

## Chula Vista may help defend Malcolm in real estate lawsuit

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### Document Text

The Chula Vista city attorney's office might help defend Councilman David Malcolm against a lawsuit accusing him of deceiving a real estate agent in a 1986 land deal and depriving the agent of a \$50,000 commission.

The city council is scheduled to discuss the case in a closed session tonight and could order the city attorney's office to defend Malcolm in the lawsuit.

Although the city is not named as a defendant in the case, it has a duty to provide legal help if Malcolm requests it, because the allegations involve Malcolm's role as a city official, Assistant City Attorney Rich Rudolf said. "It would be the same as us defending a police officer," Rudolf said.

Malcolm, who was out of town yesterday, could not be reached for comment.

The lawsuit by Truman Brooks, a Chula Vista Realtor, alleges that Malcolm and Margie J. Phares, a real estate agent, "intentionally interfered" with Brooks' role in a complicated land deal, depriving him of a \$50,000 commission. The lawsuit contends that Phares took the commission herself.

The suit, filed a year ago, contends that Brooks spent two years negotiating a deal with Sweetwater Union High School District on the purchase of a parcel of land on Alvarado Street and Third Avenue in Chula Vista. The land was the site of a vacant Safeway market, the former Chula Vista Star-News building and residential units.

District officials eventually decided they wanted to ask Chula Vista's Redevelopment Agency to buy the land, which it wanted for a new district headquarters. The deal then called for the agency to lease or sell some of the property back to the district, according to the suit.

On Aug. 19, 1986, district official Andy Campbell met with Chula Vista Mayor Greg Cox and Malcolm regarding the city's purchase of the property and was told the district's plan was feasible, the suit alleges.

Brooks says that later, on behalf of the district, he pressed Malcolm to have the Redevelopment Agency make a firmer commitment to the plan after learning from the listing agent for the Safeway store that another party was interested in the property.

Brooks says he asked Malcolm on either Aug. 28 or Sept. 2, 1986, to place the item on the Redevelopment Agency's Sept. 4 agenda. Malcolm responded, Brooks says, by indicating that the city planned to go forward with the project, but told him several things "needed to be worked out."

One week later, Brooks says, Phares contacted the Safeway listing agent for the purchase of the Safeway property on behalf of the Redevelopment Agency and sealed the purchase, cutting Brooks out of the deal and depriving him of the

commission.

"She got the credit and the commission when I had in fact put the transaction together," Brooks said. "There would have been no deal if it hadn't been for me."

Brooks' attorney, Michael Crowley, alleged that Phares, who has been involved in past business dealings with Malcolm, was brought into the deal by Malcolm, apparently as a favor to her.

Phares, he said, never did anything more than "walk the papers around and have people sign them. She never did any negotiating."

Under real estate regulation, disputes over commissions are supposed to be handled by the local real estate board. But Brooks said Phares is not a member of the board, forcing him to seek redress through the courts.

Although neither Malcolm nor Phares could be reached for comment, Malcolm contended a year ago that the lawsuit was a "cheap political trick" designed to discredit him before the November 1987 election in Chula Vista. Malcolm was running for re-election at the time the suit was filed.

Malcolm also has contended that he kept Brooks out of the deal because Brooks also was an agent for Safeway, one of the land sellers, putting him in a conflict of interest. Malcolm has claimed he was acting as a city official, not as an individual, when he selected Phares.

But yesterday, Crowley said his client has no political motivations. "He knows nothing about Mr. Malcolm's politics. If this was politically motivated, why would he be spending all this money and time to pursue it?"

Responding to Malcolm's contention that Brooks had a conflict of interest, Crowley said it is common practice in real estate for agents to represent both the seller and the buyer.

"It was Mr. Malcolm who had the conflict of interest. He showed personal favoritism to a real estate agent and brought her in personally. The relevant question here is, why wasn't it put up for bid? Why didn't the city staff hire the real estate agent?"

The case is expected to go to trial in June. It already has survived a challenge by the city, which had claimed that the suit should be dropped because Malcolm had acted as a city official, and therefore should be immune to any lawsuit. A judge ruled that the facts indicate Malcolm acted outside his role as councilman.

Credit: Tribune Staff Writer

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#### **Abstract** (Document Summary)

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