



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 8, 2021

Jeffrey Ballinger
City Attorney
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-21-141

Dear Mr. Ballinger:

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

Does City of Palm Springs (“City”) Councilmember Dennis Woods have a disqualifying conflict of interest under the Act as to potential decisions before the Council to sell, rezone, or establish a conservation easement (restrictive open space covenant) over the two City-owned properties, where those properties are within 500’ and 1000’ feet, respectively, of the Councilmember’s residence?

CONCLUSION

Yes. Councilmember Dennis Woods may not take part in these decisions. Under Regulations 18702.2(a)(7) and (8), it is reasonably foreseeable that the decisions will have a material financial effect on the Councilmember’s interest in his residence.

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 18109 through 18998 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 City currently owns two properties, referred to as the “Crescendo property” and the “Boulders property.” The properties are currently undeveloped open space, both zoned R1A, which allows for residential use. You provided a map of the properties, which indicates that these are large parcels adjacent to existing residential neighborhoods and undeveloped land. Councilmember Woods owns a residence adjoining (within 500’) the Crescendo property and just within 1000’ of the Boulders property. In 2017, the Council approved a final map for the Boulders property for the development of 45 single family residential lots, but the final map was never recorded, none of the improvements occurred, and the entitlements have now expired. The Crescendo property was also previously entitled, but those entitlements have also expired. Both properties were transferred by a local developer to the City pursuant to a settlement agreement.

The City is likely to soon consider actions related to the properties, which may include selling the properties, rezoning the properties (either with additional housing density, or alternatively as open space), or establishing a restrictive open space covenant over one or both properties. The City would be required to comply with the Surplus Land Act before selling the properties. The details of any potential sale, rezone, or open space covenant are not yet known. However, all the potential decisions directly relate to the City-owned properties and would impact their future development potential in some way.

Councilmember Woods was previously advised in Advice Letter A-20-127 that he was not prohibited from participating in the City’s decision to hire a real estate broker to list the properties for sale, as a first step in investigating what interest exists in the marketplace for the two properties, because that decision would have no measurable impact on his financial interest in his residence.

ANALYSIS

Under Section 87100 of the Act, “[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.” “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 specified economic interests. (Section 87103.) Among those specified economic interests is any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency.” It further provides that 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 Regulation 18702.2(a)(1)-(6).

Councilmember Wood's real property interest is not explicitly involved in the governmental decisions at issue.

Where an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If 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 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Applicable to the Crescendo property decisions, Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property parcel is material whenever 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. No facts have been presented indicating that the decisions for the Crescendo property would not have such an impact on Councilmember Wood's property. Therefore, under Regulation 18702.2(a)(7), it is reasonably foreseeable that the decisions to sell, rezone (with additional housing density or alternately as open space) or establish a restrictive open space covenant over the Crescendo property will have a material financial effect on Councilmember Wood's property. .

Applicable to the Boulders property decisions, Regulation 18702.2(a)(8) provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property parcel is material whenever the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value. The facts indicate that the Boulders property decisions, to sell, rezone (with additional housing density or alternately as open space) or establish a restrictive open space covenant over the property, would impact the character of Councilmember Woods' residential property and its market value. These decision will determine whether the Boulders property is developed in the future (bringing increased traffic, noise levels and intensity of use in proximity to Councilmember Woods' residential neighborhood) or preserved as a large open space. Accordingly, it reasonably foreseeable that the decision regarding the Boulders property will have a material effect on Councilmember Wood's property under Regulation 18702(a)(8).

Based on the facts provided, Councilmember Woods' has a prohibitive financial interest in the Crescendo decisions and in the Boulders decisions.

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
Counsel, Legal Division

LKH:dkv