



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 13, 2021

Frank A. Splendorio
City Attorney
City of Plymouth
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-21-103

Dear Mr. Splendorio:

This letter responds to your request for advice regarding City of Plymouth (“City”) Councilmembers Marianne Akerland and Douglas Sim, and Planning Commissioners William Klapproth and Michael Sullivan and 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 Councilmembers Marianne Akerland and Douglas Sim, and Planning Commissioners William Klapproth and Michael Sullivan participate in decisions relating to the subdivision and development of a 161.4 acre parcel where their respective residences are located within 500 feet of the parcel?

CONCLUSION

Yes. Where each official’s residential property is located less than 400 feet from the Project and the access road to their residences will be extended to provide access to the new subdivision

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.

through their neighborhood, it is reasonably foreseeable that the Project decisions, including the preliminary environmental consultant decisions, will have a material financial effect on each official's real property interest. However, it does not appear from these facts that there is a disproportionate financial effect on each official's residential property due to the proximity of the Project, in comparison with the effects on the significant segment of 15 percent of City residences located within 800 feet of the Project. Therefore, the officials' have established that the financial effect on their financial interests is indistinguishable from its effect on the public generally and they are not barred from participation under the Act.

FACTS AS PRESENTED BY REQUESTER

The City is a quintessential small town, both in size and population. The City will be making a series of decisions regarding the proposed subdivision and development of a 161.4-acre parcel ("Greilich Parcel") that lies to the south of the City's core downtown area. The proposed Project consists of two developments: the 116.5-acre Greilich Ranch Subdivision and a 44.9-acre 49er Village RV Resort Expansion. 11% of the City's residential real properties are located within 500 feet and 15% are located within 800 feet of the Project.

Greilich Ranch Subdivision

The Greilich Ranch Subdivision site, 116.5 acres, is currently undeveloped. The proposed development is a mix of residential and public land uses and open space, consisting of 234 single-family residential lots, three open space parcels including a 5.2-acre park site, two stormwater retention basins and landscaped corridor, greenways, and common areas. The site is bounded by the 49er Village RV Resort to the north; SR-49 to the east; Zinfandel Parkway to the south; and open space to the west. Access to the subdivision from SR-49 would be provided by the existing Zinfandel Parkway, and a new proposed collector street (Greilich Parkway) would extend to the north-south direction from Zinfandel Parkway to Old Sacramento Road. It is anticipated the subdivision would be developed in phases through the filing of multiple Final Subdivision Maps.

49er Village RV Resort Expansion

The existing 49er Village RV Resort is currently developed with 326 RV and vacation rental sites which include small individual cabins. Existing amenities include swimming pools, a volleyball area, an amphitheater, and meeting facilities. The proposed expansion and development of the RV Resort includes 214 new RV and vacation sites west and south of the existing RV and vacation sites, a Clubhouse Facility, guest pool area, an outdoor gathering space patio, meeting areas, showers, and restrooms. The RV Resort expansion site abuts the Greilich Ranch Subdivision site and is bounded by the Amador County Fair site to the north; SR-49 to the east; the Greilich Ranch Subdivision site to the south; and open space to the west. The RV Resort expansion will result in an increase in traffic and noise at the main entrance to the RV Resort on SR-49, which will affect residential properties located to the north, northeast and east of the main entrance. The expansion will effectively triple the RV Resort's size and impact the Resort as a whole.

Officials' Real Property Interests

The Greilich Parcel sits between the City's downtown core and the City's Zinfandel Ridge subdivision. All four of the official's properties are in the Zinfandel Ridge, to the south of the Project's Greilich Ranch Subdivision site. Councilmember Sim's residential property directly abuts the property line of the Greilich Parcel. Councilmember Akerland owns a single-family residence 260 feet away from the Greilich Parcel. Commissioner Klapproth's residential property is 277 feet away from the Greilich Parcel and Commissioner Sullivan's residential property is 365 feet away from the Greilich Parcel. Access from SR-49 to the Zinfandel Ridge subdivision is currently provided by Zinfandel Parkway, which dead-ends in the subdivision and borders the Greilich Parcel. As noted above, Zinfandel Parkway would be extended to provide access to the new Greilich Ranch Subdivision site. You provided the additional information by email that 11.7 percent of the City's residential real property is in Zinfandel Ridge.

The Project will require many land use decisions involving both the Planning Commission and the City Council, including decisions regarding a Conditional Use Permit; Zoning Amendment (Rezone); Development Agreement; General Plan Amendment; and Tentative Subdivision Map (collectively, "Land Use Decisions"). In addition, as lead agency under the California Environmental Quality Act (CEQA), the Council must approve the selection of an environmental consultant to prepare the report and will ultimately certify an Environmental Impact Report ("EIR") for the Project ("EIR Certification").

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a)). Relevant to these facts, Section 87103 defines financial interests to include an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Each official has identified a real property financial interest in their residence.

Regulation 18701(a) and (b) provide the standards to determine the foreseeability of a decision's financial effect on an official's financial interest. Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. (Regulation 18701(a).) The facts indicate that none of the officials' financial interest is explicitly involved in the decisions related to the Project.² Regulation 18701(b) provides the foreseeability standard where an official's

² Regulation 18701(a) provides that an official's financial interest is explicitly involved in a governmental decision if the interest is a named party in, or subject of, the decision. A financial 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 financial interest, and includes any governmental decision affecting a real property financial interest as described in the materiality standard for real property financial interests, Regulation 18702.2(a)(1)-(6). Regulation 18702.2(a)(6) applies if the decision involves construction or improvements such as to streets or water

financial interest is not explicitly involved in a decision, and states, that a financial effect is reasonably foreseeable if the effect can be recognized as a “reasonable possibility” that is “more than hypothetical.”

The materiality standard for real property applicable to these facts,³ Regulation 18702.2(a)(7), states that the “reasonably foreseeable financial effect of a decision on an official’s real property interest is material if the decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property.”

Due to the Project’s magnitude and proximity to the Zinfandel Ridge subdivision, proposing to develop the 116.5 acres into 234 single-family homes, a 5.2-acre park site, with landscaped corridor, greenways, and common areas and develop the 44.9 acres into 214 new RV and vacation sites to expand the RV Resort, it appears that each official’s real property interest will be affected by the decision and no facts are provided to establish that the decision will not have a measurable impact. Therefore, it is reasonably foreseeable that the Project decisions will have a material financial effect on each official’s real property interest located less than 500 feet from the Project, and each of the above officials would have a financial interest in the Project decisions. (Regulation 18701(b) and 18702.2(a)(7).)

Public Generally Exception

A public official that has financial interest in a decision may still participate if the official demonstrates that the financial effect is indistinguishable from its effect on the public generally. (Regulation 18703.) A decision’s financial effect on a public official’s financial interest is indistinguishable if the official establishes that a significant segment of the public is affected and the effect on the official’s financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).)

Applicable to these facts, where the only interest an official has in the decision is the official’s primary residence, Regulation 18703(b)(1)(C)(2) defines a “significant segment” as at least 15 percent of residential real property within the official’s jurisdiction. Regulation 18703(c)(2) states that a “unique effect” on a public official’s financial interest includes a disproportionate effect on the official’s real property resulting from the proximity of a project that is the subject of a decision.

The facts indicate that a significant segment, 15 percent of the City’s residential properties, are within 800 feet of the Project. It appears these properties will experience the increased noise and traffic at the entrance to the RV Resort off SR-49 due to the RV Resort expansion, as well the increased noise and traffic at the entrance to the Zinfandel Parkway off SR-49 due to the development of the new subdivision. As the new subdivision will also have access via the proposed

facilities and the official’s parcel will receive new or improved services with benefits or detriments disproportionate to other properties receiving the services. Although the Project involves an extension of Zinfandel Parkway, the access road to each official’s residential neighborhood, no facts indicate that the construction will provide new or improved services to an official’s parcel and Regulation 18702.2(a)(6) is not applicable.

³ See discussion in footnote 2.

collector street (Greulich Parkway) connecting Zinfandel Parkway to Old Sacramento Road, it appears residences to the North of the Project and in proximity to Old Sacramento Road will also experience increased traffic and noise due to the Project. Further, as to a “unique effect,” there is no indication from the facts provided that there is a disproportionate financial effect on any of the officials’ residential property in comparison other properties within 800 feet of the Project. Therefore, the officials’ have established that the financial effect on their financial interests is indistinguishable from its effect on the public generally and they are not barred from participation under the Act.

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:dkv