



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

September 30, 2020

Donna Mooney
City Attorney
City of Pittsburg
65 Civic Avenue, Pittsburg, CA 94565

Re: Your Request for Advice
Our File No. A-20-106

Dear Ms. Mooney:

This letter responds to your request 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.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

May City Planning Commissioner Chris Moreno participate in the design review decision of the San Marco Villas III project, where he is a lessee under a one-year residential lease of an apartment in adjacent San Marco Villas I?

CONCLUSION

Yes. Where there are no facts indicating that the design review decision before the Planning Commission will alter the termination date of his lease; the potential rental value of the property; his use of the property; or his use and enjoyment of the property, it is not reasonably foreseeable that the decision will have a material effect on Commissioner Moreno’s leasehold interest.

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 AS PRESENTED BY REQUESTER

The Pittsburg City (“City) Planning Commission has a pending agenda item for the design review of an apartment project that is part of a larger multi-year Development Agreement for the development of up to 2,938 residential units (including 1,412 single family residential and 1,526 multi-family residential units) across 639 acres in Pittsburg’s Southwest Hills, entered into in the early 1990s. The entire project is roughly 70 percent built out. The particular project at issue is known as San Marco Villas III. Commissioner Moreno is the lessee under a one-year residential lease of an apartment in San Marco Villas I, which is adjacent to San Marco Villas III.

San Marco Villas III entails construction of a 270-unit multi-family development at the site. Six garages would be made available to tenants. The proposed project consists of 11 three-story, walk- up apartment buildings. The project will have similar exterior and design to the existing adjacent Villas I and II apartments (e.g. Mediterranean style, arched windows, blue tiled design features, paint colors). The Villas III project would also include installation of landscaping, walkways, drive aisles, parking, lighting and multiple trash enclosures. In addition, site amenities would include a clubhouse, covered loggias with outdoor seating areas, and a pool and spa, similar to amenities that were built for Villas I and II.

Design Review approval by the Planning Commission requires a finding by the Commission as to whether the proposed project is consistent with Pittsburg Municipal Code Section 18.36.220(B):

1. the structure conforms with good taste, good design and in general contributes to the character and image of the city as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality;
2. the structure will be protected against exterior and interior noise, vibrations and other factors that may tend to make the environment less desirable;
3. the exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value;
4. the structure is in harmony with proposed developments on land in the general area; and
5. the application conforms with the criteria set forth in any applicable city-adopted design guidelines.

The Commission may also attach additional conditions to the approval, so long as it relates to the design elements of the project and complies with the terms set forth in the Development Agreement with the City.

With respect to the four factors for materiality listed in Section 18702.2(c) for leaseholds, you note that the design review approval of the project would not change the termination date of Commissioner Moreno’s lease, or change the actual or legally allowable use of his leased property. Commissioner Moreno does not anticipate that the decision will change the potential rental value of the rental property he occupies. He does not expect that the decision will impact his use and enjoyment of the property. You note that the project may affect the availability of unreserved parking spaces: The unreserved parking spaces are not necessarily exclusive to each of the Villas, and the Villas have internal vehicle connections. Commissioner Moreno has his own reserved spot

and rents an additional garage space. The project is expected to result in increased vehicular traffic to and from the apartment complexes.

In regards to the above comments on the anticipated impacts of the decision on the potential rental value and his use and enjoyment of the property, the City provided additional information, including the Planning Commission's Staff Report, Environmental Impact Report, and the Presentation of the Project, as well as answered follow-up questions by phone. The City explained that the project is subject to the terms of the City's Development agreement for the area. Items such as housing density, traffic impacts and unreserved parking spaces for example, are not subject to this design review decision. The City further explained that the design and character of the Villas III project is essentially a continuation of the earlier Villas I and II development, with some updates to comply with current guidelines. The City noted that the Villa III traffic flow plans allow for internal movement within the three Villa projects, primarily for emergency access; however, the flow is such that Villa III traffic would not be likely to flow through Villas I and II. The increased flow of traffic to and from the apartment complexes is not a part of the decision at issue, and is addressed in a separate City 5-year traffic plan.

ANALYSIS

Section 87100 of the Act provides that "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Section 87103 further specifies that a "public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on certain enumerated economic interests. This includes an interest in "real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103(b).) Commissioner Moreno has a potentially disqualifying economic interest in his real property leasehold interest.

Under the standards in Regulation 18701(a), it does not appear his leasehold interest will be explicitly involved in governmental decisions pertaining to the San Marco Villas III project, as the facts do not indicate that he is a named party in, or that his interest is the subject of, the proceedings, and the decision does not affect property as specified in Regulation 18702.2(a)(1)-(6).² The decision at issue is a design review that focuses on the exterior design, appearance, structure

² The 18702.2 (a) criteria are: (1) Involves the adoption of or amendment to a development plan or criteria applying to the parcel; (2) Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries; (3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel; (4) Authorizes the sale, purchase, or lease of the parcel; (5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property; (6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. These facts do not indicate any of these items.

and character of the proposed San Marcos III development, within the approved Development Agreement.

Regulation 18701(b) provides the standard for determining whether a financial effect is reasonably foreseeable when an official's economic interest is not explicitly involved in a decision. The regulation states that a "financial effect need not be likely to be considered reasonably foreseeable" and, that "[i]n general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable." And it states, "[i]f the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

Regulation 18702.2(c) contains the standards for determining when a governmental decision's financial effect on an official's real property leasehold interest is "material," and states as follows:

The reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

Under the facts provided, the design review decision before the Planning Commission will not change the termination date of Commissioner Moreno's lease, nor will it change the actual or legally allowable use of his leased property. The facts presented do not indicate that the design decision, considering its scope, will impact the Commissioner's use and enjoyment of his leasehold, or impact the potential rental value of the property. Therefore, it does not appear reasonably foreseeable that the Planning Commission's design review decision will have a material effect on Commissioner Moreno's leasehold and he is not disqualified from this decision.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

LKH:aja