



FAIR POLITICAL PRACTICES COMMISSION

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June 19, 1998

Ann M. Siprelle
City Attorney
City of Woodland
Kronick Moskowitz Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, California 95814-4417

**Re: Your Request for Advice
Our File No. A-98-153**

Dear Ms. Siprelle:

This letter is in response to your request for advice on behalf of City Planning Commissioner Jack Mahan regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

May Planning Commissioner Mahan participate in decisions regarding the "Turn of the Century Specific Plan"?

CONCLUSION

It is reasonably foreseeable that the decisions regarding the "Turn of the Century Specific Plan" will have a material financial effect on Commissioner Mahan's economic interests; therefore, he may not make, participate in making, or influence a governmental decision affecting his economic interests, unless the public generally exception applies.

FACTS

The City of Woodland (the "city") has received an application for a land use development plan known as the "Turn of the Century Specific Plan" ("Specific Plan"). The Specific Plan would permit development of 977 acres to a mix of commercial, residential, and public uses.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

Planning Commissioner Mahan's principal residence, which he owns, is located within 300 feet of the proposed boundary of the Specific Plan.

The planning commission's role in adoption of a specific plan is advisory to the city council. It must hold at least one public hearing on the proposed Specific Plan. (Government Code Sections 65453(a) and 65353(a).) Its recommendation to the city council must be made by the affirmative vote of a majority of the planning commission's entire membership. (Government Code Section 65354.)

The city had an independent appraisal prepared regarding the potential impact of the Specific Plan, if adopted, on the value of Commissioner Mahan's home. The appraisal concludes, "the planning commissioner's home will have little if any change in value due to the proposed development."

ANALYSIS

Conflict of Interest Law, Generally

Section 87100 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. As a member of the city planning commission, Commissioner Jack Mahan is a public official. (Section 82048.)

Economic Interest

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 any one of five enumerated interests including any real property in which the public official has an interest worth \$1,000 or more. (Section 87103(b).)

Commissioner Mahan owns a personal residence in the City of Woodland that is presumably worth \$1,000 or more. (Section 87103(b).) Accordingly, he may not make, participate in making, or use his official position to influence a decision if it is reasonably foreseeable that the decision will have a material financial effect on his real property interest.

Foreseeability

Whether the financial consequences of a decision are reasonably foreseeable 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.) It is

reasonably foreseeable that the change in land use of a given area will have a financial effect on property within the immediate vicinity.

Materiality

Once an effect is determined to be reasonably foreseeable, the official must then determine whether the effect is material. The Commission has adopted a series of regulations that provide guidance concerning whether the foreseeable effect of a decision is material. These regulations apply different standards depending on whether the official's economic interest is directly or indirectly involved in the decision. The facts indicate that the commissioner's interest in his personal residence is not *directly* involved in the decisions related to the Specific Plan. (Regulation 18702.1(a)(3).)

However, such decisions may have an *indirect* effect on the commissioner's real property interest. The appropriate standard for determining materiality where an ownership interest in real property is indirectly involved in a decision is set forth in regulation 18702.3. The regulation provides, in pertinent part, that the effect of a decision is material if:

“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.”
(Regulation 18702.3(a)(1).)

The commissioner's property is within 300 feet of the proposed boundary of the Specific Plan. Therefore, decisions involving the Specific Plan will have a material financial effect on the commissioner's residential property, *unless such decisions will have no financial effect* on the official's property. The appraisal you have attached states an opinion that the Specific Plan will have “*little if any*” effect on the commissioner's property. It appears that the Specific Plan will have “*little*”-*but some*- financial effect on the commissioner's property.

Public Generally Exception

Although an official's economic interest may be materially affected by a decision, the official may still participate in the decision if the effect on the official's interest is not distinguishable from the effect on the public generally. (Section 87103.) Regulation 18703 provides that the “public generally” exception applies where both subdivisions (1) and (2) apply:

“(1) Significant Segment: The governmental decision will affect a ‘significant segment’ of the public generally as set forth below:
(A) For decisions that affect the official's economic interests

(excluding interests in a business entity which are analyzed under subdivision (B)):

- (i) Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents, or
- (ii) 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

* * *

(C) For decisions that affect any of the official's economic interests, the decision will affect 5,000 individuals who are residents of the jurisdiction.

* * *

(2) Substantially the Same Manner: The governmental decision will affect the official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (a)(1) of this regulation." (Regulation 18703(a), copy enclosed.)

Thus, the public generally exception will apply if the decision will affect a *significant segment* of the public generally in *substantially the same manner* as it would affect Commissioner Mahan.

Generally, a *significant segment* of the public may include: 1) 10 percent or more of the population of Woodland; 2) 10 percent or more of all property owners, home owners, or households in Woodland; or 3) 5,000 individuals who are city residents. (Regulation 18703(a)(1)(A) and (C).)

However, a significant segment of the city, as described above, must also be affected in *substantially the same manner* as Commissioner Mahan. For governmental decisions involving real property, we assume that residences approximately the same distance from the project area as the official's residence will be affected in a substantially similar manner. (*Jenkins* Advice Letter, No. A-98-075; *Gillig* Advice Letter, No. A-96-150.) For example, in the *Blakely* Advice Letter, No. A-95-202, we advised that where an official's residential property was within 300 feet of a project site, the public generally exception applied only if a significant segment of the public owned residential property within 300 feet from the project.

The result reached in the *Blakely* letter may appear somewhat harsh, but the public generally exception allows persons with a clear financial stake in a vote to participate in the decision. For this reason, the exception must be construed narrowly. (*See* 58 Cal.Jur.3d, Statutes, § 116, p. 505 [exceptions to the general rule of a statute are strictly construed].)

Accordingly, Commissioner Mahan may participate in decisions related to the Specific Plan, under the public generally exception, if 10 percent of the city's population; 10 percent of all property owners, home owners, or households in the city; or 5,000 individuals who are city residents, own residential property within 300 feet of the Specific Plan.

You have attached an appraisal from Lynch & Associates which provides as follows:

“...the planning commissioner's home will have *little if any* change in value due to the proposed development.”

The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Therefore, we do not evaluate the accuracy of appraisals. Regarding the public generally exception, we have advised that public officials may rely on appraisals where it is reasonable to do so.² (*Zundel* Advice Letter, No. A-93-478.) In addition, the letter does not specify that 10 percent of the city's population; 10 percent of property owners, home owners, or households in the city; or 5,000 city residents own residential property within 300 feet of the Specific Plan.

The appraisal suggests that a significant segment of the public generally will be affected. However, it does not explicitly state what percentage of the population of Woodland will be affected, nor does it explicitly provide that the persons affected will be affected in substantially the same manner. Accordingly, it does not appear to be reasonable for the commissioner to rely on the appraisal for decisions relating to the public generally exception. Ultimately, the public official bears the responsibility of applying the public generally exception. Thus, the official will only benefit by conducting a thorough assessment of the financial effects of a decision and documenting the facts and analysis on which the assessment is based. (*Mandeville* Advice Letter, No. A-93-403.)

Legally Required Participation

If an official is disqualified from making a decision because he or she has a conflict of interest under the Act, the official may still participate in the decision under the rule of legally required participation. (Section 87101.)

Regulation 18701 interprets and implements the rule of legally required participation and provides, in pertinent part, as follows:

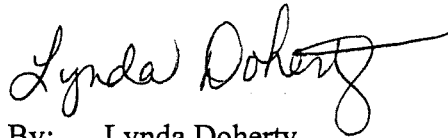
² For example, in the materiality context, we have advised that an appraisal conducted by a disinterested and otherwise qualified real estate professional, who considers the Commission's materiality regulations, will generally be considered a good faith effort to assess the materiality of the effect of a government decision. (*Chiozza* Advice Letter, No. A-94-114.)

“This regulation shall be construed narrowly and shall not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.” (Regulation 18701(c)(2).)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink that reads "Lynda Doherty". The signature is written in a cursive style with a long, sweeping underline.

By: Lynda Doherty
Political Reform Consultant, Legal Division

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