



FAIR POLITICAL PRACTICES COMMISSION

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December 2, 2009

John G. Barisone
City of Capitola
Office of the City Attorney
333 Church Street
Santa Cruz, CA 95060

Re: Your Request for Advice
Our File No. A-09-234

Dear Mr. Barisone:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

QUESTION

Would the "public generally" exception allow three planning commissioners and two city councilmembers who own real property within 500 feet of the City Hall and Pacific Cove parcels to participate in decisions on the Capitola Village Parking project?

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.

CONCLUSION

We are unable to determine if the public generally exception in Regulation 18707.1 applies because you have not provided sufficient facts to determine whether a “significant segment” as defined in Regulation 18707.1(b)(2) will be affected by the Plan.

However, based on the facts presented in your request, none of the officials qualify under the public generally exception for “small jurisdictions” under Regulation 18707.10. as discussed below.

FACTS

The city of Capitola is a small coastal city in Santa Cruz County with a population of approximately 10,000. The city comprises 1.7 square miles. The Capitola Planning Commission (“planning commission”) and city council are embarking on a comprehensive planning process to address a severe parking shortage in the city’s “Capitola Village” (“Village”) neighborhood. This neighborhood—which includes the city’s beach, surf break, municipal wharf and numerous locally-owned businesses and restaurants—hosts hundreds of thousands of tourists and visitors annually and is a vital component of the city’s economy, both in terms of revenue and employment opportunities.

The city has historically wrestled with issues concerning traffic and parking due to the fact that it literally predates the automobile and is substantially confined by both nature (the ocean) and dense residential and commercial development.

A parking analysis (which you have included in your request for advice) prepared by a city-retained consulting firm, RBF Consulting, outlines the scope of the parking/traffic problem to be addressed by the planning commission and city council.

The RBF analysis sets forth potential solutions to the parking supply shortage including:

- “[R]epaving and stripping” the western end of the Pacific Cove Mobile Home Park to “accommodate approximately 110 parking spaces.”
- Identifying “additional sources of parking” such as a parking structure which “could be incorporated into design for re-use and new development of currently identified under-utilized sites” including the Theater site, the current City Hall site or the Pacific Cove lot.

The RBF analysis will form the factual basis for the decision making and planning process before the planning commission and city council. It is anticipated that

one of the most prominent topics of discussion will be whether to develop additional parking spaces on the Pacific Cove parcel.

Currently, three of the five planning commissioners and two of the five city councilmembers own real property within 500 feet of the adjacent Pacific Cove and City Hall parcels. The officials' real property interests are all located within the Village parking plan. The officials are all required to live in the jurisdiction. The elected officials (city councilmembers) are elected in an at-large jurisdiction. The Pacific Cove and City Hall parcels are two of the city's larger parcels and together they comprise seven acres (or approximately 1/10 of a square mile).

You also stated during our telephone conversation of November 19, 2009, that with regard to each of the officials' real property interests, there are at least 20 other properties of similar value under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision.

The real property interests of the three Planning Commissioners and two City Councilmembers are as follows:

- **Planning Commissioner Edward Newman:** owns a commercial building located at 331 Capitola Avenue, which is within 300 feet of the City Hall parcel. The property is less than ¼ acre in size.
- **Planning Commissioner Michael Termini:** owns property—his principal residence—that is more than 300 feet from the Pacific Cove/City Hall parcels. The property is less than ¼ acre in size.
- **Planning Commissioner Gayle Ortiz:**
 - Owns property that serves as her principal place of residence that is more than 300 feet from the City Hall/Pacific Cove parcels. The property is less than ¼ acre in size.
 - Owns residential property that is “ancillary to her primary residence as a guest house and studio.” The parcel is more than 300 feet from the City Hall/Pacific Cove parcels and is less than ¼ acre in size.
- **City Councilmember Ron Graves:** owns property which serves as his primary residence. The property is within 300 feet of the Pacific Cove parcel and is less than ¼ acre in size.
- **City Councilmember Dennis Norton:** owns a parcel that serves as his principal place of residence. The property is more than 300 feet away from the Pacific Cove/City Hall parcels and is less than ¼ acre in size.

In light of this information, you wish to know whether the “public generally” exception would allow the three planning commissioners and two city councilmembers to participate in the Village parking planning and decision making process.

Due to the prominence the Pacific Cove parcel will play in informing all decisions concerning an ultimate parking plan for the Village, you state it “is not reasonable to proceed from the premise that decisions concerning the Pacific Cove parcel can be segregated from other decisions concerning the ultimate adoption and scope of that parking plan.” You also stated in our November 19, 2009 telephone conversation that decisions involving the City Hall parcel cannot be segregated from decisions involving the entire project area.

ANALYSIS

Based on the facts presented, we assume for purposes of this analysis that the officials involved have a conflict of interest in making, participating in making, and influencing government decisions involving the proposed parking planning decisions because they have real property within 500 feet of the Village parking area, the subject of the governmental decisions.

Therefore, we discuss only Step 7, the “public generally” exception.

The “Public Generally” Exception – General Rule

Even if a public official determines that his or her economic interests will experience a material financial effect as a result of the governmental decision before the official, he or she may still participate under the “public generally” exception if the material financial effect of a governmental decision on a public official’s economic interests is indistinguishable from its effect on the public generally. (Section 87103; Regulation 18707.)

Regulation 18707.1 provides that in order to meet the public generally exception, for real property interests, the decision must affect either 10-percent of all property owners or all residential property owners in the jurisdiction or the district the official represents (Regulation 18707.1(b)(1)(B)(i)), or 5,000 property owners or residential property owners in the jurisdiction. (Regulation 18707.1(b)(1)(B)(ii).

If the effect of the decision reaches these thresholds, it must next be determined whether the decision affects these other properties in “substantially the same manner” as it affects the official’s real property. (Regulation 18707(b)(4).) The phrase “substantially the same manner” is defined in Regulation 18707.1(b)(2).

You do not include information about the percentage of all property owners or all residential owners in the jurisdiction that would be affected by the Village parking plan.

Additionally, you do not include information regarding the number of property owners or residential property owners in the jurisdiction of planning commission or the city council.

Therefore, we are unable to determine if the public generally exception in Regulation 18707.1 applies because you have not provided sufficient facts to determine whether a "significant segment" as defined in Regulation 18707.1(b)(2) will be affected by the Plan. Without additional information, we are unable to analyze your question with regard to this regulation.

Public Generally Exception – Regulation 18707.10 – Small Jurisdictions – Effects on an Official’s Domicile

In addition to the basic rule for the "public generally" exception found in Regulation 18707.1, there are specialized forms of the exception provided in Regulations 18707.2-18707.10.

Regulation 18707.10 is limited in its application to a public official’s *personal residence*, in small jurisdictions only. It provides, in pertinent part, as follows:

“(a) The effect of a governmental decision on the residential real property that is the domicile of a public official is not distinguishable from the effect on the public generally if all of the following conditions are met:

“(1) The jurisdiction of the public official’s agency has a population of 30,000 or less and covers a geographic area of ten square miles or less;

“(2) The public official is required to live within the jurisdiction;

“(3) The public official, if elected, has been elected in an at-large jurisdiction;

“(4) The official’s property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;

“(5) The official’s property is located on a lot not more than one-quarter acre in size or not larger than 125 percent of the median residential lot size for the jurisdiction; and

“(6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value.”

In order to qualify for the public generally exception under Regulation 18707.10, an official's residence must meet *all* six requirements under the regulation. (Regulation 18707.10(a); *Gogna* Advice Letter, A-09-171.)

Based on your facts, all the officials (with the exception of Commissioner Newman who owns a commercial building) meet the basic requirement under Regulation 18707.10(a) that makes the exception applicable only to residential real property that serves as the public official's domicile. Because he has real property interests involved that are other than his personal residence, Commissioner Newman does not meet the requirements. (Regulation 18707.10(a).)

The criteria under Regulation 18707.10(a)(1)-(a)(3), (5) and (6) are also met for the remaining officials—Commissioners Termini and Ortiz, and Councilmembers Graves and Norton—because: (1) they are officials of a small jurisdiction with a population of less than 30,000; (2) they are all required to live within the jurisdiction; (3) the elected officials were elected in an at-large jurisdiction; (4) the real property interest is located on a lot not more than one-quarter acre in size; and (5) there are at least 20 other similarly valued properties under separate ownership within a 500 foot radius of the boundaries of the entire Village area—the subject of the parking project.

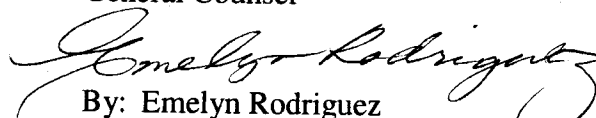
However, because you ask us to assume that the parking decisions involving the Pacific Cove/City Hall parcels may not be segmented from the decisions involving the entire Village parking area, Commissioners Termini and Ortiz, and Councilmembers Graves and Norton do not meet the requirement under Regulation 18707.10(a)(4). These officials' real property interests are within the boundaries of the Village parking project—the subject of the governmental decision.

Therefore, Commissioners Termini and Ortiz, and Councilmembers Graves and Norton do not qualify under the exception in Regulation 18707.10 because they do not meet all six criteria required by the regulation.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl