



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 16, 2023

Christopher J. Diaz
Best Best & Krieger
2001 N. Main Street, Suite 390
Walnut Creek, CA 94596

Re: Your Request for Advice
Our File No. A-22-129

Dear Mr. Diaz:

This letter responds to your request for advice on behalf of Town of Hillsborough Mayor Christine Krolik 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 Mayor Krolik have a prohibited interest in the Town of Hillsborough’s decision to approve an application to subdivide a 48 acre property into 29 additional parcels developable as single-family homes (the “Project”) where the Project site is located 610 feet from her residential property?

CONCLUSION

Yes. It is reasonably foreseeable that the decision to approve the subdivision application will have a material financial effect on her interest in her residential property under Regulation 18702.2(a)(8)(E) in that it would change the market value of the official’s residence. This is a large development project for the Town of Hillsborough that would add a significant number of potential

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.

single family home developable parcels in an exclusive area to a property that is largely undeveloped at this time and located within 1,000 feet of the official's residence.

FACTS AS PRESENTED BY REQUESTER

The Town of Hillsborough ("Town") is predominately zoned single-family residential with the exception of government property, schools, and one existing country club. The Town is built out with single-family homes on large residential lots ranging from 1/2 acre in size with some smaller lots of 1/3 of an acre. Under the Town's laws, a lot must be a minimum of 1/2 acre in order to be developable for the construction of a single-family home. Any application to construct a single-family home in the Town on a developable parcel is subject to future discretionary design review approvals.

The Town anticipates receiving an application to subdivide an existing 48.266 acre property with one existing home located at 2260 Redington Road in Hillsborough into a total of 34 total parcels (the "Project"). The property is currently divided into five parcels, one of which is a large parcel with an existing home. The proposed parcels will be at least 1/2 an acre in size, and thereby developable for construction of a single family home. The Project will be served by existing Town streets and one new private road that services the interior Project parcels. You provided a map which indicates the private road will connect the Project to Macadamia Drive to the south and to Redington Road to the northeast. The existing parcels, to the north of the Project site, are accessible off Forest View Avenue. Six parcels proposed along Macadamia Drive will be accessible off that street, and the remainder will use the private road for access.

Mayor Krolik lives in and owns a single-family residence in the Town, located on Baileyana Road and 610 feet north of the Project site and its Forest View Avenue border. (This distance is corrected from the original report of 925 feet.) You provided a map which indicates her residential area does not have streets that readily connect to Forest View Avenue, which dead ends in this direction, or any of the streets that border the Project site. You note that the Mayor's residential property is buffered from the Project site by a number of residential parcels and surface streets and that the Mayor's property is not further developable for additional single family homes. She will not have a view of the Project site due to the hilly area. The main access to the Project is located at 2260 Redington Road which is not directly located in the Mayor's neighborhood and a number of streets removed with no easy access between the two locations. The Town believes only one new lot may be proposed on Forest View which is closest to the Mayor's home, but anticipates, based on information from the developer, that the majority of the new lots will only be accessible through Redington Road.

In response to our request for additional information on the number of Town residential properties that are within a similar distance of the Project site, the Town staff determined there are 239 residential parcels within 1,000 feet out of a total of 3864 residential parcels in the Town, which equates to 6.2 percent of the parcels.

The City Council has two roles with respect the proposed Project's application to subdivide the property: (1) a conceptual review (where the City Council provides preliminary comments on a proposed subdivision); and (2) discretionary approval of the tentative and final map (where the City Council approves or denies the proposed subdivision). Further, although not part of a subdivision application, if a property owner also wanted to build homes on a new subdivision, an application to

construct one or more single-family homes in the Town is subject to additional discretionary design review approvals.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest.

Section 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests that is distinguishable from the decision's effect on the public generally.

Section 87103 lists several types of financial interest that may give rise to a conflict of interest, including a financial interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Accordingly, we analyze the potential financial effect of the decision at issue on Mayor Krolak's interest in her residential property.

Foreseeability and Materiality

The standard for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is "explicitly involved" as a named party in, or the subject of, the decision. An 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 interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). Where, as here, the official's financial interest is not explicitly involved as a named party or subject of the decision, the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.2(a)(8) is the applicable materiality standard regarding an official's real property parcel that is located within 500 to 1,000 feet from property involved in a decision. Under Regulation 18702.2(a)(8)(A)-(E), a decision's effect on an official's real property interest is material if the decision would change the parcel's development potential, income producing potential, highest and best use, or character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value.

This Project is for the subdivision of 48.266 acres into developable single-family residential lots. With the property currently divided into five parcels, the approval of the subdivision would make way for an additional 29 potential developable lots in the area, in proximity to the official's residential area. From the facts provided, it does not appear that the Project will affect the development potential, income potential, highest or best use of her residence, or the character of her residence. However, we must also consider whether the decision may potentially affect the market value of her residence.

We have advised previously that the Act's conflict of interest provisions prohibit an official from taking part in decisions relating to a proposed large residential development project located on undeveloped real property between 500 and 1,000 feet from the official's residence because it is reasonably foreseeable that those decisions would have a material financial effect on the market value of the official's real property interest in a residence.² The noted letters looked to the magnitude of the proposed development, as well as whether the decision could act to either ensure the property remained vacant or be developed in some other manner. Although the advice letters noted below involved larger and denser residential developments than we have in this decision, given the unique real estate characteristics of the Town, this development will have an outsized impact on the Town's real estate market. It will create a significant number of developable parcels for homes in an exclusive area, on land that is largely undeveloped, in proximity to the official's residence. Further, a decision to reject the proposal could, for example, act to protect the scarcity of parcels in the area. Therefore, because the decision is of a magnitude that it has the potential to protect or affect the market value of real property within a close proximity to the Project, it is reasonably foreseeable that the decision will have a material financial effect on the official's residence under Regulation 18702.2(a)(8)(E).³

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 an official's financial interest 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).) Applicable to these facts, where the only interest an official has in the decision is the official's primary residence, Regulation 18703(b)(1)(C)(2) defines a "significant segment" as at least 15 percent of residential real property within the official's jurisdiction. 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).)

² *Roberto* Advice Letter, No. A-21-043 [city manager prohibited from taking part in decisions concerning a proposed 130-unit residential development project located on 16 acres of vacant land about 600 feet from her residence based on its potential to protect or increase the market value of neighboring properties]; *Wisinski* Advice Letter, No. A-20-085 [councilmember disqualified from decisions relating to proposed residential project consisting of 510 units on undeveloped real property located 703 feet from councilmember's residential real property interest]; *Minner* Advice Letter, No. A-20-072 [councilmember disqualified from decisions relating to proposed mixed-use project including up to 620 residential units on largely vacant real property located 939 feet from councilmember's residential real property interest]; see also *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residences of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes].

³ This finding is in contrast to recent *Chuang* Advice Letter, No. A-22-124, where we advised there was no conflict of interest under Regulation 81702.2(a)(8)'s factors for a small project [not reasonably foreseeable that the small project, subdivision of two existing lots to create a third developable lot and a street extension in the Town, would have a material financial effect on the official's residence where there were no connecting streets to the site and the official's property is not similarly developable.]

As stated above, the facts indicate the decisions relate to a significant number of developable parcels for homes in an exclusive area, on land that is largely undeveloped, in proximity to the official's residence. Based on these circumstances and the characteristics of the Town, it appears that properties nearest to the currently vacant parcels may be affected to a greater degree than other properties further from the development. Accordingly, the facts indicate that the public generally exception is not applicable, as the number of similarly located residences to the Project is less than 15 percent.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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