



California Fair Political Practices Commission

June 10, 1992

Betsy Strauss
City Attorney
1000 Webster Street
Fairfield, CA 94533

Re: Your Request for Advice
Our File No. I-92-290

Dear Ms. Strauss:

This letter is in response to your request for advice regarding the duties and responsibilities of City of Fairfield Vice-Mayor Garry Ichikawa and Councilmembers George Pettygrove and Chuck Hammond under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Your request is general in nature and seeks guidance regarding various decisions pending before the city council. Accordingly, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329.²

QUESTIONS

1. The vice-mayor and councilmembers own homes which are located beyond 300 feet but within 2,500 feet of the Waterman & Capitola Project. Do the conflict-of-interest provisions of the Act require their disqualification from participating in governmental decisions regarding this project?

2. How should the factors of Regulation 18702.3(d) be applied to determine whether the financial effect of each of 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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

pending decisions on the officials' real property interests is material with regards to this project?

CONCLUSIONS

1. If it is determined that the pending decisions will have a material financial effect on the officials' interests in real property, their disqualification will be required.

2. The factors in Regulation 18702.3(d) should be applied by a qualified real property appraiser to determine whether the pending decisions will have a material financial effect on the officials' real property interests. Such a determination will be considered to be a good faith effort to assess the material financial effect of the pending decisions on the officials' real property interests.

FACTS

The City of Fairfield is in the process of developing the Waterman & Capitola Project, an affordable housing project. The project will consist of for-sale townhomes at a density of 12-14 units per acre. The existing neighborhood within one-half mile of the project contains single-family residences constructed to an average density of 4 units per acre.

The personal residences of Vice-Mayor Ichikawa (3001 Rustle Ct.), Councilmember Pettygrove (1970 Barbour Dr.), and Councilmember Hammond (2680 Mankas Blvd.), each are outside a 300 foot radius but within a 2,500 foot radius of the site of the project.

The city has looked at two separate studies to analyze any potential economic impact on the real property interests of the public officials who reside within 2,500 feet of the proposed affordable multifamily townhouse ownership project. The studies examined the impact of affordable multifamily development projects on existing single-family homes. One study, prepared by the California Department of Housing and Community Development, was not site specific. This study, which you have enclosed for our review, concluded that affordable and subsidized housing does not have a significant effect on the value of nearby homes.

The second study, which you have enclosed for our consideration, was commissioned by the City of Fairfield and conducted by Sedway and Associates. This study, which is site specific, analyzed the potential financial effect of the project on single-family housing situated within 2,500 feet. Specifically, the study attempted to determine whether the project would result in an increase or decrease of \$10,000 or more in the value of homes situated within 2,500 feet.

Sedway and Associates compared the proposed project with similar developments in other communities and concluded that the

financial effect of the project on housing situated within 2,500 would be less than \$10,000.³

On June 16, 1992, the city council, sitting as the redevelopment agency, will be asked to consider contributing \$1.4 million in agency funds towards the acquisition of the land for the project. At a subsequent meeting, the city council will be asked to approve certain land use entitlements to allow the Waterman & Capitola Project to proceed.

You are the city attorney for the City of Fairfield. Vice-Mayor Ichikawa and Councilmembers Pettygrove and Hammond have authorized you to seek our advice on their behalf.

ANALYSIS

Question 1

The Act was enacted to ensure that public officials, whether elected or appointed, perform their official duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) To that effect, Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. The vice-mayor and councilmembers on whose behalf you seek our advice are public officials. (Section 82048.)

Financial Interests

An official has a financial interest in a governmental decision within the meaning of Section 87100 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, or on a member of the official's immediate family,⁴ 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.

³ The study concluded that the value of Councilmember Pettygrove's residence would be affected by more than \$10,000 as a result of the project. However, the researchers have concluded that this impact is due to a statistical error. (Additional Research Regarding Effects of New Multifamily Housing on Value of Existing Single-Family Homes, Sedway and Associates, page 9.)

⁴ An official's "immediate family" includes the official's spouse and dependent children. (Section 82029.)

(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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

Accordingly, a public official may not make, participate in making, or attempt to use his or her official position to influence a governmental decision if the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on the official, or on a member of the official's immediate family, or on any of the official's economic interests specified in Section 87103 above. For purposes of our discussion, we assume that each official has an interest in real property which is greater than \$1,000. (Section 87103(b).)

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 Community 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.) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

It would appear reasonably foreseeable that the location of a high-density affordable housing project within a neighborhood will affect property values in areas surrounding the project. Some studies⁵ show that subsidized housing leads to an increase in property values, others indicate a decrease, while still others indicate that there is no effect on the value of existing housing. Thus, it is reasonably foreseeable that the project will have a financial effect on the officials' real property interests. Accordingly, if the financial effect will be material, disqualification will be required unless the financial effect of the decisions on the officials' real property interests will not be distinguishable from the effect on the "public generally."

Materiality

When it is reasonably foreseeable that a governmental decision will have an indirect financial effect on an official's interest in real property, the appropriate standard for assessing materiality is that of Regulation 18702.3. All the officials on whose behalf you seek our advice have residences beyond 300 feet but within 2,500 feet of the project area. The appropriate standard for determining materiality when an official's interest in real property is located outside a radius of 300 feet but within a radius of 2,500 feet from the property which is the subject of the decision is that of Regulation 18702.3(a)(3). This regulation states that the effect of a decision is material if 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)(3).

Accordingly, you must determine whether the public officials' interests in real property will be affected materially by decisions regarding the project area by applying these monetary standards. As you correctly point out in your request for advice,

⁵ See, for example, The Effects of Subsidized and Affordable Housing on Property Values: A Survey of Research, State of California, Department of Housing and Community Development, pages 14, 16, 23 and 25.

factors which must be considered in making this determination include, but are not limited to:

(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) In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

Regulation 18702.3(d).

The City of Fairfield has commissioned a study by Sedway and Associates which takes into account variables such as distances between the public officials' properties and the project site, and the effect of affordable housing in comparable communities with similar projects.

Assuming that Sedway and Associates was qualified to determine the values of the real property in issue and determined, based on the provisions of Regulation 18702.3, that the pending decisions regarding the project will have no material financial effect on the officials' real property interests, the determinations of Sedway and Associates will be considered to be a good faith effort to assess the materiality of the pending decisions on the officials' real property interests.⁶ (Stone Advice Letter, Our File No. A-92-133a.)

To obtain written advice from the Commission which grants immunity from Commission enforcement action under Section 83114(b), a written statement to the Commission declaring that there will be no material financial effect would be sufficient as long as it is made clear that the Commission's materiality regulations have been applied in reaching this determination. (Stone, supra.)

⁶ Your questions focus solely on the real property interests of the vice-mayor and councilmembers. You have not asked, and therefore we do not comment, regarding any other potentially disqualifying economic interests of the vice-mayor and councilmembers. In this regard, you may want to refer to Section 87103.

Please note that, in issuing immunizing advice, the Commission is not a finder of fact.⁷ Therefore, the immunity granted in such a letter necessarily only applies to the facts provided.

Question 2

You have asked for advice on the appropriate manner to apply the factors contained in Regulation 18702.3(d) to this fact situation for purposes of determining whether the pending decisions will have a material financial effect on the officials' interests in real property. We have previously advised that the factors of Regulation 18702.3(d) should be applied by a qualified real estate appraiser. (Stone, supra.) It would appear that Sedway & Associates has already applied the first standard by analyzing the proximity and magnitude of the proposed project in relationship to the officials' real property interests. Based on this analysis, Sedway and Associates has concluded that the effect of the project on the officials' interests in real property will not be material.

For a complete determination of materiality, the second and third factors of Regulation 18702.3(d) must be applied as well. Thus, a qualified professional should determine whether it is reasonably foreseeable that the project will affect the development potential or income producing potential of the officials' real property interests. In addition, a qualified professional must determine whether it is reasonably foreseeable that the project will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood. If any of these changes will affect the fair market value of the officials' property by \$10,000 or more or the rental value by \$1,000 or more in a twelve month period, the official's disqualification will be required.

Public Generally

Even if you determine that the officials' interests in real property will be affected materially, disqualification is only required if the financial effect of the pending decisions regarding the project area on the officials' real property interests will be distinguishable from the effect on the public generally. We have insufficient facts to make this determination. We are enclosing a general discussion of the "public generally" exception for your review.

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In re Oglesby (1975) 1 FPPC Ops. 71, 77.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.⁸

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

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Enclosures

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.