



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 3, 2021

Jean B. Savaree
Town Attorney
Aaronson, Dickerson, Cohn & Lanzone
1001 Laurel Street, Suite A
San Carlos, CA 94070

Re: Your Request for Advice
Our File No. A-21-062

Dear Ms. Savaree:

This letter responds to your request for advice on behalf of Town of Woodside Town Councilmember Ned Fluet and Planning Commissioner Virginia Dare 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

Do the Act’s conflict of interest provisions prohibit Town Councilmember Fluet or Planning Commissioner Dare from taking part in governmental decisions relating to a proposed update of the development standards applicable to the Southern Western Hills study area within the Town given that the Councilmember and the Commissioner each own their respective residences located within the study area?

CONCLUSION

Yes. The Act prohibits the Councilmember and the Commissioner from taking part in decisions relating to the proposed update because it is reasonably foreseeable that those decisions would have a material financial effect on both the Councilmember and the Commissioner’s respective residences.

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 Town of Woodside is a general law city located in the County of San Mateo. The Town is divided into seven separate Districts. Councilmembers are elected from each of the seven Districts from votes cast Town wide. A councilmember is required to reside within the District from which the councilmember was elected. The Planning Commission is comprised of seven commissioners, with one commissioner appointed from each District. A planning commissioner is also required to reside within the District from which appointed.

According to the 2010 US Census, the Town's population is 5,287. There are 2,363 residentially-zoned parcels and 27 commercially-zoned parcels in Town.

The Woodside Town Council has authorized a comprehensive review of the Town's development standards, as those standards relate to nonconforming lots, structures, and improvements. The Town Council has directed that the Planning Commission examine the effect of the Town's current development standards on a neighborhood-by-neighborhood basis. The first neighborhood to be studied was the Glens, and the second is the Southern Western Hills.

Located within District 7 of the Town, the Southern Western Hills is comprised of 577 acres of land, or approximately 9.9 percent of the Town's residential area. Town Councilmember Fluet was elected, and Planning Commissioner Dare was appointed, from District 7. The Councilmember and the Commissioner each own a single-family home in the Southern Western Hills study area.

The Southern Western Hills study area was originally established through the recordation of two subdivisions, the southern portion of the Portola Hills Map No. Vol. 7, pg. 20, filed in 1909, and Woodside Country Club Map No. Vol. 14, pgs. 56-58, filed in 1926. There are currently 213 parcels in the Southern Western Hills study area. The average lot size is 2.46 acres, and the median lot size is 2.12 acres. Nineteen lots are under a half-acre, and nine lots are 7.5 acres or more. No lots are large enough to subdivide. For at least the past 110 years, homes have been constructed on 168 of the lots. Forty-five lots are vacant.

The Town was incorporated in 1956. The Southern Western Hills area was zoned Special Conservation Planning – 7.5 Acres ("SCP-7.5") and Special Conservation Planning – 10 Acres ("SCP-10"), thereby requiring minimum 7.5 and 10 acre lots, respectively. Within the Southern Western Hills study area, 99 lots are zoned SCP-7.5, and 14 lots are zoned SCP-10.

Of the 213 parcels in the Southern Western Hills study area, 96 percent are nonconforming in regard to lot size. Because the Town's current development standards were created for flatter, conforming lots, when these standards are applied to the Southern Western Hills' nonconforming lots, especially those with steep terrain, numerous exceptions or variances are necessary.

As noted above, the Town Council instructed that the review of the Town's development standards be conducted on a neighborhood-by-neighborhood basis, with each neighborhood within the Town studied separately, in recognition of each neighborhood's unique attributes. Because the lot nonconformities and constraints in the Glens affected 85 percent of the properties within the

Glens, thereby creating disproportionate financial and safety impacts for those property owners, the Town Council instructed that the Town wide review begin with the Glens.²

As the Town prepares to begin the study of development standards for the Southern Western Hills, staff anticipates that changes to many of the same development standards considered with respect to the Glens will also be explored for the Southern Western Hills. These may include standards for setbacks, height limitations, floor area, main residence size, slope restrictions, parking/driveway requirements, paved area and surface coverage limitations, accessory dwelling unit regulations, nonconforming rights, the impacts of nonconformity, fire requirements, entitlements, and the planning and building process.

The public input component of this review is scheduled to begin in June 2021. Through this process, staff will formulate recommendations regarding potential revisions to the Town's current development standards for Planning Commission review. The Planning Commission will be asked to receive public input, review the staff planning recommendations, and to formulate its own independent recommendations for the Town Council to consider. The Town Council will then hold public hearings and decide whether to amend the Woodside Municipal Code to revise development standards for the Southern Western Hills study area.

Councilmember Fluet's single-family home located within the Southern Western Hills study area is approximately 1,560 square feet, and Planning Commissioner Dare's single-family nonconforming home located within the study area is approximately 2,418 square feet.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using the public official's position to influence a governmental decision in which the official has a financial interest. Section 82048 defines "public official" as every member, officer, employee, or consultant of a state or local government agency, including city councilmembers and planning commissioners.

Financial interests from which a disqualifying conflict of interest may arise are identified in Section 87103. The interest pertinent to the officials in question is set forth in Section 87103(b), which provides that an official has "[a]n interest in real property in which the official has a direct or indirect interest of \$2,000 or more."

Foreseeability and Materiality

In order for a public official's financial interest in real property to require the official's disqualification from a governmental decision under the Act's conflict of interest provisions, it must be reasonably foreseeable that the decision would have a material financial effect on the property.

² In the *Savaree* Advice Letter, No. A-19-035, we advised that a town councilmember and a planning commissioner, each of whom owned a residence within the Glens study area, were disqualified from taking part in decisions relating to a proposed update of the development standards applicable to that study area because it was reasonably foreseeable that those decisions would have a material financial effect on both the councilmember and the planning commissioner's respective residences.

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; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest. In addition, an official's interest in real property is explicitly involved in any decision which affects that interest as described in Regulation 18702.2(a)(1)-(6).

Regulation 18702.2 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's interest in real property, and subdivision (a)(1) of that regulation provides that the effect is material if the decision "[i]nvolves the adoption of or amendment to a development plan or criteria applying to the parcel."

Both the Councilmember and the Planning Commissioner's respective residences are on parcels located within the Southern Western Hills study area. The facts presented indicate that the scope of the proposed update of the development standards for that study area may be extensive, and may include changes to standards for setbacks, height limitations, floor area, main residence size, slope restrictions, parking/driveway requirement, paved area and surface coverage limitations, accessory dwelling unit regulations, nonconforming rights, the impacts of nonconformity, fire requirements, entitlements, and the planning and building process. Therefore, decisions relating to the proposed update of the development standards within the Southern Western Hills study area involve the amendment of development criteria which apply to both the Councilmember and the Planning Commissioner's respective residences.

Accordingly, the Act's conflict of interest provisions prohibit Councilmember Fluet and Planning Commissioner Dare from taking part in those decisions, based on the facts presented, as there is no indication an exception would apply.

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

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

MFC:dkv