



California Fair Political Practices Commission

May 9, 1994

Scott Field
Temecula City Attorney
Burke, Williams & Sorenson
3200 Bristol Street, Suite 640
Costa Mesa, CA 92626

Re: Your Request for Advice
Our File No. A-94-106

Dear Mr. Field:

This is in response to your letter requesting advice on behalf of Temecula Mayor Ron Roberts, Councilmember Patricia H. Birdsall, and Temecula Planning Commissioners John E. Hoagland and Linda Fahey regarding their responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

May Mayor Roberts, Councilmember Birdsall, Commissioner Hoagland and Commissioner Fahey participate in a decision regarding a specific plan for an area that is located adjacent to property owned by the Meadowview Community Association?

CONCLUSION

Mayor Roberts, Councilmember Birdsall, Commissioner Hoagland, and Commissioner Fahey may not participate in any decision which will have any financial effect on property owned by the Meadowview

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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Community Association (if the interest is worth \$1,000 or more), or will materially affect their residences.

FACTS

The Temecula City Council will be considering a specific plan for 133 acres of the city to implement land use and densities previously established by the city's general plan. The area subject to the specific plan is adjacent to property owned by the Meadowview Community Association (the "association").

The association is a nonprofit corporation which owns and maintains the land for the use and enjoyment of residents of the Meadowview Planned Unit Development (PUD), an 896 parcel development. Currently, 815 of the 896 parcels have been developed with single-family residences.

Each of the officials in question resides in a single-family residence in the Meadowview PUD, and each is a member of the association. The association was formed to maintain and manage areas owned, leased or acquired by the association for the benefit of the members. Members are charged an assessment to pay the association's operation costs. The association is controlled by the membership (each member has a right to vote), or by a board of directors elected by the membership depending on the nature of the decision.

Membership in the association is mandatory for those owning residences in the Meadowview PUD. Each lot is entitled to one membership by right with ownership of property in the PUD, although the right to use and enjoy the common areas may be delegated to family or tenants. Membership ceases upon conveyance of the property owned in the PUD. The association holds fee title to all the common area in the Meadowview PUD.

ANALYSIS

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. A "public official" is defined in Section 82048 and Regulation 18700 as every natural person who is a member, officer, employee, or consultant of a state or local government agency. Temecula City Councilmembers and members of the Temecula Planning Commission would be considered "public officials" under the Act.

Section 87103 provides that an official has a financial interest in any decision which will have a reasonably foreseeable material financial effect on the official, a member of the official's immediate family, or on any real property in which the

public official has a direct or indirect interest worth \$1,000 or more. (Section 87103(b).)

Section 82033 defines an "interest in real property" as:

[A]ny leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more.

Emphasis added.

Each of the officials in question has an interest in real property that may be affected by the decision. All four officials reside in single-family residences in the Meadowview PUD. Clearly, the officials' interests in their residences constitute an interest in real property.

In addition, the homeowners are entitled to the use and enjoyment of the common areas in the PUD. These areas are owned exclusively by the Meadowview Community Association, Inc., however, the property is maintained for the use and enjoyment of homeowners in the Meadowview PUD. This constitutes a beneficial interest in real property for the officials. Thus, the officials' interest in the common areas is an "interest in real property" if the value of the official's interest in the common areas is worth \$1,000 or more.

Foreseeability and Materiality

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. 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.)

The officials each have an economic interest that is indirectly involved in the decision.² Where an interest in real property is indirectly affected by a decision, Regulation 18702.3 is applied to determine whether the effect will be material.

² Regulation 18702.1(a)(3) provides a list of situations in which an official's property is directly involved in a decision. Some examples include decisions to zone or rezone the official's property, decisions to annex the property, decisions concerning assessments on the property and decisions to include the property in or exclude it from any city, county, or other local governmental subdivision.

Regulation 18702.3 provides that the financial effect is material if any of the following apply:

1. The official owns property within 300 feet of property that is the subject of a decision and the decision will have some financial effect on the property;
2. The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the official's property will receive new or substantially improved services.
3. The official's real property is beyond a radius of 300 feet from the subject property, but within 2,500 feet, and the decision will affect the value of the official's property by \$10,000 or more, or the rental value of the property by \$1,000 in a 12 month period.
4. The official's property is located beyond a 2,500 foot radius of the subject property, but there are specific circumstances regarding the decision which make it foreseeable that the decision will affect the value of the official's property by \$10,000 or more, or the rental value of the property by \$1,000 or more per 12 month period. However, even if the decision has such an effect on the property, the effect is not deemed material if the effect on the official's property will be substantially the same as the effect upon at least 25 percent of all the properties within a 2,500 foot radius of the official's property, and there are at least 10 properties under separate ownership within a 2,500 foot radius of the official's property.

Under your facts, the property which is the subject of the decision is more than 300 feet from the residences of the officials.³ However, the common area in which they have a beneficial interest is within 300 feet of the subject property.

Under your facts the common areas are actually owned by the association and are separate and distinct from the actual residences. Thus, under these limited facts, cumulation would not be appropriate. Instead, you would apply the materiality standards to each interest independently. Thus, the officials may not participate in the decision if the decision will have any financial effect on the common property interest (if the interest is worth \$1,000 or more), or the decision will materially affect

³ According to the information provided by your office on May 6, 1994, three of the officials own residences situated within 2,500 feet of the project, but more than 300 feet away. One councilmember owns a residence 4,600 feet from the site of the project.

the officials' residences pursuant to the applicable provision of Regulation 18702.3.⁴

"Public Generally" Exception

Please note that Regulation 18703 provides an exception from the conflict-of-interest provisions of the Act where a decision will affect an official in the same manner as a significant segment of the public generally.

Regulation 18703 defines "significant segment" as any of the following:

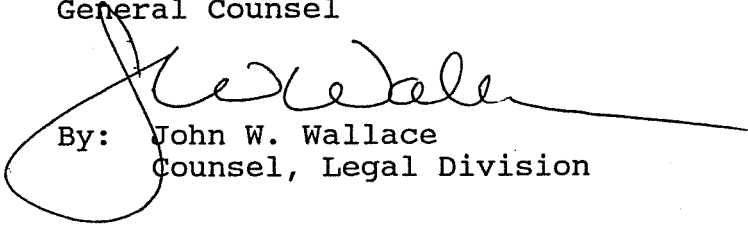
1. Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents, or
2. Ten percent or more of all property owners, all home owners, or all households in the jurisdiction of the official's agency or the district the official represents, or
3. Fifty percent of all businesses in the jurisdiction or the district the official represents, so long as the segment is composed of persons other than a single industry, trade, or profession; or,
4. Five thousand individuals who are residents of the jurisdiction.

You have not requested advice pertaining to the "public generally" exception. If you believe one of these provisions might apply, you should contact us for further advice.

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

Sincerely,

Steven G. Churchwell
General Counsel


By: John W. Wallace
Counsel, Legal Division

⁴ This conclusion differs from the conclusions in past advice letters (See, Haas Advice Letter No. A-92-366; Etheridge Advice Letters, No. A-93-075 and A-93-143.) To the extent that a past advice letter is inconsistent with this conclusion, it is superseded.