



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 8, 2015

Gary W. Schons
Best Best & Krieger, LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-15-152

Dear Mr. Schons:

This letter responds to your request for advice on behalf of Todd Spitzer, a member of the Orange County Board of Supervisors, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Moreover, this letter is based 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.)

QUESTION

Is it reasonably foreseeable that a decision to amend a specific plan will have a material financial effect on Ron King, a source of income to Supervisor Spitzer, where Mr. King owns real property within the specific plan area and the amendment solely involves a development located 3,600 feet or .7 miles from his property?

CONCLUSION

Yes. A material financial effect on Mr. King can be recognized as a realistic possibility and, therefore, is reasonably foreseeable.

FACTS

Supervisor Spitzer served on the board of supervisors from 1997 to 2002 and again from 2012 to the present time. In 2011, the board amended the Specific Plan for an area commonly referred to as North Tustin. The amendment created a new zoning category - “Senior Residential Housing” - that applies only to a single property, a 7.25 vacant parcel. Before the amendment, the

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.

property was zoned “Residential Single Family” which permits four homes per acre and also allows churches and schools as principal uses, subject to a use permit. The amendment paved the way for the owner’s proposed construction of a 153-unit senior living community on the vacant parcel. After the amendment was adopted, the county issued discretionary use and site development permits for the proposed development.

In early 2015, the Board of Supervisors began the process of reconsidering the project, specifically whether to revoke the discretionary use and site development permits and amend the Specific Plan to remove the special zoning definition for senior residential housing.

Supervisor Spitzer is an attorney who, in addition to his law practice, provides consulting services as a non-lawyer regarding social media and succession planning for Centaurus Financial Inc. Centaurus is an independent broker-dealer licensed to offer securities, investment advice and insurance products. Supervisor Spitzer receives income from Centaurus aggregating \$500 or more within a 12-month period. Ron King is the principal of Centaurus, serving as its Chairman and CEO. He owns a residence within the Specific Plan area. His property is located just inside the boundary of the Specific Plan area on the east side of Hewes Avenue and about .7 miles (3,600 feet) from the project. The opposite side of Hewes Avenue is outside the Specific Plan area.

You have provided a memorandum by a California certified real estate appraiser who is employed by the county’s Executive Office/Real Estate in which he states that he has “not found any market evidence reflecting a negative (or positive) influence on adjacent residential values resulting from the development of a senior housing complex” and that he is “not aware of any conclusive studies or analyses performed that have indicated such a relationship.” He also states that, based on his expertise, “the inability to establish a negative value of neighboring residences is reasonable as the traffic and noise impacts of senior housing developments are less intrusive than many alternative uses, e.g. retail-commercial office, multi-family residential.”

You have also provided excerpts from an Environmental Impact Report prepared in 2010 that found that effects of the project would not be significant because, in part, the project is residential and would not conflict with the surrounding residential land uses, any increased traffic, air quality or noise would not be significant, and parking at the site would be adequate.

You specifically ask us to address the issue of foreseeability raised by your account of the facts.

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.

Financial interests include:

- Any real property in which the public official has a direct or indirect interest of at least \$2,000. (Section 87103(b).)

- Any business entity in which the public official has a direct or indirect investment worth at least \$2,000 and any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a) and (d).)
- Any source of income, such as a business entity, from which the official has received income of \$500 or more within 12 months before the decision. This also includes income from any client of the business entity of at least \$500, provided to and received by the public official within 12 months before the decision is made. (Section 87103(c).)
- Any donor of gift(s) amounting to a total of at least \$460 within 12 months before a decision is made. (Section 87103(e).)
- A public official's own personal finances, or those of a member of his or her immediate family. (Section 87103.)

Supervisor Spitzer is a public official with a financial interest in his business as a business entity and as a source of income. Mr. King is also a source of income to him.²

Foreseeability and Materiality

A financial interest is explicitly involved, and thus the financial effect is presumed to be reasonably foreseeable, if the financial interest is the subject of a governmental decision before the official or the official's agency. (Regulation 18701(a).) A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest. (Regulation 18701(a).)

Where there is no presumption of foreseeability under Regulation 18701(a), the applicable foreseeability standard is set forth in Regulation 18701(b) as follows: "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."

Neither Councilmember's business nor Mr. King is the subject of a proceeding as defined in Regulation 18701(a). Thus, unless a financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is not reasonably foreseeable.

We believe it conceivable that decisions regarding the specific plan amendment, which applies solely to the proposed development, would have a financial effect on Mr. King. For example, there is a realistic possibility that Mr. King would be affected by increased traffic, whether on his own street or arterial streets leading to major destinations such as freeway entries or shopping districts. Therefore, a financial effect is reasonably foreseeable.

² Income of an individual includes a pro rata share of the income of a business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82030(a).) Thus, customers or clients of Supervisor Spitzer's business who are sources of income to his businesses are also considered sources of income to him to the extent that his share of the income will be \$ 500 or more.

Under Regulation 18702.3(a)(2), the reasonably foreseeable financial effect on a source of income that is an individual is material where the income is received for goods and services provided in the ordinary course of business if the official knows that the individual has an interest in real property that will be financially affected under the standard appearing in Regulation 18702.2. Under subdivision (a), a financial effect is material pursuant to Regulation 18702.2(a) if the decision: “(1) Involves the adoption of or amendment to a general ... or specific plan, and the parcel is located within the proposed boundaries of the plan.”

Supervisor Spitzer receives income from Mr. King for services he provides in the ordinary course of business. The subject decisions involve an amendment to a specific plan. Therefore, the reasonably foreseeable financial effect of the decisions is material and Supervisor Spitzer 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

/s/

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl