



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 7, 2018

Laurence S. Wiener
City Attorney
City of Beverly Hills
455 N. Rexford Drive, Room 230
Beverly Hills, CA 90210

Re: Your Request for Advice
Our File No. A-18-234

Dear Mr. Wiener:

This letter responds to your request for advice on behalf of Beverly Hills City Councilmember Lili Bosse 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, we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and that any advice we provide assumes your facts are complete and accurate.

QUESTION

1. May Councilmember Bosse take part in the City Council's interpretation of an existing permit requirement that would determine, among other things, whether her property is subject to the requirement?
2. May Councilmember Bosse take part in the City Council's consideration of an existing permit application for a property located approximately one-seventh of a mile away from her home?

CONCLUSION

1. No. Given that the outcome of the City Council's decision involves whether Councilmember Bosse's property is subject to the requirement, she may not take part in decisions related to the interpretation of the permitting requirement.
2. Councilmember Bosse may take part in the City Council's consideration of the existing permit application only if the decision regarding the interpretation of the permitting requirement is determined first and without her participation.

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

Councilmember Lili Bosse is one of five members who sit on the Beverly Hills City Council. Councilmember Bosse owns a home located in the Hillside Area of the City. The Hillside Area is generally located north of Sunset Boulevard, and makes up approximately twelve-percent of the residential properties in the City and five-percent of the dwelling units in the City.

The Hillside Area is a single-family zoning designation with unique development standards that apply to all homes in the Hillside Area. The Beverly Hills Municipal Code requires a property owner in the Hillside Area to request a Hillside R-1 permit in order to build a site with a cumulative floor area that exceeds 15,000 square feet. The cumulative floor area is the sum of a property owner's above-ground and basement floor areas.

In order for the reviewing authority to grant a request for a Hillside R-1 permit for a development, Beverly Hills Municipal Code Section 10-3-2550(E) states:

The reviewing authority may issue a Hillside R-1 permit to allow the total of the cumulative floor area developed on a site, in combination with the floor area of all basements on that site ..., to exceed fifteen thousand (15,000) square feet if the floor area ratio formula ... would so permit and the reviewing authority finds that the development will not have a substantial adverse impact on the scale, integrity, or character of the area or on the privacy of neighboring properties.

The decision made by a reviewing body pursuant to subsection 10-3-2550(E) is subject to the reviewing authority granted to the City Council.

The City Council plans to discuss how to interpret the Hillside R-1 permitting requirements in an upcoming meeting. Councilmember Bosse does not have a pending permit application, nor does she intend to apply for a Hillside R-1 permit. You state that Councilmember Bosse, as the owner of a legally nonconforming structure, would be precluded from filing an application for a Hillside R-1 permit for a development that exceeds 15,000 square feet because her home exceeds the floor area ratio formula. However, Councilmember Bosse would not be prohibited from applying for a Hillside R-1 permit because her home is legally non-conforming. Thus, Councilmember Bosse would be allowed to apply for a permit for her existing nonconforming structure.

Additionally, at an upcoming hearing, the City Council plans to review a pending Hillside R-1 permit application. Specifically, in an e-mail exchange on November 28, 2018, you note that a request was made for three Hillside R-1 permits to allow the remodel of an existing single-family residence (the "Applicant Property"). The Applicant Property is located approximately one-seventh of a mile away from Councilmember Bosse's property. Councilmember Bosse's property is not visible from the Applicant Property. The City Council's consideration of the permit application would not change any parcel's zoning designation.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests set forth in Section 87103. Specific to the provided facts, the following interests are relevant:

- An interest in real property in which the officer has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in the official's personal finances, including those of the official's immediate family. (Section 87103.) An official always has an interest in his or her personal finances.²

Based on the provided facts, Councilmember Bosse has a real property interest in her primary residence, assuming she has an interest of \$2,000 or more.

Foreseeability and Materiality

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. An official's financial interest is explicitly involved in a decision, and is presumed to be reasonably foreseeable, if the interest is a named party in, or the subject of, a decision before the official or the official's agency. (Regulation 18701(a).) Regulation 18701(a) establishes that 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). For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

City Council Interpretation of the Hillside R-1 Permitting Requirement

For real property, Regulation 18702.2(a) establishes that a foreseeable effect of a governmental decision on an official's financial interest is material if the decision:

- (5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on that real property....

² While an official also has an interest in his or her personal finances, including those of an immediate family member (Section 87103), an effect on an official's personal finances is not considered separately where the decision affects the official's interest in a business entity or real property. (Regulation 18702.5(c)). Therefore, we do not analyze Councilmember Bosse's interest in her personal finances.

In this case, the City Council's interpretation of the Hillside Area's permitting requirements determines which properties must apply for a Hillside R-1 permit for a specific use or improvement. As noted in your request, City Council's interpretation directly resolves whether Councilmember Bosse's property must request the issuance of a Hillside R-1 permit for any future development. Therefore, the decision involves the issuance, denial or revocation of a permit authorizing a specific use or improvement to Councilmember Bosse's real property, and it is reasonably foreseeable that the decision will have a material financial effect on Councilmember Bosse's real property interest.

City Council Consideration of Existing Hillside R-1 Permit Application

As stated above, Regulation 18702.2(a) establishes that a foreseeable effect of a decision on an official's financial interest is material if the decision:

(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

[¶] . . . [¶]

(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

Under the provided facts, the Applicant Property is approximately one-seventh of a mile away from Councilmember Bosse's property, is not visible from Councilmember Bosse's property, and approval of the permit application would not change either parcel's zoning designation. Assuming the decision is considered after a final determination regarding the City Council's interpretation of the Hillside R-1 permitting requirement, the City Council's consideration of the Applicant Property's Hillside R-1 permit application would not create a reasonably foreseeable material financial effect on Councilmember Bosse's real property interest.

Segmentation

In this case, a decision regarding the Applicant Property's Hillside R-1 permit application cannot be made without first determining the Hillside R-1 permitting requirement. Accordingly, Councilmember Bosse is disqualified from both decision unless properly segmented.

Regulation 18706 permits an agency to segment certain decisions and provides in pertinent part:

(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

- (2) The decision in which the official has a financial interest is segmented from the other decisions;
- (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

The City Council's consideration of the Applicant Property's permit application could be segmented from the interpretation of the Hillside R-1 permitting requirements. However, Regulation 18706(a)(3) provides that the decision in which the official has a financial interest must be considered first and a final decision must be reached by the agency without the disqualified official's participation in any way.

Consequently, Councilmember Bosse may only participate in the consideration of the Applicant Property's permit application, after the decision in which she has a conflict is made. Until the City Council decidedly interprets the Hillside R-1 permitting requirements with finality, and without Councilmember Bosse's participation, she may not participate in the Applicant Property's permit application.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Sara K. Puricelli
Counsel, Legal Division

SKP:jgl