

April 2, 1998

Sharlene Neff
444 North First Street
Creswell, Oregon 97426

Dear Councilor Neff:

At its April 2, 1998, meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION ADVISORY OPINION 98A-1002

STATED FACTS: You are a City Councilor in Creswell, Oregon. You reside on North First Street which is a dead-end street where a 130 plus unit manufactured home park is being proposed. This proposed development is presently before the Creswell Planning Commission and it is anticipated that it will come before the city council on appeal. (The mayor appoints the planning commission members with no input from city councilors)

The developer requested a conditional use permit for the 19.5 acre site before the planning commission in July 1997. The city planner and planning commission members had concerns about the development as proposed and requested changes and studies by the developer. The developer has now prepared necessary documents to appear before the planning commission in February 1998.

You have been working with a citizens group opposing this development. You have expended personal money expressing your views on the project, testified against the project at planning commission meetings and have written letters to the local newspapers in opposition of the development. This has been done as a private resident in the immediate vicinity of the proposed development and not as a city councilor.

The City of Creswell has an official population of 2850 residents and a 130 plus space manufactured home park would, by conservative estimates, increase the city population by roughly 16%.

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The traffic from this development is proposed to flow to the south on North First Street, a substandard city street at this time, and Nieblock Lane to the west which converges with Harvey Road. Nieblock Lane is a dedicated lane maintained by the property owners. Harvey Road to Nieblock Lane is the only access to Creswell High School and is already a busy area. North First Street intersects with Oregon Avenue, the main street in Creswell and is also a very congested area. That traffic would also be flowing to Oregon Avenue and Front Street.

Creswell is already running on a special Department of Environmental Quality permit for waste water treatment and this is a 16% increase on that system. The 47 units proposed for Phase I are to use a temporary private pumping station to move the sewage uphill to the south.

Drainage is a concern to property owners to the north and west of the proposed development. Much of what the developer is proposing for the initial 47 units is temporary and that indicates future plans. This is particularly disturbing to the adjacent property owners.

While the property owners on North First Street would be immediately impacted by the development the people of the entire City of Creswell will be asked to make a sacrifice for this development.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (8)(a) to (c) of this section.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

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(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

QUESTION: Would it be a violation of Oregon Government Standards and Practices law for you to take official action as a city councilor with regard to this matter should it come before the city council on appeal from the planning commission?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. For certain officials, the law prescribes different actions depending on whether a conflict of interest is actual or potential. The difference between an actual conflict of interest and a potential conflict of interest is determined by the words would and could. An actual conflict of interest occurs when a public official takes action that would directly and specifically affect

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the financial interest of the public official, a relative of the public official or a business with which the public official or the public official's relative is associated. A potential conflict of interest exists when a public official takes action that could possibly have a financial impact on the official, the official's relative or a business with which the official or the official's relative is associated.

ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial affect on that official, a relative of that official or a business with which the official or the official's relative is associated. If other people in a class are also affected to the same degree by that action, the official would be exempt from conflict of interest disclosure requirements.

According to the stated facts, you are opposing this development because of the impact it will have on vehicular traffic on North First Street where you reside, because it will add to the overcrowding in local public schools, because of the increased demands it will place on the city's already overburdened waste water treatment system and because the project would increase the percentage of the city's households comprised of mobile homes in parks. You suggest in the stated facts that the entire city constitutes a class which would be equally affected by the proposed manufactured home park. The information you provided, however, does not support this contention. One of perhaps several reasons for this is because the residents of North First Street would clearly be impacted by the increase in vehicular traffic to a greater degree than other residents of the city. Another reason is that the impact to residences could be different than the impact to businesses.

Notwithstanding, it does appear that all residences and businesses on North First Street, north of Oregon Avenue, would be affected equally by the increase the proposed project would cause in vehicular traffic. The maps you provided indicate the existence of 40 to 50 separate parcels of land between Oregon Avenue and the proposed development. The owners of these parcels, of which you are one, appear to be of sufficient number to constitute a class.

It would appear that any action you take as a city councilor with regard to this proposed development would have the same impact on you as it would to all other property owners on North First Street. You would, therefore, come within the class exception and would not need to declare a conflict of interest nor refrain from taking action.

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It should be noted that only the Government Standards and Practices Commission is authorized by law to determine the existence of a class for the purpose of compliance with the conflict of interest provisions of ORS Chapter 244.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 1997.

Ilo Bonyhadi, Chairperson, Chairperson
Oregon Government Standards and
Practices Commission

Legal Counsel Review:

Lynn Rosik
Assistant Attorney General

Date