

April 18, 2006

Robert G. Thomas
Lincoln County Assessor
225 W Olive St Room 207
Newport OR 97365

Dear Mr. Thomas:

This is in response to your correspondence dated February 17, 2006 regarding a condominium project on property you own and the requirements of ORS 100.110.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 06S-008

STATED FACTS: A county assessor has undertaken a “condominium project” on property the assessor owns. As the property owner, the assessor will be submitting a declaration and plat for approval pursuant to ORS 100.110. That provision requires approval of the plat by the county tax collector, the state real estate commissioner and the “...county assessor of the county in which the property is located.”

The assessor believes that what appears to be the mandatory language quoted above must be followed. As a matter of normal practice, the assessor does not actually approve condominium plats. Such plats are normally approved by a subordinate of the assessor, the chief cartographer, who typically signs the assessor’s name to approvals.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

100.110 Approval of declaration, supplemental declaration or amendment required; prerequisites; fee. (1) Before a declaration, supplemental declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor and the Real Estate Commissioner. Before a declaration or supplemental declaration may be recorded, it must be approved by the tax collector of the county in which the property is located. A declaration or amendment

thereto may not be approved unless the requirements of subsections (2) to (6) of this section are met. Approval shall be evidenced by execution of the declaration or amendment or by a written approval attached thereto.

(2) The county assessor of the county in which the property is located shall approve a declaration, supplemental declaration or amendment thereto if:

(a) The name complies with ORS 100.105 (5) and (6); and

(b) The plat and floor plans comply with the requirements of ORS 100.115.

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 (14) of this section."

244.020(14) " '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:"

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."

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:"

244.040(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."

244.120 "**Methods of handling conflicts; generally; application to elected officials or members of boards.** (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:"

244.120(2) "An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:"

244.120(2)(b) "When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:"

244.120(2)(b)(A) "Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue."

QUESTION: Would a county assessor violate Government Standards and Practices laws by approving the assessor's own condominium plat as mandated by ORS 100.110?

OPINION: ORS 244.040(1)(a) prohibits a public official from using or attempting to use an official position or office to obtain financial gain or to avoid a financial detriment that would not otherwise be available but for the public official's holding the official position or office. The only exceptions are that the public official may accept financial gain in the form of official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement. A public official is also prohibited from using an official position to obtain a financial gain for a relative or to aid the relative in avoiding a financial detriment.

Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(14)]. 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 the action is certain to result in a financial benefit or detriment. It will occur when an action taken by the official would directly and specifically affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A potential conflict of interest exists when an official takes action that could have a

financial impact on that official, a relative of that official or a business with which the official or the relative of that official is associated. In this case the impact is not certain.

The language of ORS 100.110(2) states that the "county assessor of the county in which the property is located shall approve..." a plat. Nonetheless, it is very doubtful that, when the law was written, it was ever contemplated that an assessor would be in the situation of having to approve the assessor's own plat. It does not appear, therefore, that ORS 100.110(2) supersedes the prohibition against use of official position for financial gain in ORS 244.040(1) (a).

The official action by the assessor of approving a plat for property personally owned by the assessor would have a direct financial impact on the value of the property. This would give rise to an actual conflict of interest. If the assessor were to approve the plat for the condominium project, the assessor would most likely violate the prohibition in ORS 244.040(1)(a).

ORS 244.120(2) requires elected officials and appointed members of boards and commissions to publicly announce conflicts of interest. While it appears that this procedure works well for elected officials who are members of governing bodies, such as city councils or county boards of commissioners who convene public meetings, it is not practicable for elected officials such as county assessors.

It is recommended that, when conflicts of interest arise for such officials, they request that an item be placed on the agenda of a regular meeting of the county Board of Commissioners. In this instance, the assessor would then be able to publicly declare an actual conflict of interest during the board meeting and request that the approval required by ORS 100.110 be done by the chief cartographer or other person.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON STANDARDS AND PRACTICES COMMISSION.

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Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

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