



California Fair Political Practices Commission

June 16, 1994

Richard J. Chiozza
Assistant City Attorney
City of South San Francisco
315 Maple Avenue
P.O. Box 711
South San Francisco, CA 94083

Re: Your Request For Conflict of
Interest Advice
Our File No. A-94-114

Dear Mr. Chiozza:

The following analysis and advice is provided in response to your March 29, 1994 request. You requested advice concerning application of the conflict of interest provisions of the Political Reform Act (the "Act").¹ In providing this advice, the Fair Political Practices Commission accepts as true the facts contained in your request; the Commission does not operate as a fact finder in providing advice.²

QUESTIONS

1. May Mayor Joseph Fernekes, Councilwoman Roberta Teglia, Councilman John Penna, Planning Commissioner Lucchesi, Planning Commissioner DeZordo, Planning Commissioner Mantegani and Planning Commissioner Warren participate in a decision concerning real property located within 2500 feet (300 feet for Commissioner Warren) of their respective real property?
2. May Commissioner Mantegani participate in the decision when he is an equity shareholder and employee of the "Standard Building Company," a building company that once considered and then decided against building homes on the proposed site?

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.

² (In re Oglesby (1975) 1 FPPC Ops. 71.)

CONCLUSIONS

1. The appraisal you have provided shows that no foreseeable financial effect on these persons' financial interests will result from the proposed decision. Thus, there is no prohibition on the participation of Mayor Fernekes, Councilmembers Teglia and Penna, and Commissioners Mantegani, Dezordo, Lucchesi, and Warren.
2. The factual record you have provided indicates that the financial affect of the Stonegate project on Commissioner Mantagani's financial interest is remote and not reasonably foreseeable. Thus, this also is not a disqualifying interest for him.

FACTS

The Stonegate project is anticipated to begin in the fall of 1994. Stonegate is a 34 unit single family home development located in South San Francisco. It is anticipated that the market price for the units in Stonegate will be between \$300,000.00 to \$350,000.00. The mayor, two city councilmembers, and three planning commissioners live within 2500 feet of the project; one additional commissioner lives within 300 feet of the project. The city has asked a local real estate broker with no financial interest in the project to render an opinion on the financial effect the project may have on each of the public officials' property interest. The real estate broker has opined that there will be no financial effect on each individual public official's property by virtue of the project.

Commissioner Mantegani has an equity interest in the Standard Building Company, a company which once considered bidding on the Stonegate project but did not do so. The Standard Building Company is currently completing two residential developments in South San Francisco, "Foothill Estates" and "Sunshine Gardens." All thirty units in Foothill Estates have been sold and construction is completed. Two units remain for sale in Sunshine Gardens. The sales price for the two homes in Sunshine Gardens is between \$400,000.00 and \$450,000.00. It is anticipated that construction in Sunshine Gardens will be completed in September, 1994. The two Standard Building Company developments are within one quarter mile and one mile, respectively, of the proposed Stonegate project. The Standard Building Company has over eighteen million dollars in assets but is not publicly traded.

ANALYSIS

Section 87100 of the Act prohibits a public official from making or participating in a governmental decision which will have a reasonably foreseeable and material effect on the public official's financial interest. Foreseeability does not require absolute certainty, however, a mere possibility is insufficient as there must be a substantial likelihood of occurrence. (Downey Cares v. Downey Community Development Com., 196 Cal. App. 3d 983,

989-991 (1987); Witt v. Morrow, 70 Cal. App. 3d 817, 822 (1977); In re Thorner, 1 FPPC Ops. 198 (1975).) Governmental decisions concerning approval of housing subdevelopment projects have generally been considered to have a reasonably foreseeable effect on the value of property in the immediate vicinity. (See Wilson Advice Letter, No. A-93-035; Caldwell Advice Letter, No. A-92-647; Hanson Advice Letter, No. I-93-188.)

Whether the effect is material is determined by the Fair Political Practices Commission's regulations and generally is dependent upon the proximity of the public official's property to the proposed development and the size of the financial effect anticipated. For a public official's property located within 300 feet of a proposed development, the effect of a governmental decision is material unless there is absolutely no financial effect whatsoever. (Regulation 18702.3(a)(1).) For a public official's property located further than 300 feet but within 2,500 feet of the proposed development, the effect of a decision is material if it results in an increase or decrease in the value of the property by \$10,000 or more; or, results in an increase or decrease in the rental value of the property of \$1,000 or more within a 12 month period. (Regulation 18702.3(a)(3).) In order to determine if the foreseeable financial effects of a governmental decision indirectly affecting a public official's property are material, the public official may rely on an appraisal from a disinterested real estate professional otherwise knowledgeable regarding real estate in the area of the public official's property.

You have commissioned an appraisal of the effects the Stonegate development will have on the respective property interests of the mayor, councilmembers, and planning commissioners. The appraisal indicates that all of the appropriate factors listed in Regulation 18702.3(d) were considered and that the appraiser himself is financially disinterested in the Stonegate project. The appraisal indicates that there will be no financial effect on the property interest of Mayor Fernekes, Councilmembers Teglia and Penna, and Commissioners Mantegani, Dezordo, Lucchesi, and Warren. An appraisal conducted by a disinterested and otherwise qualified real estate professional, who considers the factors listed in Regulation 18703.3(d), will be considered a good faith effort to assess the materiality of pending governmental decisions indirectly affecting a public official's property and an immunizing advice letter from the Commission may be issued on that basis. (Walter Advice Letter, No. I-92-345; Stone Advice Letter, No. A-92-133a.) Accordingly, Mayor Fernekes, Councilmembers Teglia and Penna, and Commissioners Lucchesi, Dezordo, Mantegani and Warren have no disqualifying conflict based upon their respective real property interests identified in your request for advice.

Commissioner Mantegani's equity interest in the Standard Building Company may be a disqualifying financial interest regarding governmental decisions affecting the Stonegate project.

The Standard Building Company is a source of income to Commissioner Mantegani. A reasonably foreseeable and material financial effect on a source of income to a public official will trigger the conflict of interest provisions of the Act. If it is reasonably foreseeable that there will be a material financial effect on the Standard Building Company, Commissioner Mantegani would be prohibited from participating in decisions regarding the Stonegate project. The Standard Building Company is a direct competitor of the builder who has developed the plans for the Stonegate project. Indeed, the Standard Building Company presently has two single family housing developments under construction within the City of South San Francisco. It is anticipated that the two developments currently under construction by the Standard Building Company will be completed prior to the beginning of construction on the Stonegate project. Additionally, it is noted that the price of the proposed Stonegate homes is anticipated to be significantly less than the remaining units of the Standard Building Company projects. Under the facts submitted by you, it does not appear that the Standard Building Company will compete directly with the Stonegate project for either customers or for available labor and materials. Absent facts which would indicate a substantial likelihood of a financial effect on the Standard Building Company, it is not reasonably foreseeable that decisions concerning the Stonegate project will have a financial effect on the Standard Building Company. If the decision's effects are remote and not foreseeable, there is no need to determine materiality of the potential effect under Regulation 18702.2.

We hope that this analysis is helpful. If you need further assistance, this office remains available for that purpose.

Sincerely,

Steven G. Churchwell
General Counsel



By: Daniel E. Muallem
Counsel, Legal Division