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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 JAN HORTON
13 Respondent.
14
15
16

FPPC No: 09/671

STIPULATION, DECISION, and
ORDER

17 Complainant Roman G. Porter, Executive Director of the Fair Political Practices
18 Commission, and Respondent Jan Horton hereby agrees that this Stipulation will be submitted
19 for consideration by the Fair Political Practices Commission at its next regularly scheduled
20 meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised
22 by this matter and to reach a final disposition without the necessity of holding an administrative
23 hearing to determine the liability of Respondent.

24 Respondent understands, and hereby knowingly and voluntarily waive, any and all
25 procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and
26 in Sections 18361.1 through 18361.9 of title 2 of the California Code of Regulations. This
27 includes, but is not limited to, the right to personally appear at any administrative hearing held in
28 this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-

1 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to
2 have an impartial administrative law judge preside over the hearing as a hearing officer, and to
3 have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondent violated the Political Reform Act by
5 making a governmental decision in which she had a financial interest, in violation of
6 Government Code section 87100 (1 count); as described in Exhibit 1. Exhibit 1 is attached
7 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
8 accurate summary of the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon her an administrative penalty in the
11 amount of Three Thousand Dollars (\$3,000). A cashier's check from Respondent in said
12 amount, made payable to the "General Fund of the State of California," is submitted with this
13 Stipulation as full payment of the administrative penalty, and shall be held by the State of
14 California until the Commission issues its Decision and Order regarding this matter. The parties
15 agree that in the event the Commission refuses to accept this Stipulation, it shall become null and
16 void, and within fifteen (15) business days after the Commission meeting at which the
17 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation
18 shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the
19 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
20 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
21 disqualified because of prior consideration of this Stipulation.

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25 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

1 Dated: _____
2 _____
3 Jan Horton, Respondent

4
5 **DECISION AND ORDER**

6 The foregoing Stipulation of the parties “In the Matter of Jan Horton, FPPC No. 09/671,”
7 including all attached Exhibits, is hereby accepted as the final Decision and Order of the Fair
8 Political Practices Commission, effective upon execution below by the Chair.

9
10 IT IS SO ORDERED.

11
12 Dated: _____
13 _____
14 Ann Ravel, Chair
15 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Jan Horton (“Respondent Horton”) was a Yorba Linda City Council member. At all relevant times, Respondent Horton owned real property in the City of Yorba Linda, located within 500 feet from the boundaries of two parcels in the 2008-2014 Draft Housing Element. These two parcels are the Lakeview/Strawberry Field (“Strawberry Field”) parcel, which is located adjacent to Respondent Horton’s real property, and the Lakeview/Altrudy (“Altrudy”) parcel, which is located within 500 feet from Respondent Horton’s real property.

In this matter, Respondent Horton impermissibly made a governmental decision in which she had a financial interest, in violation of Government Code section 87100.

For the purposes of this Stipulation, Respondent’s violation is stated as follows:

COUNT 1: On January 13, 2009, as a Yorba Linda City Council member, Respondent Horton made a governmental decision in which she had a financial interest, by voting to send the 2008-2014 Draft Housing Element back to staff for refinement on the housing densities of specific parcels, including the reduction of the housing densities proposed at the Lakeview/Strawberry Field parcel and the Lakeview/Altrudy parcel, located within 500 feet of her real property, in violation of Government Code section 87100.

SUMMARY OF THE LAW

The primary purpose for the conflict of interest provisions of the Act is to ensure that “public officials, whether elected or appointed, 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, subd. (b).)

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps seven and eight of the standard step by step analysis are exceptions to the Act and the respondent has the responsibility to provide facts and evidence that support the use of these exceptions. (Regulations 18707, 18708.) Because the facts and evidence do not indicate that either of the exceptions are applicable to this case, these exceptions are not discussed. The six relevant steps of the analysis

follow below.

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include members of a state or local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a) (1), a public official “makes a governmental decision” when the official votes on a matter.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (b), an economic interest of a public official includes any real property in which the public official has a direct or indirect interest worth \$2,000 or more.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.2, subdivision (a)(1), real property in which a public official has an economic interest is directly involved if the real property is located within 500 feet of the boundaries or proposed boundaries of the property which is the subject of the governmental decision.

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.2, subdivision (a), if real property is directly involved in a governmental decision, the financial effect of a governmental decision is presumed to be material. For real property directly involved in a governmental decision, any financial effect, even “one penny,” is presumed to be material. (Regulation 18705.2, subdivision (a)(1).) This is known as the “one penny” rule. The official may rebut this presumption with proof that the financial effect on his or her real property interest is not a reasonably foreseeable result of the decision.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)¹

SUMMARY OF THE FACTS

Respondent Horton was a Yorba Linda City Council member. At all relevant times, Respondent Horton had an economic interest in her personal residence in the City of Yorba Linda, which is located within 500 feet from the boundary of two of the parcels in the 2008-2014 Draft Housing Element. These two parcels are the Strawberry Field parcel, which is located adjacent to Respondent Horton’s real property, and the Altrudy parcel, which is located within 500 feet from Respondent Horton’s real property.

¹ The *Thorner* opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

On January 13, 2009, as a member of the Yorba Linda City Council, Respondent Horton made the motion and voted to send the 2008-2014 Draft Housing Element back to staff for refinement on the housing densities of specific parcels, including the reduction of the housing densities proposed at the Strawberry Fields parcel, which is located adjacent to Respondent Horton's residence, and the Altrudy parcel, which is located within 500 feet of her residence. On January 13, 2009, the 2008-2014 Draft Housing Element proposed 30 units per acre for the Strawberry Fields parcel and the Altrudy parcel. The motion passed with a 5-0 vote.

On April 21, 2009, the 2008-2014 Draft Housing Element was presented to the Yorba Linda City Council with a proposed 20 units per acre for multiple parcels, including the Strawberry Fields parcel and the Altrudy parcel. However, the Yorba Linda City Council did not vote to approve this version of the 2008-2014 Draft Housing Element. Instead, the Yorba Linda City Council sent it to the State Department of Housing and Community Development for review and comment to determine if the 2008-2014 Draft Housing Element was consistent with state law.

Respondent Horton contends that she received advice from the Assistant City Attorney and was advised that she could vote on this matter. Additionally, the local land use initiative, Measure B, precluded the Yorba Linda City Council from adopting any increase to the residential densities over ten dwelling units per acre without a vote of the electorate.

The relevant analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision are set forth below.

Step One: Respondent Was a Public Official as Defined By the Act

As a member of the Yorba Linda City Council, Respondent Horton was a public official as defined in Section 82048.

Step Two: Respondent Made a Governmental Decision

At the January 13, 2009, Yorba Linda City Council meeting, Respondent Horton made a motion and voted in favor of the motion to ask the City staff to reconsider the housing density in the 2008-2014 Draft Housing Element and bring it back to the Yorba Linda City Council for a vote. On January 13, 2009, the 2008-2014 Draft Housing Element proposed 30 units per acre for the Strawberry Fields parcel and the Altrudy parcel. This motion passed with an unanimous vote.

Therefore, Respondent Horton made a governmental decision by voting on January 13, 2009.

Step Three: Respondent Had an Economic Interest

At all relevant times, Respondent Horton had an ownership interest in her personal residence in the City of Yorba Linda, located within 500 feet from the Strawberry Fields parcel

and the Altrudy parcel that were included in the 2008-2014 Draft Housing Element. As Respondent Horton had a direct interest in the real property worth \$2,000 or more, Respondent had an economic interest in real property for the purposes of Section 87103, subdivision (b).

Step Four: Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's real property was located within 500 feet from the Strawberry Field parcel and the Altrudy parcel that were included in the 2008-2014 Draft Housing Element. Therefore, the real property was directly involved in the governmental decision. (Regulation 18704.2, subd. (a)(1).)

Step Five: Applicable Materiality Standard

Since the Respondent's real property was directly involved in the governmental decision, any financial effect of the governmental decisions on her real property is presumed to be material. (Regulation 18705.2, subd. (a).)

Step Six: It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, and not just a mere possibility, that the applicable materiality standard will be met as a result of the governmental decision at issue. (Regulation 18706, subd. (a).)

Respondent Horton's governmental decision on January 13, 2009, involved a vote that sent the 2008-2014 Draft Housing Element back to staff to refine and reduce the housing densities of specific parcels in the 2008-2014 Draft Housing Element, including the two parcels that were located within 500 feet of Respondent Horton's personal residence.

There are many reasons that homeowners would not want high density and low income apartments and condos in close proximity to their home. By reducing the amount of people in apartments near a home, it would affect the area by reducing the impact of additional people and housing. The impact, in part, includes increased noise, traffic, air pollution, and people in the area. The reduction of housing densities would have a reasonably foreseeable financial impact on Respondent Horton's real property interest.

Accordingly, in light of Respondent Horton's vote that asked staff to refine and reduce the housing densities of specific parcels, including the Strawberry Fields parcel and the Altrudy parcel located within 500 feet of Respondent Horton's real property, in the 2008-2014 Draft Housing Element, it was reasonably foreseeable that the vote would have a material financial impact on Respondent's real property interest.

In summary, by making a governmental decision in which she had a financial interest, Respondent Horton committed a violation of Section 87100.

CONCLUSION

This matter consists of one count of violating the Act, and carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

The conduct of participating in a governmental decision in which an official has a financial interest is a serious violation of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial interest. The typical administrative penalty for the conflict of interest violation has ranged from the middle to high penalty range, depending upon the facts of the case.

AGGRAVATING FACTORS

Respondent Horton's personal residence was located adjacent to the Strawberry Fields parcel.

MITIGATING FACTORS

Respondent Horton has no history of violating the Act and has been cooperative with the agency. Respondent Horton contends that she received advice from the Assistant City Attorney and was advised that she could vote on this matter. The vote in this matter was unanimous. Respondent Horton has sought advice multiple times in the past and has recused herself when she was aware of a potential conflict of interest. Additionally, the decision by the Yorba Linda City Council was not a final decision since the local land use initiative, Measure B, precluded the Yorba Linda City Council from adopting any increase to the residential densities over ten dwelling units per acre without a vote of the electorate. Further, Respondent Horton is no longer in public office. The Enforcement Division considered as mitigating factors that Respondent Horton maintained that the violation was unintentional and that she maintained she relied on the advice of the Assistant City Attorney that she could vote on this matter. This is supported by the fact, but not conclusive, that while the Assistant City Attorney does not recall whether she spoke to Respondent Horton about this specific vote, she confirmed that she gave the Respondent advice on multiple occasions regarding potential conflicts.

PENALTY

The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties. The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).