



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 18, 2015

Quinn M. Barrow
Manhattan Beach City Attorney
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071

Re: Your Request for Advice
Our File No. A-15-155

Dear Mr. Barrow:

This letter responds to your request for advice on behalf of Councilmember David Lesser regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

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.

QUESTION

Do the Act’s conflict of interest provisions preclude Councilmember Lesser from participating in decisions concerning a development project approximately 1,000 feet from his residence?

CONCLUSION

No. As explained below, the Act’s conflict of interest provisions do not preclude Councilmember Lesser from participating in decisions concerning a development project approximately 1,000 feet from his residence.

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

You are the City Attorney for the City of Manhattan Beach and have been authorized by City Councilmember Lesser to request this advice. A developer has proposed to develop a Gelson's supermarket and other retail uses on property located at 707 North Sepulveda Boulevard ("Development Site") within City limits. The Development Site is located on the southwest corner of the intersection of 8th Street and Sepulveda Boulevard, formerly an automobile repair facility. Sepulveda Boulevard is a major regional arterial thoroughfare in the City with almost 60,000 daily vehicle trips. It is intensely developed with commercial businesses.

According to the developer, the Development Site would provide 27,583 square feet of supermarket use, 3,200 square feet of bank use, and 3,800 square feet of other retail use. The existing 31,720 square-foot automobile repair facility will be removed as part of the Project. The Development Site's parking supply would provide 128 off-street surface spaces of which 112 spaces would be located within the Development Site and 16 spaces would be located in an adjacent lot across 8th Street. Additionally, the existing driveway on Sepulveda Boulevard would be relocated further south on the same street. A second driveway would be located on 8th Street. The existing driveway on 6th Street would be closed.

Councilmember Lesser and his spouse reside on Anderson Street and title to the property is held in their revocable trust – the David and Elizabeth Lesser Family Trust. The property is located approximately 1,000 feet (three blocks west and two blocks south) from the Development Site. His property is located on a residential street, in a residential area commonly referred to as the Hill Section of the City. His residence is about 55 feet from 2nd Street, which is an east-west residential street that crosses Sepulveda Boulevard. The residence is about 275 feet from 3rd Street, which is an east-west residential street that forms a "T" intersection at Sepulveda Boulevard.

A preliminary draft traffic study has been completed and concluded that the proposed development would not have a significant impact on the intersection of 2nd Street and Sepulveda. In addition, your facts state that the proposed development will not result in noise, vibration or light glare that would affect Councilmember Lesser's property. And the draft study does not foresee that construction vehicles or patrons of the new development will impact parking on Anderson.

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.) Of the interests recognized under the Act, the only interest you have indicated is an interest in real property resulting from your residence. (Section 87103(b).)

Foreseeability:

For a financial interest that is not explicitly involved in a decision (such as your residence), Regulation 18701(b) states:

“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:

“(2) Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

[¶]...[¶]

“(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:

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. Generally, the financial effect must be more than nominal, inconsequential, or insignificant. (Regulation 18702(b).) As relevant to your facts, the financial effect will be material if the decisions:

“(10) 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.

[¶]...[¶]

“(12) 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 that its reasonably foreseeable effect would influence the market value of the official’s property.”

As mentioned, a preliminary draft traffic study concluded that the proposed development would not have a significant impact on the intersection near Councilman Lesser’s residence. And the Development Site will not produce noise, vibration or light glare that would affect Councilmember Lesser’s property. Moreover, there is no suggestion that the proposed development will have any substantial effect on Councilman Lesser’s residence in terms of such things as the views, privacy, noise levels, or air quality.

The Development Site will have a new supermarket and other retail uses where an automobile repair facility used to be located. The Development Site is located on Sepulveda Boulevard, however, a major arterial thoroughfare that is already intensely developed with commercial businesses. Based on these facts, there is nothing to suggest that it is reasonably foreseeable that the Development Site will have more than a nominal, inconsequential, or insignificant effect on the market value of Councilmember Lesser’s residence.

Accordingly, Councilmember Lesser may participate in decisions concerning the Development Site.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/jack woodside

By: Jack Woodside
Counsel, Legal Division

JW:jgl