



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 18, 2022

Gary B. Bell
Town Attorney
Town of Yountville
333 University Ave. Suite 200
Sacramento, CA 95825

Re: Your Request for Advice
Our File No. A-22-038

Dear Mr. Bell:

This letter responds to your request for advice on behalf of the Town of Yountville Mayor John Dunbar and three Councilmembers – Margie Mohler, Eric Knight, and Joe Tagliaboschi, 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.

QUESTIONS

1. Do Councilmembers Knight and Mohler have a conflict of interest in a decision to approve a development agreement and rezone a parcel of property as a result of owning real property within 500 feet of that parcel?

2. Do Mayor Dunbar and Councilmember Tagliaboschi have a conflict of interest in a decision to approve a development agreement and rezone a parcel of property as a result of owning real property more than 500 feet but less than 1,000 feet from the parcel?

3. If any of the officials have conflict of interest in the decision concerning the parcel in question, does the Act’s the “public generally” exception permit their participation in the decision?

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 18104 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.

CONCLUSION

The public generally exception applies to allow the officials to take part in the decision notwithstanding any financial effect on their respective interests. Based upon the facts provided, approximately 20 percent of the residential properties are located within a similar or closer distance than the officials' property and there is no indication that the decision will affect the officials' properties uniquely in comparison to other residential properties.

FACTS AS PRESENTED BY REQUESTER

The Town is considering a development agreement relating to a parcel of real property approximately six acres in size and located in the center of the Town (the "Parcel.") In a follow-up email, you stated that the Parcel currently has split zoning: half the parcel is zoned "public facilities" and half the parcel is zoned "parks and playfields". The uses contemplated under the development agreement are not allowed in the "parks and playfields" zone. However, the "public facilities" zone authorizes "any other use authorized by a development agreement under Chapter 17.216 of [the Yountville Municipal Code]." (YMC 17.48.040(D).) The plan is to rezone the portion of the parcel zoned "parks and playfields" to "public facilities" so the whole parcel is zoned "public facilities" and the uses under the development agreement will be allowed throughout.

The Parcel is the former site of the Yountville Elementary School, which was shut down in 2020 by the Napa Valley Unified School District. The site is not currently being used, except for some recreational uses and auxiliary uses, and has a temporary fence around all buildings to prevent access. The portion of the Parcel zoned "parks and playfields" is a baseball diamond and recreation field associated with the former school. The portion of the Parcel zoned "public facilities" contains the school buildings (classrooms and administration), which are not currently used.

The Development Agreement contemplates future development of the Parcel for 40-45 residential units, mixed-use commercial space, and open space. The Development Agreement does not authorize any development of the Parcel and any future development would be subject to further discretionary approvals of the Town Council including, for example, use permits and a master development plan, which are likely to be requested. Concurrently with approval of the Development Agreement, the Town Council will consider rezoning the Parcel to allow future development under the Development Agreement.

The Official's Property Interests

The property interests at issue here are the Mayor and the three Councilmembers' primary residences. We note that all officials' residences are separated from the Parcel by other residences.

Mayor Dunbar

Mayor Dunbar owns real property 903 feet from the Parcel, at the end of a cul-de-sac, and on a tertiary street not used for through traffic.

Councilmember Mohler

Councilmember Mohler owns real property 433 feet from the Parcel, when measured from the two nearest property lines of the two properties; and is located on a secondary street.

Councilmember Knight

Councilmember Knight owns real property 428 feet from the Parcel, when measured from the two nearest property lines of the two properties; and is located on a secondary street.

Councilmember Tagliaboschi

Councilmember Tagliaboschi owns real property 820 feet from the Parcel, when measured from the two nearest property lines of the two parcels. Councilmember Tagliaboschi's real property is 820 feet from the Parcel, on a secondary street not used for through traffic.

Public Generally Exception

You also state that the Town is 1.49 square miles in total area and, as a result, the Parcel is relatively near most other points in the Town. Based on the facts provided, the only financial interests involved are the officials' primary residences. In a subsequent communication, you indicated that all councilmembers, including the mayor, are elected at-large. You also stated that there are a total of 750 residential real properties in the Town, and that 152, or 20 percent, are located within 500 feet of Parcel, while 409, or 54 percent, are located within 1,000 feet of the Parcel.

ANALYSIS

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official 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 the official's immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests are "[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).) Mayor Dunbar and Councilmembers Mohler, Knight, and Tagliaboschi each have economic interests in their respective real properties.

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)." The aforementioned

officials' real property interests are not explicitly involved in the governmental decisions relating to the development agreement and zoning change.

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."

Councilmembers Mohler and Knight

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is presumed material whenever the governmental 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. (Regulation 18702.2(a)(7).) The Development Agreement and zoning change would result in rezoning the portion of the parcel zoned "parks and playfields" to "public facilities" so the whole parcel is zoned "public facilities," thus allowing the site of the former and now unused elementary school to be redeveloped with 40-45 residential units, mixed-use commercial space, and open space.

No evidence has been provided to indicate that the decisions related to the approval of the development agreement and zoning change would not have a measurable impact on Councilmembers Mohler and Knight's properties so it is reasonably foreseeable the decisions would have material financial effects on the officials' properties

Mayor Dunbar and Councilmember Tagliaboschi

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental 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:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

As Mayor Dunbar's and Councilmember Tagliaboschi's residences are located between 500 and 1,000 feet from the boundary of the Parcel, the relevant materiality standard is Regulation 18702.2(a)(8). However, in light of the conclusion below that the public generally exception applies, it is unnecessary to determine whether it is reasonably foreseeable the decision will have a material effect on the Mayor Dunbar's or Councilmember Tagliaboschi's property interests.

Public Generally Exception

Commonly referred to as the “public generally” exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of his or her interests if the decision’s financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) In general, an effect on an official’s interest is indistinguishable from its effect on the public generally if a significant segment of the public is affected and the effect on the official’s interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).) A significant segment of the public includes at least 15 percent of residential real property within the official’s jurisdiction if the only interest an official has in the governmental decision is the official’s primary residence. (Regulation 18703(b)(2).) A unique effect is defined to include a disproportionate effect on an interest in real property resulting from the proximity of a project. (Regulation 18703(c).)

Here, the officials’ respective properties are located less than 1,000 feet from the boundary of the Parcel, with two of the properties within 500 feet. The facts provided indicate that 20 percent of residential parcels are located within 500 feet of the Parcel, and 54 percent are located within 1,000 feet of the Parcel. Further, the effect of the decision concerning the Parcel on the Councilmember’s property interests is not “unique” as compared to any of the other residences identified in the significant segment. Therefore, the officials may participate in the decision under the public generally exception. (Regulation 18703.)

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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