

MEMORANDUM OF LAW

DATE: December 29, 1988

TO: Councilmember Ron Roberts

FROM: City Attorney

SUBJECT: Potential Conflict of Interest/T&S Development
- University Community Plan Amendment

This is in response to your memorandum of November 29, 1988, to City Attorney John W. Witt in which you asked for a specific decision from this office on whether you may participate in a City Council hearing on a University Community Plan Amendment proposed by T&S Development.

Background Facts

The following facts were taken from City Manager's Report No. 88-465 dated November 15, 1988, and its attachments, regarding initiation of an amendment to the University Community Plan for La Jolla Village Square. The applicant is T&S Development ("T&S"). T&S requests initiation of an amendment to the Development Intensity Element of the University Community Plan ("Plan Amendment") to increase the development intensity of the La Jolla Village Square and a portion of the Cape La Jolla site from 737,000 square feet to 950,000 square feet of regional commercial. On October 21, 1988, the Planning Commission of The City of San Diego considered the request for the Plan Amendment, and denied the request. As shown in the City Manager's Report, the City's planning staff recommended the Mayor and City Council approve the request.

Attachment two (2) of the City Manager's Report lists those persons and entities that have a "financial interest" in the project. The entity known as SGPA/Architecture and Planning ("SGPA") is listed as one of two architectural firms for the project. From prior discussions and communications with you, we understand that you formerly held an equity interest in SGPA. You sold your equity interest to the other equity holders when you became a member of the City Council; currently, you hold a promissory note payable to you evidencing the debt owed by SGPA.

In two prior memoranda of law involving SGPA, we answered the questions of whether you faced a potential conflict of interest

when: 1) SGPA appeared before the City Council as an applicant on a project (January 20, 1988); and 2) SGPA represented someone else before the City Council (April 26, 1988). Copies of these two memoranda of law are enclosed for your easy reference.

The present request for advice differs from the other two in

that SGPA is neither the applicant nor the agent appearing on behalf of the applicant (T&S). Rather, SGPA is listed by the applicant as part of its "development" team, in other words, is listed as having a "financial interest" in the project, that is, this requested Plan Amendment. The precise financial arrangement between T&S and SGPA is not shown.

Analysis

As pointed out in the previous memoranda of law, the basic California law governing conflicts of interest is the Political Reform Act ("Act") codified at Government Code Sections 81000 et seq., and regulations adopted by the Fair Political Practices Commission ("FPPC") under that Act, codified at Title 2, Division 6 of the California Code of Regulations. The Act 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. Government Code Section 87100.

As the prior memoranda indicate, whether an official has a "financial interest" in a governmental decision within the meaning of Government Code Section 87100 hinges on whether it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b)

(c) Any source of income, . . . aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; Emphasis added. Government Code Section 87103.

In the memorandum of January 20, 1988, it was determined that you had a potential income as well as investment interest in SGPA because of the promissory note.

The issue presented by your November 29th memorandum is whether the governmental decision at hand, that is, the approval or denial of the request for the Plan Amendment, may reasonably foreseeably result in a material financial effect on SGPA. Although no facts are given on the precise financial arrangement between SGPA and the project applicant, since SGPA is one of the two architects on the project, it may reasonably be inferred from the facts given that there will be some financial effect on SGPA. First, the Plan Amendment proposes to expand the development

intensity allowable under the plan by 212,750 square feet. Secondly, the applicant proposes to expand the existing commercially developed area (La Jolla Village Square) from 350,000 to 950,000 square feet. See attached City Manager's Report. Hence, it is reasonably foreseeable that architectural work and, hence, financial benefit may result to the project's architects, including SGPA.

In addition to having a foreseeable financial effect, the financial effect must also be "material." The standard for non-stock exchange companies has been defined by regulation to equate to an increase or decrease in gross revenues for a fiscal year of \$10,000.00 or more or an increase or decrease in the value of assets or liabilities of \$10,000.00 or more. 2 Cal. Code of Regs. Section 18702.2(g). While we do not possess the amount of the financial involvement of SGPA, if you ascertain their reasonably foreseeable involvement exceeds this \$10,000.00 threshold, you should disqualify yourself from consideration of this matter. Should the involvement be below this threshold, you may participate.

We share your concerns that such fine distinctions are required under the conflict of interest laws that you had to seek a third (3rd) memorandum. However, this is both common in the complex mosaic of changing fact situations and a tribute to your sensitivity to these rules that were instituted to preserve the public's confidence in government. California Government Code Section 81002.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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Attachments

ML-88-109