



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 10, 2021

Katherine Wisinski
Assistant City Attorney
City of Brentwood
Office of the City Attorney
150 City Park Way
Brentwood, CA 94513-1164

Re: Your Request for Advice
Our File No. A-21-016

Dear Ms. Wisinski:

This letter responds to your request for advice on behalf of Brentwood City Councilmember Jovita Mendoza 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 Brentwood City Councilmember Mendoza take part in reviewing and approving various aspects of a project that would develop more than 200 new single-family residences, among other potential changes, given that her residence is located approximately 1,200 feet from the nearest boundary of the project site?

CONCLUSION

Yes, the Act permits Councilmember Mendoza to take part in the decisions at issue, as there is insufficient evidence to rebut the presumption that the decisions would not have a material financial effect on her real 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 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

City of Brentwood (“City”) is a general law city in Contra Costa County. Although the majority of the City is built out, various undeveloped sites remain. One such site is an approximately 137-acre site in the northwest area of the community (the “Project Site”). The Project Site is bisected, north and south, by Sand Creek, which flows through the northern portion of the site. It currently bears four separate General Plan land use designations: Regional Commercial (“RC”), Park (“P”), Permanent Open Space (“P-OS”), and Residential – Low Density (“R-LD”). The entirety of the site is currently zoned Planned Development No. 36 (“PD-36”), and the zoning allows for a variety of uses: low density (i.e., single-family) residential development, commercial uses, and parks and open space uses.

West Coast Home Builders, Inc. (“West Coast”) and Discovery Builders, Inc. (collectively, “Applicants”) have submitted a series of applications to the City of Brentwood to develop the Project Site. As currently proposed, the project consists of:

- Development of approximately 252 single-family homes (the “Bridle Gate Subdivision”);
- Development of an approximately 11-acre parcel in the middle of the Bridle Gate Subdivision as either (1) a public elementary school site, or (2) as an additional 63 single-family homes, in the event a school is not developed at this location;
- Extension of Sand Creek Road, a major arterial, from the eastern border of the Project Site to its western boundary;
- Dedication of roughly 4 acres of public parkland to the City of Brentwood for neighborhood parks;
- Continued designation and use of approximately 30 acres as Open Space that will not be developed; and
- Development of infrastructure necessary to support the development identified above, including improvements to and new construction of transportation, water, wastewater, and electrical infrastructure.

In addition, the existing General Plan land use designation and zoning would allow the future development of roughly 34 acres within the Project Site with commercial uses (which uses would continue to be allowed with the proposed General Plan Amendment and Zoning Amendment listed below). Collectively, these elements constitute the “Project.”

To develop the Project, Applicants applied to the City for the following entitlements and environmental review documents for the Original Project. All of the requested entitlements will require City Council review and certification or approval:

- A Final Environmental Impact Report (“FEIR”), which would include a Mitigation Monitoring and Reporting Program, and a statement of overriding considerations;
- A General Plan Amendment (GPA 17-001) to (1) change the land use designation for 4.3 acres of the site south of Sand Creek Road to ‘Park’ for two public parks associated with the single-family units, and (2) modify a figure in the General Plan’s Circulation Element to change the required alignment of the proposed San Jose Avenue extension to terminate at a new intersection with Sand Creek Road, not connect to Hillcrest Avenue, as is currently required;

- A Zoning Amendment (RZ 17-004) for the site to establish project-specific development standards for PD-36;
- A Vesting Tentative Subdivision Map (VTSM 17-002) to subdivide the Project Site into roughly 4 acres of neighborhood park space, 14 acres of multi-family use, approximately 27 acres of permanent open space, 252 single-family residential lots, an 11 acre elementary school site (with optional overlay for an additional 63 single-family homes), and approximately 34 acres of future commercial development;
- Design Review for the single-family (DR 17-007) residences; and
- A Development Agreement (DA 19-001) between the City and West Coast.

On September 1, 2020, the City's Planning Commission held a public hearing on a previous iteration of the Project; that version would have additionally converted roughly 14 acres of the existing commercial land to 258 multi-family residences. Following the public hearing, the Planning Commission recommended that the City Council deny the Project. The City Council never considered that Project, however, as the Applicants requested that Council suspend consideration on the night of the Council's scheduled hearing date (September 15, 2020). Subsequently, Applicants requested the Council hearing be rescheduled to February 9, 2021. On December 30, 2020, the Applicants notified the City that they wished to revise the Project as described above. The Project is scheduled to be presented to the City Council at a public hearing in the course of its March 9, 2021 meeting. During the public hearing, the Project will be presented to the City Council, along with the Planning Commission's recommendation on the earlier version of the Project, for the Council's determination as to whether to approve, deny, or request modifications to the Project.

Jovita Mendoza is a newly-elected member of the Brentwood City Council. Councilmember Mendoza owns her home, which is located approximately 1,200 feet away from the Project Site. A draft Environmental Impact Report ("EIR") was prepared to study the earlier version of the Project and evaluated the impacts of the Project on the "environment," as that term is defined in CEQA (i.e., "the physical conditions which exist within the area which will be affected by the proposed project, including land, air, water, minerals, flora, fauna, and objects of historic or aesthetic significance"). One chapter of the document begins with the statement that "The Air Quality and Greenhouse Gas Emissions chapter of the EIR describes the potential impacts of the proposed project on local and regional air quality," but the analysis is not specific to Councilmember Mendoza's property.

Your request for advice included three attachments: (1) the proposed vesting tentative subdivision map for the Project; (2) a map indicating the location of Councilmember Mendoza's residence in relation to the Project; and (3) trip distribution and traffic volume figures from the Project EIR.

In a follow-up email, you provided an updated version of the proposed vesting tentative subdivision map for the Project. You also clarified that the Applicants are excising the parcel upon which the 258 multi-family residences would have been built from the Project entirely, such that the aforementioned 252 single-family residences are the only residences still proposed. The EIR will not be amended, as it will simply have studied a more expansive version of the Project than is ultimately being requested to be approved. The City's EIR consultant is preparing a memorandum to document this and note that, though analyzed, the anticipated impacts associated with the multi-family development will not come to fruition without the development of those 258 residences.

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 “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Councilmember Mendoza has an economic interest in her residence as real property worth more than \$2,000.

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).” Here, Councilmember Mendoza’s real property 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.” It is a realistic possibility that a neighborhood development can have material financial effects on surrounding residential properties.

The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official’s property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official’s property. (Regulation 18702.2(b).)


Here, Councilmember Mendoza’s real property interest is located more than 1,000 feet from the closest boundary of the Project Site and, accordingly, a different, heightened standard for determining materiality applies. Per Regulation 18702.2(b), it is presumed that decisions pertaining to the Project would not have a reasonably foreseeable, material financial effect on the Councilmember’s real property interest. In order to overcome that presumption, there must be clear and convincing evidence of a substantial effect on Councilmember Mendoza’s property. Based on the facts provided, there is no indication that any financial effect on Councilmember Mendoza’s

property is material based on the proximity of her residence from the Project Site. Accordingly, based on the facts provided, Project-related decisions would not have a reasonably foreseeable, material financial effect on Councilmember Mendoza's real property and, as such, the Act does not prohibit her from taking part in the decisions.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Kevin Cornwall
Counsel, Legal Division

KMC:aja