



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 13, 2021

Jose Sanchez  
Town Attorney  
Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, California 95814

Re: Your Request for Advice  
**Our File No. A-21-048**

Dear Mr. Sanchez:

This letter responds to your request for advice on behalf of the Town of Windsor Planning Commissioner Evan Zelig regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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 Commissioner Zelig’s participation in Planning Commission decisions given that he owns real property within 500 to 1,000 feet of the following projects:

1. Civic Center Project?
2. Chevron and Shell Gas Station Projects?
3. McDonald’s Project?

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<sup>1</sup> 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.

## CONCLUSIONS

1. Yes. Given the scope and size of the proposed Civic Center project, it is reasonably foreseeable that the improvements would have a material financial effect on the market value of the Commissioner's home.
2. No. The Commissioner may take part in the decisions pertaining to the Chevron and Shell gas station projects because the evidence indicates that these improvements would have no measurable impact on his property.
3. No. The Commissioner may take part in the decisions pertaining to the McDonald's project because the evidence indicates that these improvements would have no measurable impact on his property.

## FACTS AS PRESENTED BY REQUESTER

### *Civic Center Project*

The Town of Windsor currently owns what is known as the "Town Green" in the Town's downtown business district, which is an open space area that hosts a variety of programming, including concerts, festivals, community events, and a farmers' market. Surrounding the Town Green, to the south and west, are mixed-use residential and office space, with ground floor retail establishments. To the north of the Town Green exists the "Civic Center," an area comprised of government office buildings and facilities including Town Hall, the Town Police Station, the Windsor Unified School District Offices, the Windsor Regional Library, the Huerta Gymnasium, as well as parking lots and undeveloped land. North of the Civic Center area is privately-owned underdeveloped properties. Collectively, this northern area of aforementioned buildings and land is referred to as the "Civic Center Properties."

In 2016, the Town Council initiated a year-long planning study with the goal of completing the Town Green by activating the northern edge of the Town Green with uses that create a more cohesive town center. The culmination of this effort was the completion of the Civic Center Visioning Plan ("Visioning Plan"). The Visioning Plan provides guidance on land uses, urban form, public amenities, and the economic viability of future development of the Civic Center Properties. It lays out a pattern of eight future blocks based on the area's natural features, how the site relates to adjacent streets and paths in the Town Green, and suggests implementation through a series of "linked sequences" designed to accommodate some of the physical and logistical issues associated with the development of the area.

Following approval and acceptance of the Visioning Plan by the Town Council in 2019, the Town entered into an Exclusive Negotiating Agreement with the Robert Green Company for the development of the Civic Center Properties ("ENA"). The ENA establishes three phases reflecting the process for developing, selecting, and implementing a plan for the development of the Civic Center properties. The phases are as follows:

Phase I – Analysis of Development Alternatives. Phase I sets forth Developer and Town obligations for preparing and analyzing alternative development plans for the Civic Center properties and presenting the preliminary development alternatives to the Town Council for selection of a preferred development alternative.

Phase II – Analysis of Preferred Development Alternative. Phase II is to be completed within 150 days following the conclusion of Phase I, sets forth the process and requirements for preparation/refinement and evaluation of the preferred development alternative, including identification and approval of development terms by the Town Council.

Phase III – Negotiation and Preparation of a Disposition and Development Agreement (“DDA”). Phase III, to be completed within 120 days following the conclusion of Phase II, sets forth the process for preparation and approval of the DDA. The DDA will be a contract between the Town and the Developer for sale and/or lease of Town-owned land to the Developer and would require the Developer to construct and operate the proposed development project.

The Town has completed Phase I, and is in Phase II of the ENA, and will be considering a preferred development alternative that will consist of: a new 151 room hotel, 87 residential units, a 58,680 square foot Civic Center building that houses Town offices, the Library and Windsor Unified School District offices, an 11,725 square foot Police Station, the Park Pavilion and expansion of the Town Green to include a Pedestrian Promenade, and assumes acquisition of land commonly known as the “Telfer Properties” (collectively the “Preferred Development”).

Additionally, under Phase II, there will be a negotiation of proposed development terms with the Robert Green Company for the Preferred Development.

Under Phase III, there will be a negotiation and execution of a Disposition and Development Agreement, which will outline and contractually commit both the Town and Robert Green Company to the construction of the Preferred Development.

No formal environmental review has been completed specifically related to the proposed Civic Center Project; however, the Town anticipates the most significant impacts would be transportation/Vehicle Miles Traveled (“VMT”) and Air Quality. Lesser impacts in the areas of aesthetics, biological (tree removal, impact to a small un-named drainage ditch), and noise to adjacent mixed density residential neighborhoods. The Town’s General Plan EIR included a Statement of Overriding Considerations for transportation impacts.

It is anticipated that the Windsor Planning Commission will in the future be considering for approval elements of the finalized Preferred Development and Development Agreement.

#### *Proposed Chevron Gas Station Project*

There is currently a Chevron gas station and convenience store located at 9120 Old Redwood Hwy, Windsor, CA 95492 (“Chevron”). Chevron is proposing a remodel of their facilities, which will include minor changes to the current footprint. The proposal includes a new canopy for gas pumps in generally the same location as the existing structure, increasing the size to

accommodate two additional pumps. The convenience store/restaurant, which will be rebuilt and increased in size by approximately 2,353 square-feet, will be located on the opposite side of the site from its existing location, and a new and separate carwash is proposed in the same general location as the existing carwash. It is not anticipated that the remodel will result in a significant change in traffic, noise, or other intensity of use of Chevron. The Planning Commission will be potentially considering a design review and conditional use permit for the remodel.

#### *Proposed Shell Gas Station Project*

There is currently a Shell gas station, drive-thru car wash, and convenience store located at 9033 Old Redwood Hwy, Windsor, CA 95492 (“Shell”). Shell is proposing a remodel of their facilities, which will include minor changes to the current footprint. The proposal includes a new canopy for the gas pumps in generally the same location as the existing, reducing the number of pumps from six to four, the convenience store will be rebuilt and increased in size by approximately 101 square-feet (in generally the same location as the existing market), and the car wash will be relocated from the western property line to the northern property line. It is not anticipated that the remodel will result in a significant change in traffic, noise, or other intensity of use of Shell. The Planning Commission will be potentially considering a design review and conditional use permit for the remodel.

#### *Proposed McDonald’s Project*

There is currently a McDonald’s eating establishment located at 125 Windsor River Rd, Windsor, CA 95496 (“McDonald’s”). McDonald’s is considering adding a drive-thru to its establishment. It is anticipated that the Planning Commission will be considering a design review, zoning text amendment, revisions to the Downtown Specific Plan, as well as a General Plan amendment. No formal environmental review has been completed to date, but the Town anticipates that there will be impacts to transportation/VMT in the area, air quality, as well as noise as a result of the addition of a drive-thru.

#### *Commissioner Zelig’s Financial Interest*

Currently, Commissioner Zelig owns his personal residence located within the Town of Windsor (“Property”). The fair market value of this ownership significantly exceeds \$2,000. The Property is a single-family residence and is located in an area that is zoned residential. It is located approximately 770 feet from the Chevron Project, 996 feet from the Shell Project, 998 feet from the McDonald’s Project, and 970 feet from the nearest portion of the Civic Center Project. All of the aforementioned projects are in an area zoned as “Town Center Commercial,” which is a mixed-use zoning classification intended to provide attractive areas within the Old Town where the community can gather to socialize, shop, recreate, or live. The Town Center Commercial zoning district includes diverse, compatible land uses that can be developed on the same site, and where desirable, in the same building. Appropriate land uses include retail, high density residential, public uses, hotels and motels, and offices.

The aforementioned distances are straight-line distances from the Property to the proposed projects. However, a major freeway, Highway 101, separates the Property from the proposed projects. To be able to physically reach the proposed projects from the Property, one would be

required to travel 0.8 – 1.1 miles, traveling through a separate commercial area before reaching the proposed projects in the Town Center Commercial zoning district.

## ANALYSIS

The Act's conflict of interest provisions prohibits 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.) An official's financial interests that may give rise to a disqualifying conflict of interest are identified in Section 87103 and include all the following:

- An interest in any business in which the official has an investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- An interest in any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).)
- An interest in any source of a gift or gifts aggregating \$520 or more in the 12 months prior to the decision. (Section 87103(e).)
- An interest in the official's personal finances and those of immediate family members. (Section 87103.)

Section 82033 defines "interest in real property" and provides in pertinent part that an individual's real property interests include an interest in real property owned by the official with a value of \$2,000 or more. As the Commissioner owns his personal residence, he therefore has a financial interest in the real property, as well as an interest in his personal finances.<sup>2</sup>

### *Foreseeability and Materiality*

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision. Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical." Here, the

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<sup>2</sup> Under Regulation 18702.5(c), an effect on an official's personal finances is not considered separately than an effect on the official's interest in a business entity or real property. Accordingly, we do not analyze the effect on Commissioner Zelig's personal finances any further.

Commissioner's residence is not explicitly involved in any of the decisions, such that Regulation 18701(b) sets forth the applicable foreseeability standard.

Further, 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 Commissioner'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.

#### *Civic Center Project*

The Civic Center Project is a multi-phase project envisioning the development of at least eight future blocks within the Civic Center Properties. While the Town has already completed Phase I of the plan, Phase II, currently underway, anticipates acquisition of a large portion of currently privately held land in addition to consideration of a new 151 room hotel, 87 residential units, a 58,680 square foot Civic Center building that houses Town offices, the Library and Windsor Unified School District offices, an 11,725 square foot Police Station, the Park Pavilion and expansion of the Town Green to include a Pedestrian Promenade. This project encompasses a major expansion of the current Civic Center properties, with the development of previously vacant or underdeveloped land.

From the facts provided, Commissioner Zelig's home is located in an already developed subdivision, such that the Civic Center Project would likely have no effect on the development potential, nor highest and best use, of the Commissioner's parcel. Given that the Commissioner's residence is located 970 feet from the nearest portion of the Project, and across Highway 101, it also appears unlikely the Project would substantially alter the traffic levels, intensity of use or parking around the Commissioner's home.

However, the Town has not yet completed a formal environmental review and there are few facts to go on in relation to the Project's impact on the character of the Commissioner's parcel. Additionally, whether and if the Project would affect the income producing potential, or market value of the home is at question. A development such as this bringing a hotel, residential units, and a significant expansion of spaces providing City services and recreational space could have the potential to greatly increase the desirability of living close to such a community center. Based on the magnitude of the Project and the close proximity to the Commissioner's residence, there is a realistic possibility the Project, as planned, will affect the value of existing residences nearby.

Potentially, decisions regarding the Project may ensure that the property remains vacant or is 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 a less desirable Project. Therefore, it is reasonably foreseeable that decisions concerning the Project will have a material financial effect on the Commissioner's residence based on the Project's potential to protect or increase the market value of neighboring property. Commissioner Zelig must recuse himself from the decisions.<sup>3</sup>

#### *Chevron & Shell Projects*

While the Chevron and Shell Projects will marginally increase the current footprints of each property, those improvements will not result in an increase of services being offered on each of the properties and it does not appear as if there will be significant impacts resulting from the improvements. Notably, the projects will be limited to the current spaces already developed and will be offering the same types of services offered currently as well. Additionally, these projects are separated from the Commissioner's residence by Highway 101.

Based on the facts provided, it does not appear that the Chevron or Shell projects will have a reasonably foreseeable material financial effect on the Commissioner's parcel through affecting its development potential, income producing potential, highest and best use, character or market value. Accordingly, the Commissioner does not have a conflict in regard to these projects.

#### *McDonald's Project*

Similarly, the McDonald's project will be improving upon an already existing business, through the possible addition of a drive-thru, and will impact the structure already located on the site. The McDonald's is located across Highway 101, a major four-lane freeway, from the Commissioner's residence. From these facts, the project would not appear to change the development potential, income producing potential, highest and best use, or market value of the Commissioner's parcel.

While no formal environmental review has been completed to date, the McDonald's Project would potentially be altering noise, traffic, and air quality in the area. However, as pointed out previously, the site in question is located across Highway 101 from the Commissioner's residence, and 998 feet away, such that it is highly unlikely any of the proposed changes would substantially alter traffic levels, intensity of use, parking, view, noise levels or air quality of the Commissioner's parcel.

Based on the facts provided, it is not reasonably foreseeable that decisions pertaining to the McDonald's project will have a material financial effect on the Commissioner's interest in his residence such that he may participate in these proceedings.

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<sup>3</sup> Please note that when a public official who holds an office specified in Section 87200, including a planning commissioner, has a disqualifying conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.)

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".

By: Erika M. Boyd  
Senior Counsel, Legal Division

EMB:dkv