



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

January 10, 2022

Larissa Seto
City of Pleasanton
123 Main Street | P. O. Box 520
Pleasanton, CA 94566-0802

Re: Your Request for Advice
Our File No. A-21-169

Dear Ms. Seto:

This letter responds to your request for advice on behalf of Pleasanton City Councilmember Jack Balch 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

Under the Act, may Councilmember Balch take part in a decision related to the approval of a planned unit development plan for a 22-unit project on a 112-acre parcel (the “Spotorno Project”) when a parcel adjacent to a portion of the Spotorno Project is owned and inhabited by his aunt and uncle?

CONCLUSION

No, Councilmember Balch is prohibited from taking part in such a decision because he has a source of income interest in his aunt and uncle and there is clear and convincing evidence the decision would have a substantial effect on their real property by imposing an open space easement that would prevent future development adjacent to their property.

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

In the City of Pleasanton, the Spotorno Project is a planned unit development of 22 homes on a 112-acre parcel, with the homes proposed to be developed in the southern area of the Spotorno property. A portion of the Spotorno property that is directly adjacent to property owned by the aunt and uncle of Spotorno City Councilmember Jack Balch (“Aunt” and “Uncle”). Aunt and Uncle’s property is their primary residence and not used for any business purposes. The adjacent portion of the Spotorno property shares a common boundary of 30 feet and is to remain open space. Aunt and Uncle’s property is about 1,187 feet from the nearest proposed home in the Spotorno Project and about 2,555 feet from the Spotorno Project’s proposed connection with Alisal Street, the shared public roadway.

California Environmental Quality Act (CEQA) analysis has determined the Spotorno Project:

- (1) is consistent with the City of Pleasanton’s General Plan and applicable 1998 Happy Valley Specific Plan (“Specific Plan”);
- (2) would not create any new significant impacts on traffic and the conclusions and mitigations of the Specific Plan would be unchanged;
- (3) is consistent with underlying zoning;
- (4) would have a less than significant effect on scenic vistas with mitigation measures set forth in the Specific Plan; and
- (5) would have a less than significant effect on air quality because the Specific Plan concluded that the 22 new homes are not significant in the context of regional growth, and mitigation efforts regarding construction dust control are required.

The Specific Plan determined there would be a temporary increase in noise due to the construction for a short-term noise impact. However, Aunt and Uncle’s property is adjacent to the Spotorno’s open space and further from the construction portion of the Project, as noted above. Similarly, because Aunt and Uncle’s property is by the Spotorno Project’s open space area, the privacy of their property would be unaffected.

The neighborhood of the proposed Spotorno Project site is residential with single-family homes, but to-date, the Spotorno Project property has only be used for grazing. The 860-acre Specific Plan includes about 176 single family homes and envisioned the Spotorno Project Site developing with 22 homes. The City Council’s decision approving the Spotorno Project would impose an open space easement making Parcel C—the open area adjacent to Aunt and Uncle’s property—not subject to further development. The open space easement was a requirement of the Specific Plan in exchange for being able to develop the 22 homes.

Councilmember Balch is an owner, officer and director of Balch Enterprises, Inc. (“BEI”). He receives a salary of more than \$500 in income annually from BEI. Uncle is a semi-retired, part-time employee, officer, and director of BEI, and does not have an ownership interest in BEI. Through the corporate governance structure, Uncle is a minority vote on the Board and in application effectively does not have the ability to singularly cause direction of the management and policies of BEI.

Aunt and Uncle wholly own a limited liability corporation (“LLC”) that owns real property in another jurisdiction. Councilmember Balch has no ownership interest in the LLC. This LLC rents industrial real property to third-party tenants and pays a management fee to BEI for services. Councilmember Balch’s pro-rata share of the gross income paid to BEI from this LLC is between \$1,000 and \$10,000 per year (based on the pro-rata share of Councilmember Balch’s ownership interest in BEI). Aunt and Uncle, as joint owners of the LLC, could terminate LLC’s formal contract with BEI at their sole discretion by exercising a termination option in their documented management agreement.

Councilmember Balch has an indirect ownership interest of less than 10% and an investment value greater than \$2,000 in other LLC and LP entities (the “Others”) that own real property in Pleasanton as well as other jurisdictions. Aunt and Uncle are also indirect partial owners of a percentage of these Others, but do not own a majority interest in any. These Others rent real property to third-party tenants and pay a management fee to BEI for services. Councilmember Balch’s pro-rata share of the gross income paid to BEI from these Others is cumulatively greater than \$100,000. Aunt and Uncle do not have the authority to modify or terminate the Others’ contracts with BEI nor do they have the ability to cause direction of the management and policies of the Others. In many cases, this authority resides with Councilmember Balch.

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 are:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103.)

In addition to having a source of income interest in any business entity from which the official has received income of \$500 or more within 12 months before the relevant governmental decision is made, the official also has a source of income interest in any individual owning a 50% or greater interest in that business entity, or any individual who has the power to direct or cause the

direction of the management and business policies of the business entity. (Regulation 18700.1(a)(2).)

An official's "immediate family" includes only the spouse and dependent children. (Section 82029.) Accordingly, Councilmember Balch does not have an economic interest in his Aunt and Uncle based on their familial relationship. Based on the facts provided, Councilmember Balch has economic interests in BEI and Others as business entities, as well as any client of his business entity interests if his pro rata share of income from the clients is \$500 or more in the 12 months before the decision. Councilmember Balch's pro-rata share of the gross income paid to BEI from LLC is between \$1,000 and \$10,000 per year (based on the pro-rata share of Councilmember Balch's ownership interest in BEI). Therefore, Councilmember Balch has a source of income interest in LLC. Additionally, because Aunt and Uncle wholly own LLC, they also constitute source of income interests under Regulation 18700.1(a)(2).

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. 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 Regulation 18702.2(a)(1)-(6)."

Where, as here, 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."

As explained above, the Act does not disqualify Councilmember Balch from taking part in any governmental decision based on his familial relationship with his Aunt and Uncle. Rather, the Act only prohibits Councilmember Balch from taking part in a decision that would have a reasonably foreseeable, material financial effect on at least one of his economic interests. As noted above, Councilmember Balch has several business entity and source of income interests, including source of income interests in Aunt and Uncle under Regulation 18700.1(a)(2).

The reasonably foreseeable financial effect of a governmental decision on an official's source of income interest is material if the source of income is an individual and the official knows or has reason to know the individual has an interest in real property and there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(2)(C).) Here, the decision to approve the Spotorno Project would impose an open space easement on Parcel C, the area adjacent to Aunt and Uncle's real property. This would ensure that the area adjacent to Aunt and Uncle's property and, thus, the view and other aspects of Aunt and Uncle's property, could not be affected by future development. This constitutes clear and convincing evidence of a substantial effect on Aunt and Uncle's real property. Accordingly, the Act

prohibits Councilmember Balch from taking part in the decision and we need not further analyze the potential impact on his other economic interests.

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

Sincerely,

Dave Bainbridge
General Counsel



Kevin Cornwall
Counsel, Legal Division

KMC:dkv