

DATE: December 1, 1987

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Potential Disqualification on Uptown Community Plan

A decision on the Uptown Community Plan was continued until December 1, 1987 and you have asked for a priority review of a financial interest in the affected area. The interests consist of trust deed interests in two (2) unimproved parcels at 8th and Brooks and one (1) improved parcel at 3565 Seventh Avenue. Of significance is the fact that the Uptown Community Plan contemplates no change in zoning on any of the noted parcels nor on any of the adjoining parcels.

In light of the foregoing facts that a governmental decision on this Community Plan will have no effect on either the noted parcels or adjoining parcels, we find no reason for you to disqualify yourself from participation in the discussion and decision on this community plan. Our reasoning follows.

The Political Reform Act found in California Government Code section 81000 et seq. prohibits a public official from making or participating in making a governmental decision in which he or she knows or has reason to believe he or she has a financial interest. California Government Code section 87100. A person has a financial interest within the meaning of section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on

....

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
California Government Code section 87103

In administering and construing the disqualification provisions, the Fair Political Practices Commission has formulated a four (4) part test:

Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably foreseeable that the governmental decision will have a financial effect. Second, the anticipated

financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

In re Opinion requested by Tom Thorner,
1 FPPC Opinions 198, 202 (1975)

While we assume the trust deed interest exceeds one thousand dollars (\$1,000) and thus is a financial interest within Section 83103(b), one need look no further than the second prong of this four-part test. Obviously, there must be some connection, some nexus, between the governmental decision and the financial interest of the public official. Here we find no such connection. No change whatsoever is contemplated in the present zoning of the property in which you have an interest. Further no change in adjacent property is contemplated which at times can impact adjoining property.

Since there is no nexus between the governmental decision and your property or adjacent property, it is unnecessary to consider the remaining tests. The whole purpose of disqualification is to insure that public officials perform their duties free from bias caused by an effect on their own interests California Government Code section 81001(b). Since there is no effect on your interests, you are free to participate in the decision.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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