



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 06, 2021

Colin Burns
Harper & Burns, LLP
453 S Glassell St.
Orange, CA 92866

Re: Your Request for Advice
Our File No. A-21-146

Dear Mr. Burns:

This letter responds to your request for advice on behalf of City of Fountain Valley (“City”) Council Member Glenn Grandis 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 Council Member Grandis have a prohibitive financial interest in decisions involving the Slater Investment Project (“Project”), due to his ownership of a condominium located within 562 feet of the Project?

CONCLUSION

No. Under Regulation 18702.2(a)(8) the facts indicate the Project is not likely to change the development potential, income producing potential, highest and best use, character, or market value of the Council Member’s condominium, because the Project is in a developed urban area, on a parcel across a four-lane street that has existing multi-storied buildings and parking in use, and the

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.

City Police Station buffers the condominium's view of the Project. Therefore, the Council Member does not have a prohibitive financial interest in the decision and may participate.

FACTS AS PRESENTED BY REQUESTER

City Council Member Glenn Grandis owns a condominium located 562 feet from a development proposed by developer Slater Investments ("Slater"). Slater proposes to build a project consisting of 256 residential units and 6,350 sq. feet of restaurant space in a five-story mixed use building. Council Member Grandis's condominium and the proposed project site are separated by the City's Police Station headquarters. You attached the developer's application packet which states the Project site encompasses 3.34 acres and would add a 5-floor building with 256 multi-residential units, a restaurant, and 406 parking stalls. It is noted that the Project will cause a "substantial change in demand for municipal services (police, fire, water, sewage, etc.);" however there is no further indication that the Project involves any improvements or changes to municipal services. The "Locator Map" provided shows the Project parcel is in an urban, developed area. The parcel currently has three multi-storied buildings surrounded by parking spaces, and with some trees and landscaping. Council Member Grandis' condominium is located across a four-lane street, Slater Avenue, and its view of the Project is blocked by the Police Station Headquarters, a multi-storied building, located adjacent to the condominium and kitty-corner to the Project.

At your request, the City's Director of Planning and Building reviewed the materiality standard for real property located between 500-1000 feet from a proposed project. The City Director believes the Slater project will not result in a change to the development potential of Council Member Grandis's property; income producing potential (not including market rate changes to rent); its highest and best use; nor will it result in changes in traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality of Council Member Grandis's property.

At your request, local licensed Realtor Susan Sarastrri reviewed the potential impacts of the Slater project. In her email, she noted a number of factors leading her to conclude there would not be a change in the market value or rents for Council Member Grandis's property related to the Project, as follows:

I have reviewed the proposed Slater Investment project and the possible monetary impact on Council Member Glenn Grandis' property in the Solano Walk community. I find none for the following reasons:

- The distance of the proposed project is 562.2 feet from the Council member's townhouse.
- The Solano Walk community is a private, gated townhouse community, accessible only by a gate code.
- Fountain Valley City Hall, the Police Station, the Boys and Girls Club facilities and parking lots for each are located within the 562.2 feet between the proposed Slater Investment project and the subject property, thereby negating any value impact.

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).) Council Member Grandis has identified a real property financial interest in his condominium.

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). None of the items in Regulation 18702.2(a)(1)-(6) are relevant here. And we note, there are no facts indicating that the Project will involve the construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities. (Regulation 18702.2(a)(6).) Council Member Grandis’ 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 Council Member’s real property, 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 establish that the Project is in a developed urban area that has existing multi-storied buildings and parking in use; that the official’s residence is in a gated community separated by a four-lane street; and the City Police Station buffers the view of the Project. Considering the existing use of the Project property and the nature of the urban area, as well as the buffers between the residence and the Project, it appears from the facts provided that decisions regarding the Project

are unlikely to change the condominium's development potential, income producing potential, highest and best use, character, or market value. Accordingly, it not reasonably foreseeable that the Project decisions would have a material effect on Council Member Grandis' property under Regulation 18702(a)(8).

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