



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 16, 2015

Todd O. Litfin
City Attorney
City of Yorba Linda
Rutan & Tucker, LLP
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Your Request for Advice
Our File No. A-15-042

Dear Mr. Litfin:

This letter responds to your request for advice on behalf of Tom Lindsey, a member of the city council of the City of Yorba Linda, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ This advice applies only to the conflict of interest provisions of the Act and no other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Moreover, we base this letter on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

Do the Act’s conflict-of-interest provisions prohibit Councilmember Tom Lindsey from participating in city council decisions relating to two development projects (the “Projects”), one located 2,500 feet from his real property and the other 1,300 feet from his property?

CONCLUSION

Yes. As discussed below, Councilmember Lindsey has a conflict of interest and may not make, participate in making, or influence city council decisions concerning the Projects. When the item is called for at a noticed public meeting, Councilmember Lindsey must: (1) immediately prior to the discussion of the item, orally identify his economic interest involved in the decision as well as details of the economic interest, as discussed in Regulation 18704.1(b) on the record of the meeting; (2) recuse himself; and (3) leave the room for the duration of the discussion and/or vote on the item.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Orange County is considering approval of two residential development projects on vacant land zoned for agricultural use that are located within unincorporated county territory adjacent to the City of Yorba Linda. The project areas are located in the foothills of the Santa Ana Mountains and are within the City's sphere of influence. Both developers are currently seeking entitlements from the county and it is anticipated that they will seek annexation of the land into the City.

The Esperanza Hills project ("Esperanza Hills"), which abuts the northern and western city boundaries, covers 469 acres and will include approximately 340 single-family homes. A 14,000-acre state park borders the project site on the north and east. The developer has filed an application for annexation with the Orange County Local Agency Formation Commission.

The Cielo Vista project ("Cielo Vista"), which covers 84 acres and is expected to include approximately 112 single family homes, abuts the eastern and northern city boundaries and part of the western boundary of Esperanza Hills.

The developer proposed an access road through city-owned land that the residents of Esperanza Hills and Cielo Vista would use to enter and exit the communities. The access road would connect to San Antonio Road, which is the same road used by the other foothill communities, including Councilmember Lindsey's neighborhood, to reach the city's main east/west thoroughfare, Yorba Linda Boulevard. Yorba Linda Boulevard provides access to the heart of the city, interstate and state highways that connect the city to other areas of Orange County and beyond. The developer has not yet applied for use of the city property and, therefore, you do not know which of three potential city parcels the City will approve for the access road.

The City Council will also be taking various actions related to the annexation applications, including pre-zoning the project areas and approving pre-annexation and property tax sharing agreements. You anticipate that the access issues will be resolved separately from the annexation issues.

Councilmember Lindsey owns and resides in a single-family home located 2,500 feet from the nearest boundary of Esperanza Hills and 1,300 feet from the nearest boundary of Cielo Vista. His property is located 410 feet, 480 feet and 875 feet, respectively, from the three city-owned parcels being considered for the access road. The area immediately surrounding Mr. Lindsey's property on three sides is fully developed residential property. The Projects would occupy the remaining area.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has a financial interest specified in Section 87103. A public official has a "financial interest" in a government decision, within the meaning of the Act, if it is reasonably foreseeable that the decision

will have a material financial effect on one or more of the public official's interests. (Section 87103.) Councilmember Lindsey has an economic interest in his real property, which he owns. (Section 87103(b).)

Foreseeability:

Regulation 18701(b) states that for a financial interest that is not explicitly involved² in a decision (as is the case here): "A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

As relevant to your facts, the following factors in Regulation 18701(b) are considered in determining whether the financial effect on an official's financial interest is reasonably foreseeable:

"(4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public."

* * *

"(6) Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position."

Materiality:

Recently revised Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As relevant to your facts, the financial effect will be material if the decisions:

"Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest." Regulation 18705.2(a)(10):

"Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature

² An explicitly involved property would be the subject of the decision, for example. (Regulation 18701(a) .)

that its reasonably foreseeable effect would influence the market value of the official's property." Regulation 18705.2(a)(12):

The Projects, as proposed, will add approximately 450 single-family residences to the foothill communities within the vicinity of Councilmember Lindsey's home. The project will develop 500 acres of vacant land with 450 homes abutting a 14,000-acre state park. In addition, his property is located 2,500 feet, or less than one-half mile, from the Esperanza Hills project and 1,300 feet, or one-quarter mile, from Cielo Vista. The Project is likely to produce at least 450 additional vehicles travelling down the same road that Councilmember Lindsey uses to access the city's main east-west thoroughfare, will result in a substantial change in the character of his property and influence the value of the property. The proximity of his home to the more heavily travelled road suggests that there will be increased noise on his street.

Under these facts, a reasonable inference can be made that the financial effects of the Projects may compromise the official's ability to act in a manner consistent with his duty to act in the best interests of the public and cause a similarly situated person to weigh the advantages and disadvantages of the governmental decisions on his financial interest. Accordingly, a financial effect on Councilmember Lindsey's financial interest is considered reasonably foreseeable. Moreover, decisions regarding the Projects will have a reasonably foreseeable material financial effect on Councilmember Lindsey's real property. Thus, he is prohibited from participating in such decisions.

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

Sincerely,

Hyla P. Wagner
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl