



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 9, 2015

Lauren C. Valk
Deputy City Attorney
City of Half Moon Bay
P.O. Box 481
Santa Cruz, CA 95601-0481

Re: Your Request for Advice
Our File No. A-15-159

Dear Ms. Valk:

This letter responds to your request for advice on behalf of Planning Commissioner John Evans 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.

QUESTION

Does the Act limit Commissioner Evans’ participation in decisions related to the new library project in Half Moon Bay?

CONCLUSION

No. As discussed below, the decisions will not have a reasonably foreseeable financial effect on his financial interests.

FACTS

You are the Deputy City Attorney for the City of Half Moon Bay, a city of approximately 11,000 residents. The Planning Commission and City Council will be taking up the decision of whether to permit the demolition of the City’s existing library and construction of a new, larger library with expanded services on the same site (the “library project”). Commissioner Evans has an ownership interest in two parcels of real property located near the library: (1) his residence, located within approximately 600 feet of the library, and (2) a mixed-use, commercial investment property,

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.

located within approximately 250 feet of the library (the “mixed-use property”). Commissioner Evans’ business, an architecture practice, occupies a portion of the commercial building. The building includes four other offices and two studio apartments, all of which the commissioner leases to other tenants. The apartments have assigned parking that will not be impacted by the construction.

The City’s existing library is located in downtown Half Moon Bay at 620 Correas Street. It is approximately 7,800 square feet in size and has served San Mateo County’s coastal communities since 1971. Since 2002, the City and San Mateo County Library JPA have been working together to replace the existing building to meet the service needs of the area.

In the near future, the City will be considering different options for the library project, all of which include demolishing the existing library and building a new library on the same site. While size and scope of the new library will be under consideration, it is expected that the proposal will include at least 25,000 square feet of floor area and a zoning variance to allow reduced parking at the site, use of nearby street parking, and/or to accommodate parking alternatives such as shared parking with adjacent uses and public transit options. Other permits or governmental approvals may be required.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a government decision in which the official has a financial interest. (Section 87103.) A conflict of interest may arise only when the reasonably foreseeable financial effect of a government decision on a public official’s interests is material. The interests that apply here are:

- *A business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)*

Commissioner Evans has an interest in his architectural business and an interest in the rental of the mixed-use property.

- *Real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)*

Commissioner Evans has an interest in his residence and the mixed-use property.

- *A source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c).)*

Commissioner Evans has an interest in his clients from his architectural business from whom he received \$500 or more in the past 12 months. He also has an interest in the tenants in the mixed-use property as sources of income.

Foreseeability and Materiality

A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. (Regulation 18701(a).) From the facts provided, it does not appear that Commissioner Evans' financial interests are explicitly involved in a decision to replace the existing library. For interests that are not explicitly involved, as here, the 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." (Regulation 18701(b).)

Business Interests

There are several factors to consider to determine if a foreseeable effect on a business entity would be material. If a business entity is not directly involved in the decision regarding the project, as here, then typically the inquiry is whether a "prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of a privately-held business entity." (Regulation 18702.1(b).) To determine whether a foreseeable effect is material, factors to consider include whether the decision would:

"(1) Authorize, prohibit, regulate or otherwise establish conditions for an activity in which the business entity is engaged;

"(2) Increase or decrease the amount of competition in the field in which the business entity is engaged;

"(3) Increase or decrease the need for the products or services that the business entity supplies;

"(4) Make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives;

"(5) Decide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project; or

"(6) Increase or decrease the tax burden, debt, or financial or legal liability of the business entity."

(Regulation 18702.1(b)(1)-(6).)

The decisions here involve demolishing the current library to make room for a new larger library. Nothing in your facts suggests that Commissioner Evans' architectural business will be

materially affected. Likewise, the decisions are not likely to have a material effect on the rental of the mixed-use property.

Real Property Interests

For real property not explicitly involved in a decision, a foreseeable effect is material if the decision:

“(7) Would change the development potential of the parcel of real property;

“(8) Would change the income producing potential of the parcel of real property . . . ;

“(9) Would change the highest and best use of the parcel of real property in which the official has a financial interest;

“(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;

“(11) Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18702.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official’s property; or

“(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.”

(Regulation 18702.2(a).)

Mixed-use property: Based on the facts provided, it is unlikely that replacing the existing library will materially affect the mixed-use property. Because the mixed-use property is within 500 feet of the library, however, we must consider the application of Regulation 18702.2(a)(11). For properties within 500 feet of the property that is the subject of the governmental decision, the effect of the decision is presumed to be material unless the property is a commercial property, in which case Regulation 18702.1 (materiality standards for business entities) applies.

In this case, the property is a mixed-use property containing both commercial property and two studio apartments that are residential units. Because the property contains residential properties, Regulation 18702.2(a)(11) will apply. Nonetheless, the presumption of materiality may be rebutted if the Commission finds sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property. The decisions involved here will convert the existing library into a larger library. The studio apartments have assigned parking, their use will not change with the new library, and the neighborhood's character is unlikely to change in a way that would impact the value or rental value of these apartments. We therefore find that there will be no material financial effect on the residential properties.

Residence: Commissioner Evans' residence is approximately 600 feet from the library. While there may be some minor inconveniences during construction, we do not think that building a larger library on the same library site will impact the value of his property.

Sources of Income

The materiality standards for sources of income are provided in Regulation 18702.3. Barring additional facts, decisions regarding the library do not implicate customers of Commissioner Evan's architectural firm. Moreover, in regard to the commissioner's tenants, there is no more reason to believe that there will be a material effect on the tenants' businesses or rental properties than on the commissioner's interests.

Accordingly, we do not find a reasonably foreseeable material financial effect on any of Commissioner Evans' economic interests. The Act does not prohibit him from participating in the decisions related to the library.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl