear Mr. Hawkins:

This is in response to your letter requesting advice on behalf of Half Moon Bay City Councilmembers Deborah Ruddock, David Iverson and Stan Pastorino regarding their responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May City Councilmembers Ruddock, Iverson and Pastorino participate in a decision concerning the North Wavecrest Specific Plan, where Councilmembers Ruddock and Iverson own residences within 600 feet of the boundary of the specific plan area and Councilmember Pastorino is an officer and shareholder in a corporation which owns a 40-acre parcel which is 3,600 feet from the specific plan area?

2. If the councilmembers do have a conflict of interest, may they participate in the proceedings in their private capacity?

CONCLUSIONS

1. The real property interests of Councilmembers Ruddock and Iverson will not be disqualifying financial interests with respect to the North Wavecrest Specific Plan decision if the councilmembers' principal residences are no more than one-quarter acre in size (or not larger than 125 percent of the median residential lot size for the jurisdiction).

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.

Councilmember Pastorino must disqualify himself from the specific plan decision if the decision will have a material financial effect on any of his economic interests, including his business interest.

2. An otherwise disqualified official may appear in the same manner as any other member of the general public before his or her own agency in the course of its prescribed governmental function to represent his or her personal interests in real property or a business entity, provided the property or business entity is wholly owned by the official or members of his or her immediate family.

FACTS

The City Council of Half Moon Bay is in the process of preparing a redevelopment plan for the North Wavecrest Redevelopment Project (the "project"). Half Moon Bay has a population of less than 10,000 persons and covers a geographic area of less than 10 square miles. The project consists of three contiguous subareas within the city, the southernmost of which is 500 acres of undeveloped land.

The city council is also considering a specific plan for this subarea called the Northwest Wavecrest Specific Plan (the "specific plan"). The application of the specific plan is limited to the southernmost subarea and encompasses 500 acres of undeveloped land. The specific plan would not apply to any other part of the redevelopment area.

The city councilmembers are elected at-large and are required to reside in the jurisdiction. Three members of the city council have economic interests in the jurisdiction that are in the proximity to the specific plan area.

Councilmembers Ruddock and Iverson own real property as personal residences within the redevelopment area and 600 feet from the specific plan area. Councilmember Pastorino is an officer and shareholder in a corporation which owns a 40-acre parcel in the redevelopment area which is 3,600 feet from the specific plan area.²

On April 10, 1992, you provided the following additional information concerning Councilmember Pastorino: (1) the

² Please note that this letter concerning the North Wavecrest Redevelopment Project and the Northwest Wavecrest Specific Plan is based on the facts presented in your letter. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.) In addition, we note that your enclosure pertains to the South Wavecrest Redevelopment Project which does not appear pertinent to this letter.

councilmember and his immediate family own only 6.5 percent of the family corporation; (2) the corporation grows flowers which it sells to retailers; and (3) none of the retailers are located within 2,500 feet of the specific plan area.

ANALYSIS

1. Economic Interests

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that 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 the effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(c).

According to the information you have provided, Councilmembers Ruddock and Iverson own real property personal residences in which they presumably have an interest of \$1,000 or more. Councilmember Pastorino has an economic interest in a business entity, a corporation, in which he is an officer and owns 6.5 percent.³

³ Please note, that if Councilmember Pastorino and his immediate family owned 10 percent or more of the corporation, he would also be treated as the owner of a pro-rata share of the interests in real property held by the corporation (Section 82033) and a pro-rata share of the sources of income to the corporation. (Section 82030.)

2. Foreseeability and Materiality

A. Councilmembers Ruddock and Iverson

As stated above, a public official is prohibited from participating in a decision that will have a foreseeable and material financial effect on his or her economic interest. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.)

According to your facts, the councilmembers do not own property within the specific plan area, but each has an interest in real property near the specific plan area. The proximity of each official's property to the specific plan area and the magnitude of the proposed project in comparison to the current condition of the property suggest that some financial effects on the councilmember's property are indeed foreseeable.

The materiality of the financial effect depends on the nature of the decision, and on the economic interest involved. (Regulation 18702.) For example, with respect to some redevelopment decisions, an official's property is considered directly involved in the decision if the property is within the redevelopment area. These decisions include decisions 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

However, your question concerns a specific plan decision within the redevelopment area. A specific plan decision for a discrete portion of the redevelopment area is not considered a "redevelopment decision" as set forth in Regulation 18702.1(a)(3)(D) or Regulation 18702.3(e). Thus, the decision on the specific plan would be considered as an independent decision to determine if there will be a foreseeable material financial effect on an official's economic interests. (In re Owen (1976) 2 FPPC Ops. 77; Marston Advice Letter, No. A-89-120; Rosenthal Advice Letter, No. I-89-406.)⁴

⁴ Please note that under some circumstances a series of decisions may be too interrelated to be considered separately or may be legally inseparable. For example, if the decision on the specific plan would reverse the result of a redevelopment decision as set forth in Regulation 18702.1(a)(3)(D) and Regulation 18702.3(e), the councilmembers must disqualify as to both decisions.

The foreseeable indirect effect of a decision on an official's real property interest is material if:

(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.

Regulation 18702.3(a).

You stated that Councilmembers Ruddock and Iverson own real property within 600 feet of the specific plan area. Consequently, Councilmembers Ruddock and Iverson must disqualify themselves from the specific plan decision if the decision will increase or decrease the fair market value of their real property interest by \$10,000 or more or the rental value of the property by \$1,000 in a 12-month period. (Regulation 18702.3(a)(3)(A).)

We cannot determine the magnitude of the financial effect of the decisions on the councilmembers' real property. We must leave

this factual determination of materiality to you and the councilmembers within the guidelines provided by Regulation 18702.3.⁵

B. Councilmember Pastorino

You stated that Councilmember Pastorino has an interest in a family corporation. Since the councilmember's interest is less than 10 percent, the issue becomes whether it is reasonably foreseeable that the decision will financially affect the corporation.

An interest in a business entity will result in disqualification if a decision will either directly or indirectly have a foreseeable material financial effect on the business. The corporation in which the councilmember has an interest is not directly involved in the specific plan decision.⁶ Whether the indirect effect on a business entity is material depends on the financial size of the business entity. For example, Regulation 18702.2(g) provides that for a relatively small business entity, the indirect effect of a decision is material where:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in the increase

⁵ Regulation 18702.3(d) does set forth factors that must be considered in determining whether the decisions will have a material financial effect on the value of the real property in which the official's has an interest: (1) the proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest; (2) whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property; (3) whether it is reasonably foreseeable that the decision will result in a change to 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 of the neighborhood. The factors to be considered are not limited to the factors specified in Regulation 18702.3(d).

⁶ If the corporation initiated the proceeding in which the decision is to be made or is a named party (Regulation 18702.1(b)), Regulation 18702.1 provides that the effect of the decision would be material.

or decrease in the value of assets or liabilities of \$10,000 or more.

Thus, if subdivision (d) was the applicable provision, Councilmember Pastorino would be required to disqualify himself from any decision of the city council that would affect the gross revenues of the corporation by \$10,000 or more for a fiscal year, or the value of assets or liabilities by \$10,000 or more, or would result in the corporation incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more.

You stated that the only asset of the corporation that might be affected by the specific plan decision was the corporation's real property which is situated approximately 3,600 feet from the specific plan area. You stated your belief that it is not reasonably foreseeable that the property will be financially affected by the decision.

Whether a financial effect on the councilmember's property is foreseeable is a close question. However, it is clear from Regulation 18702.2 that if the foreseeable financial effect of the decision will not meet the thresholds of the regulation, the corporation will not be a disqualifying financial interest.

3. The "Public Generally" Exception

Public officials with real property interests that will be financially affected by a governmental decision may still participate in a decision if the effect of the decision on their property is not distinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it would affect a significant segment of the public of the official's jurisdiction. (Regulation 18703.)

In the Yang Advice Letter (No. A-90-067) we concluded that the redevelopment area did not contain a sufficient portion of the population of Half Moon Bay to permit use of the "public generally" exception. Since the specific plan area is even smaller we conclude that the exception still does not apply to any of the economic interests in question.

However, Regulation 18703.1 provides an additional exception applicable to small jurisdictions. You stated that the population of Half Moon Bay is less than 25,000 persons and the geographic area of the city is less than 10 square miles. You also stated that city councilmembers are required to reside within the jurisdiction and are elected in an at-large election. Thus assuming that the residences of Councilmembers Ruddock and Iverson are no more than one-quarter acre in size (or not larger than 125 percent of the median residential lot size for the jurisdiction),

pursuant to Regulation 18703.1, the effect of the specific plan decision on the councilmembers' principal residences will be deemed indistinguishable from the effect of the decisions on the public generally.

Of course, since the exception is limited to personal residences, the exception would not apply to Councilmember Pastorino's economic interest if you determine it is disqualifying.

4. Official's Representing Their Personal Interests

In your follow up letter of February 3, 1992, you asked whether the councilmembers could participate in the proceedings in their personal capacities if in fact they are disqualified from participating in the decision in their official capacity. Regulation 18700.1(b) expressly provides an exception where an otherwise disqualified official appears in the same manner as any other member of the general public before his or her own agency in the course of its prescribed governmental function to represent his or her personal interests in real property, provided the property is wholly owned by the official or members of his or her immediate family.⁷

According to your facts, Councilmembers Ruddock and Iverson own homes within 600 feet of the project area, both of which are a "personal interest" as defined in Regulation 18700.1(b). Councilmember Pastorino is an officer and shareholder in a family corporation. However, you stated that the councilmember and his immediate family only own 6.5 percent of the corporation. Since the family corporation is not solely owned by the councilmember and members of his immediate family, the corporation and the 40-acre parcel owned by the corporation are not the personal interests of the councilmember.

Thus, Councilmembers Ruddock and Iverson can appear before the Half Moon Bay City Council, in the same manner as any other member of the public, to advocate on behalf of their own personal interests with respect to the decision from which they are disqualified. However, the comments of the councilmember's must be limited to their personal interests, and they should take care to clarify that they are not acting in any official capacity or appearing to represent any other person's interests. (Larsen

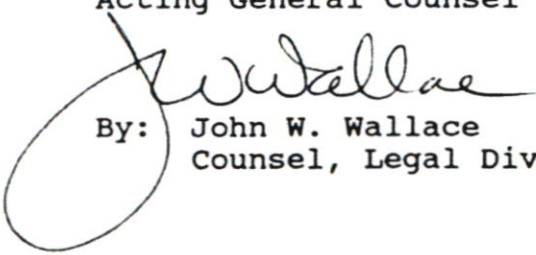
⁷ Section 82029 defines "immediate family" to be the spouse and dependent children of the councilmember.

Advice Letter, No. A-87-151.) The exception would not apply to Councilmember Pastorino.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁸

Sincerely,

Scott Hallabrin
Acting General Counsel


By: John W. Wallace
Counsel, Legal Division

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⁸ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.