



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 27, 2023

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

Re: Your Request for Advice
Our File No. A-23-155

Dear Ms. Wisinski:

This letter responds to your request for advice on behalf of Planning Commissioner David Sparling 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 Planning Commissioner David Sparling have a disqualifying interest in the Deer Ridge Clubhouse repurposing decision or in the decision regarding the potential future project of constructing a new pool, cabana, restrooms, and a full-service spa, lounge, and wine bar building due to his real property interest located within 920 feet of the lot involved?

CONCLUSION

Yes. It is reasonably foreseeable that each decision will have a material financial effect on the market value of his residential real property under Regulation 18702.2(a)(8) and he may not participate in either 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.

FACTS AS PRESENTED BY REQUESTER

Brentwood (“City”) is a general law city in Contra Costa County. Within the City is Planned Development District No. 20 (“Deer Ridge”), a zoning district that has been developed primarily as a single-family residential neighborhood that adjoins an 18-hole golf course. The City’s municipal code divides Deer Ridge into four general land use areas: (1) single-family homes, (2) general commercial, (3) planned employment center, and (4) open space/golf course.

Under the City’s code, the following uses are conditionally permitted within Deer Ridge: a golf course and associated uses, including clubhouse, driving range, swimming and tennis facilities, and “related uses.” Accordingly, in August 2000 the City Planning Commission approved a conditional use permit that allows for the development of a golf course clubhouse, consisting of a pro shop, dining room/bar, office and bathrooms, a driving range and putting green, a pool cabana with restroom facility, and maintenance building, subject to various conditions. The “Deer Ridge Clubhouse,” a roughly 9,000 square-foot structure consisting of the golf course clubhouse, pro shop, dining room/bar, office, and bathrooms, was constructed on the golf course/open space area located off Foothill Drive. The Deer Ridge Clubhouse is also accessible by golf cart paths on the interior of the golf course. The pool cabana with restrooms and the maintenance building were never built. Eventually, the golf course ceased operations and the Deer Ridge Clubhouse was shuttered, though the owner persisted in marketing the property for continued use.

On April 16, 2023, a local developer (“Developer”) submitted a preliminary proposal to reuse and redevelop portions of the Deer Ridge Clubhouse and the surrounding area of golf course/open space on the involved lot (“Project site”). The proposal has evolved into multiple aspects: landscaping the Project site, repurposing the Clubhouse building as a restaurant and bar, potentially constructing a new pool, cabana, restrooms, and a 4,000 square-foot building spa/lounge and wine bar, as well as potentially exploring other permissible uses under the existing conditional use permit and Measure Q, as discussed further below.

On August 15, 2023, the Planning Commission approved the Developer’s request to install new landscaping consisting of trees, arbors, olives, and vines on the Project site. This work was subject to design review approval, which the Planning Commission considered and approved. Commissioner Sparling recused himself from consideration of this action and left the room when the matter was called. Also, the Planning Commission generally reviewed and discussed the Developer’s request to repurpose the existing Clubhouse building for a restaurant and bar under the terms of the original conditional use permit. The Planning Commission discussed the status of the conditional use permit without taking any action on it. Commissioner Sparling recused himself from this discussion and left the meeting when the item was called. During that discussion, the Planning Commission requested that staff consult with the Developer to identify whether modified conditions of approval might be needed to clarify the scope of the original conditional use permit to avoid impacts to nearby residences. The Planning Commission will revisit this discussion for possible action following the completion of these consultations.

In addition, the Developer indicated he would like to possibly construct a new pool, cabana, and restrooms, as well as a new 4,000-square-foot building that would include a full-service spa, lounge, and wine bar in the future (“Potential Future Project”). However, no application for this project has been filed. Staff advised the Developer that approval of the Potential Future Project would

likely require at least an amendment of the original conditional use permit and a design review, both of which are within the review authority of the Planning Commission, with the City Council retaining appeal power over any such decisions. It may also require either a vote of the City electorate or action by the City Council, given that the Project Site has been included within a voter-protected open space overlay (Measure Q) since November 2022 and voter approval is required before covered community open spaces can be developed with more intensive land uses.

At the August 15, 2023, Planning Commission meeting, the Developer also indicated that he would like to explore additional uses that would be in keeping with the uses originally authorized (though not built out or otherwise commenced) under the existing conditional use permit, and also be allowable under Measure Q (collectively, “Unidentified Potential Uses”). The full extent of those possible uses, and requisite conditions of approval, has not yet been developed but may return to the Planning Commission in the future. No formal application has been filed regarding the Unidentified Potential Uses.

Commissioner Sparling was appointed to the Planning Commission after the original conditional use permit was approved by the Planning Commission in 2000. Commissioner Sparling owns and lives in a single-family home in Deer Ridge near the end of a cul-de-sac. His lot is designated as Residential-Very Low Density and located approximately 920 feet (as the crow flies) from the southern boundary of the Project site. The Project site is not visible from his residence and is geographically separated by Spyglass Drive and the surrounding residential neighborhood.

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.” The financial interests that may give rise to an official’s disqualifying conflict of interest under the Act are set forth in Section 87103 and include an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) Commissioner Sparling has identified that he has a real property interest in his residence located within 920 feet of the Project site.

The governmental decisions for this analysis are the repurposing of the Deer Ridge Clubhouse Project and the Potential Future Project (construction of a new pool, cabana, restrooms, and the spa, lounge, and wine bar building). The Developer’s request regarding landscaping has been approved by the Planning Commission and we only provide advice on future decisions. No facts are presented for analysis regarding the Unidentified Potential Uses and we do not further consider this issue. However, the analysis below may provide guidance on this issue. The official should seek additional advice, as needed, once specific facts regarding a future decision are known.

Foreseeability and Materiality

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. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here with the two identified projects, 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 18701(b).)

Applicable to these facts, where the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, Regulation 18702.2(a)(8) states that the reasonably foreseeable effect of a decision is material if the decision would do any of the following: 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. (Regulation 18702.2(a)(8)(A)-(E).)

Commissioner Sparling's parcel is within 920 feet of the Project site. The facts indicate that the decision to allow or not allow the repurposing of the existing Deer Ridge Clubhouse building for a restaurant and bar would change his parcel's market value. The Developer is seeking to revitalize a community amenity that is currently shuttered on a golf course that is no longer operating. Commissioner Sparling's residential property is part of a community built around the golf course. The golf course, clubhouse, planned amenities, or lack thereof, impact the market value of the Deer Ridge residences by attracting or discouraging potential buyers. Due to this potential to change the market value of Deer Ridge residences, it is reasonably foreseeable that the Deer Ridge Clubhouse Project decision will have a material financial effect on his residential property under Regulation 18702.2(a)(8)(E). Similarly, the Potential Future Project decision will determine whether additional amenities (a pool, cabana, spa, and a lounge and wine bar building) are constructed on the Project site and would change the market value of the Deer Ridge residences. It is reasonably foreseeable that the Potential Future Project decisions will have a material financial effect on his residential property under Regulation 18702.2(a)(8), as well. Therefore, Commissioner Sparling is disqualified from participating in each decision. For public meetings, he must recuse himself from the decision, identify the disqualifying financial interest on the public record prior to the consideration of the item, and leave the room. (Regulation 18707.)

If you have other questions on this matter, please contact me at KHarrison@Fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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