FAIR POLITICAL PRACTICES COMMISSION
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April 12, 2013

M. Katherine Jenson
Rutan & Tucker, LLP
o/b/o Donald Adolph, City of La Quinta Mayor

REDACTED

Re: Advisory Letter
FPPC No. 13/196: Donald Adolph

Dear Ms. Jenson:

As you know, the Enforcement Division of the Fair Political Practices Commission (the "FPPC") has received a sworn complaint against your client, Mayor Donald Adolph. After review of the complaint, the Enforcement Division has decided to close its file on this matter without initiating an enforcement action. The basis for this decision follows.

The FPPC enforces the provisions of the Political Reform Act (the "Act"),[1] found in Government Code Section 810000, et seq. The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. Section 87100 prohibits any public official from making, participating in making or otherwise using his official position to influence a governmental decision in which the official has a financial interest.

The allegation in the complaint is that your client had a conflict of interest regarding his personal residence when he made a governmental decision at the February 11, 2011, city council meeting to purchase property for development known as the "SilverRock" property.

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

The FPPC has adopted an eight-step analysis for deciding whether an official has a disqualifying conflict of interest. The general rule, however, is that a conflict exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his financial interests. To determine whether an individual has a disqualifying conflict of interest, the analysis consists of the following sequenced analysis: (1) is the individual a public official; (2) did or will the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) does the official have economic interests directly or indirectly involved in the governmental decision; (4) what is the applicable materiality standard for each involved economic interest; and (5) whether it is reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest. (Regulation 18700.)

Mr. Adolph is a public official and his economic interest in this matter is his personal residence. Under step 4 of the analysis, in order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the officials' economic interest is directly or indirectly involved. A conflict of interest arises only when the reasonable foreseeable financial effect of a government decision on a public official's economic interest is material. (Regulation 18700(a).) You have indicated that Mr. Adolph's personal residence is approximately 1,800 feet from the closest corner of the SilverRock property, and therefore the property is indirectly involved. (Regulation 18704.2.)

When the FPPC established the 500 foot rule, it was intended to serve, as much as possible, as a bright-line test for determining when the law would consider a financial effect on real property to be material. Within 500 feet, even a one-penny effect is material. Beyond 500 feet and the financial effect will not be considered material unless there are specific circumstances under which the official's property will receive a benefit or suffer a detriment substantially disproportionate to other properties affected by the decision. Regulation 18705.2(b)(1) provides that the financial effect of a governmental decision on real property is presumed not to be material, unless this presumption may be rebutted by proof that there are specific circumstances, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances include, but are not limited to:

(A) The development potential or income producing potential of the real property in which the official has an economic interest;
(B) The use of real property in which the official has an economic interest;
(C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, or similar traits of the neighborhood.

As stated above, when a public official's property is located more than 500 feet from the property that is the subject of the decision, it is presumed there will be no reasonably foreseeable material financial effect on the official's property. However, when the magnitude of the change brought about by the governmental decision is such that it is

clear that there may be some affects on the public official's property beyond 500 feet, the public official must consider those affects. Therefore, it is highly recommended that your client consider Regulation 18705.2(b) before any future decisions regarding the SilverRock property.

The FPPC publishes forms and manuals to facilitate compliance with the provisions of the Act. If your client needs forms or a manual, or guidance regarding your client's obligations, please call the FPPC's Technical Assistance Division at 1-866-275-3772. Please also visit our website at www.fppc.ca.gov.

Mr. Adolph's cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. If you or your client has any questions regarding this matter, please feel free to contact Teri Rindahl at 916.327.2018.

Sincerely,

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Gary S. Winuk
Chief, Enforcement Division

GSW/tr

Cc: Linda Gunnett