MEMORANDUM OF LAW

DATE:January 22, 1990

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Potential Conflict of Interest Arising from Ownership of Real Property/Item 335 on Council Docket of January 23, 1990

Your memorandum of January 17, 1990 to City Attorney John Witt and City Manager John Lockwood has been referred to me for response. You asked for our advice as to whether you have a conflict of interest in Item 335 on the Council docket of January 23rd pertaining to the proposed development of La Jolla Pines Technology Center (hereafter "subject property") in the University Community area.

Your concern arises because you own property near the subject property. Specifically, you hold fee ownership of a parcel located at 8830 Nottingham Place. This fact is shown on your Statement of Economic Interest (SEI) for calendar year 1988.

BACKGROUND FACTS

In addition to the facts contained in your memorandum, we have obtained further relevant facts from Alex Hart, Assistant to the Mayor, Hosein Ruhi, Deputy Director, Development Services Division, Engineering and Development Department, and Glenn Gargas, Associate Planner, Planning Department. We also reviewed the following documents for relevant facts: Planning Report No. 90-027 dated January 17, 1990; Environmental Impact Report No. EIR 88-0244; Findings and Statement of Overriding Considerations; Addendum to Environmental Impact Report No. 88-0244; and, Design Manual for La Jolla Pines Technology Center.

The relevant facts pertaining to the Mayor's property are as follows: The Mayor is joint owner of a single-family residence at 8830 Nottingham Place in La Jolla. The joint owner occupies the residence. The property is located in a developed residential neighborhood in the University Community area. The property is valued at over $100,000. The property and surrounding area are currently zoned and developed for single-family residential uses.

The docket item for January 23rd contains four subitems for Council determination. A full description of the nature of the governmental decisions before the Council on January 23rd is set forth in the attached copy of the Council agenda for that date

(Attachment 1). Essentially, the proposed actions pertain to the Environmental Impact Report (No. EIR 88-0244), a Planned Industrial Development permit, the Coastal Development/ Hillside Review permit, and the Tentative Map for the subject property.

The La Jolla Pines Technology Center Planned Industrial Development, Coastal/Hillside Review Permits and Tentative Map propose to develop a vacant 56.4-acre site with 831,600 square feet of scientific research uses. The Tentative Map proposes to divide the site into eight lots. Existing zoning on the property is Scientific Research (SR). To the west, north and east are research laboratory uses, all zoned SR. To the south is vacant land zoned R-1-5,000. The adopted University Community plan designates this area for Scientific Research and Open Space. The subject property is located on the northeast corner of Genesee Avenue and North Torrey Pines Road, south of Science Park Road, and west of Interstate 5 in the SR zones of the University Community area.

The distance between the property owned by the Mayor and the subject property at issue on the January 23rd docket is approximately 11,000 feet.

APPLICABLE LAW

The applicable law governing conflicts of interest arising from ownership of real property was set forth in a Memorandum of Law dated September 8, 1989 to the Honorable Mayor and City Councilmembers regarding ownership of real property near a proposed Chinese mission. In lieu of repeating the applicable law here, we attach a copy of that memorandum (Attachment 2).

Although a copy of the applicable Fair Political Practices Commission (FPPC) rule is attached in full to that September 8, 1989 memorandum, it is worth highlighting those portions of the rule pertaining to real properties located outside a 2500 foot radius from the subject property, since that is the fact situation we face here.

> 18702.3 Material Financial Effect: Ownership Interest in Real Property Indirectly Involved in the Decision.
>
> . . . .
>
> (b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or

the proposed boundaries) of the property which is the subject of the decision; unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a)(3)(A) or (a)(3)(B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

ANALYSIS

As a preliminary matter, it is necessary to determine whether the proposed Council actions on January 23rd relating to the La Jolla Pines project are the types of governmental decisions that trigger a complete analysis of your potential conflict of interest as contemplated by the Political Reform Act ("Act"). In the present instance, the proposed actions to be taken on January 23rd are clearly in the nature of governmental decisions that trigger operation of the Act.

Therefore, the next question is whether you have an economic interest within the meaning of the Act. You have an economic interest in real property within the meaning of the Act, because

you have fee ownership of real property worth more than $1,000. Government Code section 87103(b). The real issue posed by your question is whether there will be a reasonably foreseeable material financial effect on your economic interest as a result of the governmental decisions on the January 23rd docket.

In the present instance, since your property is located some 11,000 feet from the subject property, we must apply the portions of the rule quoted above to determine whether there will be a material financial effect on your property within the meaning of the law. To determine whether there will be a material financial effect resulting from the January 23rd decisions, we consulted City Manager John Lockwood in a meeting on January 22, 1990.

Mr. Lockwood analyzed the facts under the legal guidelines

set forth in FPPC rule 18702.3(b) and determined there would be no foreseeable material financial effect on your property as a result of the decisions on the January 23rd docket. Specifically, he found that there are at least ten (10) other properties under separate ownership surrounding the 8830 Nottingham Place property (Rule 18702.3(b)(2)(B)). Also, he found that the effect on the Nottingham Place property resulting from the January 23rd decisions will be substantially the same as the effect on at least 25% of other properties within 2,500 feet of the Nottingham Place property (Rule 18702.3(b)(2)(A)). Since Mr. Lockwood made those determinations there is technically no need to make a determination under Rule 18702.3(b)(1). However, Mr. Lockwood also found that, although the change in use of the subject property was significant (from vacant land to 831,600 developed scientific research uses, with some encroachment on open space), since the surrounding area is largely already zoned and developed for SR uses, the effect of the change in use in this 56.4 site does not create a special circumstance which will change the value of the Nottingham Place property by $10,000 or more in fair market value. Therefore, Mr. Lockwood determined that there will be no foreseeable material financial effect on the Nottingham Place property as a result of the January 23rd decisions regarding the La Jolla Pines Technology Center project.

Since there is no finding of "material financial effect," there is no need to consider whether the "public generally" exception applies here.

CONCLUSION

Since the January 23rd decisions regarding the La Jolla Pines Technology Center will not foreseeably result in a material

financial effect on your Nottingham Place property, you are not disqualified from participating in or voting on the subitems of Item 335 of the January 23, 1990 docket.

JOHN W. WITT, City Attorney
By
Cristie C. McGuire
Deputy City Attorney

CCM:jrl:048:(x043.2)
Attachments
cc Hosein Ruhi, Deputy Director, Development Services Division, Engineering and Development Department
Glenn Gargas, Associate Planner
Planning Department
ML-90-13