



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 25, 2021

Jeffrey Ballinger
City Attorney
BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-21-040

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of City Councilmember Greg Sanders 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.

QUESTIONS

Do the conflict of interest provisions of the Act prohibit Councilmember Sanders from taking part in governmental decisions given that he owns real property within 500 to 1,000 feet of the following projects:

1. Miles Lodge and Brixton properties?
2. Indian Wells Golf Resort (“Golf Resort”)?

CONCLUSIONS

1. Yes. Given the size of these projects and the development of heretofore undeveloped land, it is reasonably foreseeable that the projects would have a material financial effect on the market value of the Councilmember’s home.

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.

2. Councilmember Sanders will be prohibited from taking part in decisions relating to the Golf Resort located within 500 to 1,000 feet of his residence if the decisions will change his parcel's development or income producing potential, highest and best use, character or market value. While he may be able to participate in decisions relating to specific renovations or the general operations of the Golf Resort, so long as they are not inextricably interrelated to decisions that relate to the course as a whole, this is a determination that is factually dependent on the specific nature of the decision and could only be made on a case-by-case basis. Councilmember Sanders may wish to seek additional assistance prior to taking part in any decisions related to the Golf Course once the nature of the decision can be identified.

FACTS AS PRESENTED BY REQUESTER

It is expected that in the future the City Council will consider decisions regarding the development of the Miles Lodge property and Brixton property, and decisions regarding the Golf Resort, including the adoption of a Master Plan for the Golf Resort and its potential renovation.

Miles Lodge

The Miles Lodge property is an undeveloped 15-acre site located on the northwest corner of Miles Avenue and Highway 111. The City has approved a Specific Plan, a Conditional Use Permit, and a Development Agreement for the property that permit commercial and resort development on the site. Due to the impact of the Covid-19 pandemic, the developer was unable to begin construction in June of 2020, as was required by the Development Agreement. However, the property is now for sale, and if it is sold, the proposed project may change. The City Council may be faced with what actions, if any, to take with regard to the Development Agreement and possible future land use entitlements.

The Miles Lodge property sits adjacent to the Whitewater River Stormwater Channel ("Channel"). In order to facilitate the development of the Miles Lodge property, there are plans to widen the lot and narrow the Channel drainage facility by moving the edge of the Channel approximately 60 feet north of the current location. A concrete channel lining would be required to protect the proposed Miles Lodge development and relocated Channel bank. The goal of the Channel improvements is to create an additional 1 to 1.5 acres of building space on the Miles Lodge property. Due to the benefit of the Channel improvements to a neighboring property owned by the Housing Authority, the City has (prior to Councilmember Sanders' time on the Council) entered into an agreement with the developer of the Miles Lodge property to reimburse the developer for a portion of the cost to design the proposed Channel improvements ("Reimbursement Agreement").

In the future, the City Council may be asked to consider amendments to the Development Agreement or Specific Plan for the Miles Lodge property, or be asked to approve revised project plans. In addition, the City may be presented with amendments to the Reimbursement Agreement, or other decisions related to the Channel improvements.

Brixton Property

Across the street from the Miles Lodge property, located on the northeast corner of Miles Avenue and Highway 111, is the Brixton property, an undeveloped 15.3-acre property zoned for commercial and mixed-use development.

The property is subject to a Disposition and Development Agreement (“DDA”), but the developer has failed to meet construction milestones as required by the DDA. The property was previously owned by the City, and the City has considered attempting to re-acquire it, which may involve litigation. Any decisions regarding the reacquisition of the Brixton property would come before the Council. Alternatively, it is possible that the developer may propose revised project plans, which would come before the Council for review and approval.

Golf Resort

The Indian Wells Golf Resort is operated by the City and consists of two golf courses, a pro shop, a restaurant, and a “Shots in the Night” hi-tech golf putting game. There are no memberships available for the Golf Resort. A City discount card is available for purchase by all City residents for the price of \$50, and includes discounts on rounds of golf, pro shop items, and meals at the Golf Resort, as well as discounts at other restaurants in the City and events at the Indian Wells Tennis Garden. The Golf Resort also offers discounts to guests of the nearby hotels.

As the Golf Resort is a municipal facility, from time to time, the City Council may consider decisions related to the operation of the Golf Resort, such as decisions regarding certain fees, the hours of operation, or the tee time reservation process.

In addition, the City has issued a Request for Proposals for a consultant to develop a Master Plan for the Golf Resort. The City Council will vote on the award of the contract to the selected consultant, and then ultimately, on the adoption of the Master Plan.

Councilmember Sanders

Councilmember Sanders owns his personal residence, a single-family home that is located within a gated country club community. The community includes two golf courses, among other amenities. He lives near the center of the community, and his residence is located approximately 1,000 feet from the gated entrance. His residence is separated from the Miles Lodge property, the Brixton property, and the Golf Resort, by Highway 111 and four rows of homes, and none of the sites are visible from the Councilmember’s residence. If multistory buildings are constructed on the Miles Lodge or Brixton properties as proposed, those buildings would not be visible from the Councilmember’s residence. In fact, when the “story poles” for the proposed project on the Miles Lodge property were erected, they were not visible from the Councilmember’s residence. In addition, there are existing multistory resort hotels adjacent to the Miles Lodge property, and those are also not visible from the Councilmember’s residence.

In further information provided via email, you confirmed that Councilmember Sanders resides in the Indian Wells Country Club development. This development is comprised of over 200 acres of residential and golf facilities. Additionally, aerial maps of the area demonstrate that a

majority of the land surrounding Indian Wells County Club is fully developed with residential, golf and other resort facilities.

Councilmember Sanders, like many other City residents, plays golf at the Golf Resort from time to time, and has purchased a City discount card.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from making, participating in making, or attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) Relevant to these facts, an official's financial interests that may give rise to a disqualifying conflict of interest are identified in Section 87103:

- An interest in any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- An interest in the official's personal finances and those of immediate family members. (Section 87103.)

As the Councilmember owns his personal residence, he therefore has a financial interest in the real property, as well as an interest in his personal finances.

Foreseeability and Materiality

Where, as here, the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(a) and (b).) Therefore, the Councilmember will have a financial interest in the Project decisions if there is a realistic possibility the decisions will have a material financial effect on his real property interest.

Regulation 18702.2 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's real property interest. Because the Councilmember's residence is located more than 500 feet, but less than 1,000 feet, away from the proposed developments, the materiality standard of Regulation 18702.2(a)(8) applies. That materiality standard provides that the effect is material if the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel and would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, noise levels, or air quality; or
- (E) Market value.

Given this framework, we turn then to an analysis of the potential projects.

Miles Lodge & Brixton Property

The Miles Lodge property is an undeveloped 15-acre parcel located across Highway 111 from the community in which Councilmember Sanders lives. The property is not visible from the Councilmember's residence, nor would any multistory buildings constructed thereon be visible from his residence. Additionally, the Councilmember's residence is separated from the property by four rows of homes and Highway 111. The residence is also inside a gated country club community that is almost completely built out. The gated community has two of its own golf courses, among other amenities.

The City has previously approved various plan and development agreements for the Miles Lodge property which permit commercial and resort development on the site. The current developer, however, was unable to begin construction as required by the agreements, and the property is now for sale. If sold, the proposed project may change.

The Brixton Property is an undeveloped 15.3-acre parcel adjacent to the Miles Lodge property and also across Highway 111 from Councilmember Sander's gated community. The property is zoned for commercial/mixed-use development and subject to a current agreement, but the current developer has failed to meet the construction timeline as required by the agreement. As a result, the City may attempt to re-acquire the property, or the developer may propose alternative project plans which would come before the City for approval.

Based on the facts presented, there is no indication that development of the Miles Lodge property or Brixton Property would have any effect on Councilmember Sanders's parcel through changing its development potential, income producing potential, or highest and best use. As stated previously, the Councilmember's home is located in an almost completely built-out gated country club community, such that the development of commercial/resort sites across the highway would have no impact on his parcel's development potential. There is also nothing to indicate that development of the Miles Lodge property or Brixton property would affect the income producing potential, or highest and best use of the Councilmember's property.

Development of these parcels is also unlikely to change the character of the Councilmember's property. As the parcels sit across a four-lane highway, any change in the frequency of cars may have an affect on traffic on Highway 111, but would likely not impact the Councilmember's property located in the interior of a gated community. Likewise, the developments would not impact intensity of use, noise levels, parking or air quality around the Councilmember's home. And the facts as provided indicate that views will not be altered by any development of these sites.

However, due to the projects' development of previously vacant land, and the short proximity to the Councilmember's residence, there is a realistic possibility development of the Miles Lodge and Brixton properties, as proposed, will affect the value of existing residences nearby. Potentially, decisions regarding these projects may ensure that the properties remain vacant or are used for purposes that would be financially beneficial to residences in a close proximity. Alternatively, the decisions may protect residences in a close proximity from the negative financial impacts of less desirable projects. Therefore, it is reasonably foreseeable that decisions concerning the Miles Lodge and Brixton properties will have a material financial effect on Councilmember

Sanders' residence based on the projects' potential to protect or increase the market value of neighboring properties.

Golf Resort

The Indian Wells Golf Resort is a municipal course owned by the City, the remote corner of which is located 827 feet from Councilmember Sanders' residence. The Golf Resort has been in operation, and its amenities include of two golf courses, a pro shop, a restaurant, and a "Shots in the Night" hi-tech golf putting game. The City has issued a Request for Proposals for a consultant to develop a Master Plan for the Golf Resort. And the City Council will vote on the award of the contract to the selected consultant, and then ultimately, on the adoption of the Master Plan. Additionally, from time to time, the City Council may consider decisions related to the operation of the Golf Resort, such as decisions regarding certain fees, the hours of operation, or the tee time reservation process.

According to the facts, future City Council decisions will involve adoption of a Master Plan for the Golf Resort, the potential renovation of the Golf Resort, and the general operation of the Golf Resort. Because Councilmember Sanders' personal residence is within 500 to 1,000 feet of the Golf Resort, the reasonably foreseeable financial effect of those decisions will be considered foreseeable and material if they will change his parcel's development or income producing potential, highest and best use, character or market value. You have not provided details of any specific governmental decisions at this point (other than the fees discussed below), such that we are unable to analyze these issues further.

You have also inquired, however, as to a financial effect on the Councilmember's financial interest in his personal finances should he vote on changes to fees associated with use of the Golf Resort. Councilmember Sanders has previously purchased a City discount card for use at the Golf Resort at a price of \$50 that is made available on the same terms to all City residents. Under Regulation 18702.5 a governmental decision's reasonably foreseeable financial effect on a public official's financial interest in his or her personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).) Given the current \$50 price of the discount card, it does not reach the \$500 materiality threshold.²

Additionally, you have not indicated that the change in pricing is necessary or intended to ensure the solvency or continued operation of the of the Golf Resort. Based on the facts provided, the decisions are of a minor operational nature and would not involve any structural changes that might potentially affect the view, privacy, noise levels, or air quality of Councilmember Sanders' property. Barring facts indicating that the pricing strategy is necessary or intended to ensure the solvency or continued operations of the Golf Resort, it is not reasonably foreseeable that the decisions will have a material effect on the Councilmember's property. Accordingly, the

² Nevertheless, even if the price of the discount card did reach the \$500 threshold, the "public generally" exception pertaining to an increase or decrease in fees which applies to an entire jurisdiction would be applicable (18703(e)(2)), as the Councilmember is purchasing a discount card made available to all members of the jurisdiction on the same terms.

Councilmember does not have a disqualifying conflict of interest in relation to the discussion of fees and may participate fully in such decisions.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:dkv