



FAIR POLITICAL PRACTICES COMMISSION

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May 12, 2003

Barbra Williamson, Councilmember
City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063-2199

**Re: Your Request for Advice
Our File No. A-03-078**

Dear Ms. Williamson:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Will you be able to participate in aesthetic decisions such as those regarding the design, including architecture, landscaping, parking, lighting and signage, of the proposed Simi Valley Town Center Mall?
2. Will you be prohibited from attending the International Council of Shopping Centers convention to encourage retail stores to sign on as tenants in the mall?

CONCLUSION

1. You will be disqualified, barring an applicable exception, from participating in any decision that will materially financially affect your economic interests. Based on the fact that your condominium is located within 500 feet of the proposed mall, there is a presumption that your economic interest in the condominium will be materially financially affected by decisions regarding the mall.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

2. The Act will not prohibit you from attending the International Council of Shopping Centers convention and encouraging retail stores to sign on as tenants in the mall.

FACTS

You are a council member for the City of Simi Valley. Your personal residence, a condominium, is in close proximity to the 129-acre parcel proposed as the site for the 800,000 square foot Simi Valley Town Center Mall ("mall"). The mall is projected to contain two anchor chain stores, five smaller specialty anchor stores, 120 shops, a food court, and 500 units of residential apartments. The city does not have any control over the approval of the tenants in the mall. Your condominium, purchased in February 2002, is located 55 feet to the north and 285 feet to the east of the adjoining property line of the proposed mall project site. Since acquiring the condominium you have not participated in any discussions relating to the city's property or the proposed mall.

The mall property is in the process of being approved for entitlements from the city. An environmental impact report is currently in the process of being prepared, and the following approvals will be necessary for the project: a general plan amendment, a new specific plan, a tentative tract map, a master plan development permit, and a planned development permit for the mall portion of the project (additional planned development permits will be filed later for the apartments, and outlying buildings including a home improvement store). The city's zoning ordinance has a regional commercial center zone ("RCC") already on this site, but otherwise the ordinance does not have detailed standards for projects located within this zoning category. Instead, the city's general plan designates the proposed mall site for a regional mall, and also requires a specific plan for the project. The planning staff has advised that the specific plan will be the main controlling document for the entire site, and will contain standards for aesthetic issues such as architecture, landscaping, parking, lighting and signage. Since the property is already zoned RCC and has already been designated in the general plan for a mall, you do not believe that specific details relating to the project's architecture, or its landscaping will have any effect on the value of your condominium.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Specifically, 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. The Commission has adopted a standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision, which is applied here. (Regulation 18700(b)(1)-(8).)

1. & 2. Are you a public official and are you making, participating in making, or influencing a governmental decision?

As a City of Simi Valley council member, you are a "public official." (Section 82048.) A public official "makes a governmental decision" when the official, acting within the authority of his or her position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Section 87100; regulation 18702.1.) A public official "participates in making a governmental decision" when, acting within the authority of his or her position and without significant substantive review, the official negotiates, advises or makes recommendations to the decisionmaker regarding the governmental decision. (Section 87100; regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision before his or her own agency if, for the purpose of influencing the decision, the official contacts or appears before any member, officer, employee, or consultant of a governmental agency. (Section 87100; regulation 18702.3.)

Specific Plan (the Design Aspects of the Project)

The Commission has consistently advised that adoption of a specific plan, including decisions relating to design elements of the project, is a governmental decision under the Act. (*Miller* Advice Letter, No. A-94-204; *Lanzone* Advice Letter, No. A-93-135; and *Woodhead* Advice Letter, No. A-90-768.) You will be making a governmental decision if you participate in decisions regarding the specific plan.

Attendance at the International Council of Shopping Centers Convention

Using the definitions stated above, when attending the convention, we assume you will neither be "making" a governmental decision nor will you be "participating" in making a governmental decision. Although the conflict-of-interest rules also apply to attempts to "influence" a governmental decision, these attempts are limited to contacts or appearances before any member, officer, employee, or consultant of a governmental agency. Using your official position to influence retail stores to sign on as tenants in the mall is not covered under the prohibition and is not considered to be governmental decision-making. Therefore, we will not continue to analyze your attendance at the conference as a governmental decision in which you might have a potential conflict of interest.

3. Economic interests

The Act's provisions apply only to conflicts of interest arising from economic interests. These economic interests are described at regulations 18703.1 through 18703.5, enclosed. The specific economic interest² identified by the facts you supply is

² In addition to the economic interests separately listed in section 87103, a public official always has an economic interest in his or her personal finances, and may have a conflict of interest in any decision foreseeably resulting in an increase or decrease in the personal expenses, income, assets or liabilities of the

your interest in real property (i.e., your residence). A public official has an economic interest in any real property in which he or she has a direct or indirect interest worth \$2,000 or more in fair market value. (Section 87103(b); regulation 18703.2.) For purposes of section 87103, "indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater." We assume that your interest in your condominium is worth more than \$2,000. Thus, your residence is an economic interest to you, within the meaning of the Act.³ Since you have not provided information regarding any other economic interest, for purposes of this letter, we assume that you have no other economic interests relevant to the decisions regarding the mall.

4. Will this economic interest be directly or indirectly involved in decisions concerning the mall?

Pursuant to subdivision 18704.2(a)(1), a public official's interest in real property is considered directly involved in a decision if any part of the official's real property is located within 500 feet of the boundaries of real property that is the subject of a governmental decision. Inasmuch as your condominium is located 55 feet to the north and 285 feet to the east of the adjoining property line of the proposed mall project site, you have an interest in real property that is located within 500 feet of real property that is the subject of a governmental decision.

In those exceptional circumstances when the governmental decision only affects a clearly defined, specific and isolated site, such as a specific building on a large tract of land, this regulation has been interpreted to allow the distance to be measured from that clearly defined and specifically affected portion if the decision would not likely have an effect upon the property as a whole. (*Ball* Advice Letter, No. A-01-279; *Krauel* Advice Letter, No. I-92-118). However, because in your situation the mall is a cohesive unit, so that decisions regarding the design elements of part of the mall will most likely affect the rest of the mall, we may not use this interpretation and will consider that you are located within 500 feet of the entire subject of the governmental decision.⁴

official or his or her immediate family, in the amount of \$250 or more over a 12-month period. (Regulations 18703.5 and 18705.5.)

³ Please note, the common area of the complex in which you live may also be considered your real property interest under some circumstances. It is not necessary to analyze this issue since your condominium is within 500 feet of the site.

⁴ As an example of how problematic it would be to view the mall as divisible into parts for these purposes, a design plan instituted for one end of the mall, perhaps the one furthest from your condominium, would very possibly be continued, for purposes of homogeneity, into the area closest to your condominium.

5. & 6. What is the applicable materiality standard and is it reasonably foreseeable that the financial effect of the governmental decisions on your economic interest in your condominium will meet this materiality standard?

If the real property in which an official has an economic interest is directly involved in a governmental decision, the materiality standards of regulation 18705.2(a) apply. (Regulation 18704.2(b)(1).) Regulation 18705.2(a)(1) provides that the financial effect of a governmental decision on real property which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property. (See *Vadon* Advice Letter, No. A-02-080, enclosed.) However, please note that "any financial effect" includes an effect as minute as a penny's worth and nothing in the facts that you have presented indicates that the presumption of materiality may be rebutted. Any decisions regarding landscaping, lighting and signage of the mall when it is in such proximity to your condominium, will conceivably have at least a penny's worth of effect on the condominium's property value.

Segmentation: Implementation of the Specific Plan

In decisions pertaining to a project, there is the possibility that future decisions implementing the specific plan, once it is already in place, might have no material financial effect on the fair market value of surrounding properties. This is certainly true of "implementation decisions," which effectuate, but do not change, the policies established in the specific plan. (See *Athan* Advice Letter, No. A-86-094; *Strauss* Advice Letter, No. A-96-034; and *Talley* Advice Letter, No. A-96-123.) Thus, an official may participate in decisions relating to the specific plan but not affecting its existence as a whole, so long as the decision would not independently have a material financial effect on the economic interest of the official. As an example, if a governmental decision, such as the selection of a landscaper for landscaping the mall, is one which merely implements a separate decision regarding the way in which the mall will be landscaped, you may participate in the decision if it will not independently materially affect your economic interests. (*Miranda* Advice Letter, A-94-014; *Athan* Advice Letter, *supra*.) This determination must be made on a decision-by-decision basis. Nevertheless, given the presumption under our regulations described above, unless the presumption is rebutted, you will have a conflict of interest with regard to city council decisions affecting the mall project as a whole.

7. & 8. The "Public Generally" and "Legally Required Participation" exceptions.

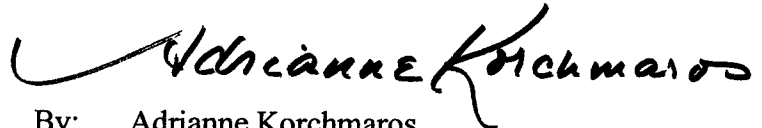
Because you have not presented specific facts that suggest issues on the subjects of the "public generally" or "legally required participation," we have not gone on to analyze the latter two steps. Step seven is an exception that applies where the reasonably foreseeable and material financial effect on the official's economic interest is not distinguishable from the effect on the public generally. This exception generally does not apply in cases where economic interests are directly involved in a decision. Step eight is

an exception that applies when the official is legally required to participate in the decision. I have enclosed regulations 18707, 18707.1, and 18708 for your information.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "Adrienne Korchmaros", with a stylized flourish at the end.

By: Adrienne Korchmaros
Political Reform Consultant

Enclosures
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