



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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Schons Advice Letter No. A-15-152(a) SUPERSEDES prior *Schons* Advice Letter No. A-15-152, we find that Supervisor Spitzer does not have a disqualifying conflict of interest under the Act.

November 9, 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(a)

Dear Mr. Schons:

This letter responds to your request on behalf of Orange County Supervisor Todd Spitzer for advice 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.)

On October 8, we issued an advice letter, (*Schons* Advice Letter, No. A-15-152), in response to your request regarding this same matter. We determined that Supervisor Spitzer has a conflict of interest in decisions to amend the North Tustin Specific Plan regarding a project to build a senior housing complex because a source of income to Supervisor Spitzer owns a home located near the site.

After receiving our advice letter, you requested that we reconsider our determination. We have revisited the facts, including the documents you have provided, and find that Supervisor Spitzer does not have a disqualifying conflict of interest under the Act in these decisions and Advice Letter A-15-152 is hereby superseded.

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

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 within the specific plan area and the amendment solely involves a development located 3,600 feet or .7 miles from his property?

CONCLUSION

No. The Board's decisions regarding the project will not have a reasonably foreseeable financial effect on Mr. King's property, as discussed below.

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 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 that 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 the following documents:

- Findings made by the Board of Supervisors when approving the project in 2011.
- Conditions of Approval
- Environmental Impact Report ("EIR") – Executive Summary
- Superior Court Order regarding the EIR
- Appraiser's letter addressing the project's effect on the value of nearby single family residences.

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 governmental decision in which the official has a financial interest.

Financial interests include 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).) Supervisor Spitzer has a financial interest in Mr. King as a source of income.

Foreseeability

Under the applicable foreseeability standard set forth in Regulation 18701(b) for financial interests that are not explicitly involved in a governmental decision, 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. In applying this standard, we have looked at the following facts from the documents you have provided.

“Findings” made by the Board of Supervisors when approving the project in 2011

Finding 3 - In considering “compatibility,” the Board found that the location, size, design and operating characteristics of the proposed use would not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.

Finding 10 - Under the category “development type” the Board found that the site is physically suitable for the proposed senior residential house community and that the proposed single-story bungalows along the perimeter of the site serve as an adequate transition between the surrounding single-family residential use and the main building.

“Conditions of Approval”

Condition 29 - Commercial truck deliveries to the project are limited to daylight hours. Delivery trucks and vehicles may only use major arterial highways and not neighborhood collector streets and they are prohibited from parking on residential streets. Sound walls and berming must be incorporated with landscape screening along certain adjacent streets. Exterior alarms on the building are prohibited except as required by the county fire authority.

Condition 30 - The project must comply with certain setback requirements which exceed county requirements. Eight-foot high evergreen landscaping along the project’s northern and southern boundaries that will serve as extensive landscape buffers are required. On-site flags and pennants for advertising purposes are prohibited.

Condition 47 - A “valet system parking management plan” must be approved demonstrating that there is adequate on-site parking for employees, visitors and residents at all times, including during special events and holidays.

Environmental Impact Report – Executive Summary

Impact 5.1-2 - The proposed project is residential and would not conflict with the surrounding residential land uses.

Impact 5.5-1 - The average daily trips generated by the project would not impact levels of service for the existing area roadway system.

Impact 5.5-2 - Adequate parking would be provided for the proposed project.

Impact 5.6-3 - Long-term operation of the project would not exceed the South Coast Air Quality Management District’s regional significance threshold or significantly contribute to the nonattainment designations of the South Coast Air Basin.

Impact 5.7-2 - Project-related mobile-source noise would not result in a substantial permanent increase in ambient noise levels.

*Superior Court Order regarding the EIR.*²

The court found that the EIR’s analyses of traffic and air quality were consistent with the rest of the EIR and that they were correct. The court also held that the EIR complied with the requirements of the Planning and Zoning Law, Subdivision Map Act, California Environmental Quality Act (“CEQA”) and CEQA Guidelines.

August 28, 2015 Letter of Appraiser Rich Edmond

Rich Edmond, a California Certified General Real Estate Appraiser who is employed by the county, wrote: “I have researched the matter and have not found any market evidence reflecting a negative (or positive) influence on adjacent residential values resulting from the development of a senior housing complex. Moreover, I am not aware of any conclusive studies or analyses performed over the course of my 25 years in the appraisal field that have indicated such a relationship. Based on my expertise, the inability to establish a negative influence on the 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.”

Based on the facts set forth in these documents and the absence of any evidence suggesting otherwise, we find that Board decisions regarding the proposed amendment to the Specific Plan will

² *Foothill Communities Coalition vs. County of Orange*, Superior Court of the State of California for the County of Orange, Civil Complex Center, Case No. 30-2011-00467132-CU-WM-CXC. In this litigation, the Coalition, a grassroots community group, challenged various county actions regarding the project, including the county’s project approvals, and certification of the EIR. The case was heard on remand from the Fourth District Court of Appeals to rule on the CEQA issues which were not addressed in the initial trial. (*Foothill Communities Coalition v. County of Orange*, (2014) 222 Cal.App.4th 1302.)

not have a reasonably foreseeable financial effect on Mr. King's property and Supervisor Spitzer may participate in these 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