



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 16, 2023

Madeleine Salah
Legal Fellow
Office of the City Attorney
City of Palo Alto
250 Hamilton Ave, 8th Floor
Palo Alto, CA 94301

Re: Your Request for Advice
Our File No. A-23-094

Dear Ms. Salah:

This letter responds to your request for advice on behalf of Palo Alto Planning and Transportation Commission (“PTC”) Commissioner George Lu, 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 Commissioner Lu’s ownership of a condominium between 500 and 1,000 feet away from a proposed development project (the “Project”) create a disqualifying conflict of interest in the PTC’s consideration of the 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 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

No. Given the scope of the Project and physical barriers between the Project site and his residential real property located between 500 and 1,000 feet away, it is not reasonably foreseeable that the Project would affect the development potential, income producing potential, highest and best use, character, or market value of Commissioner Lu's condominium, and he may take part in the Project decision.

FACTS AS PRESENTED BY REQUESTER

The Project

The Project consists of a Development Agreement between The Sobrato Organization and the City for the redevelopment of 14.65 acres located at 200-404 Portage Avenue, 3040-3250 Park Boulevard, 3201-3225 Ash Street, and 278 Lambert Avenue. 200-404 Portage Avenue houses a large commercial building whose uses currently comprise research and development (R&D) space, warehouse space, and vacant retail space. 200-404 Portage Avenue has been deemed eligible for listing in the California Register of Historical Resources. The remaining parcels currently house office buildings and an auto service center.

The Project would include the following key components:

- Demolishing part of the building at 200-400 Portage and dedicating the remaining portions of the building to R&D and retail space
- Demolishing the building at 3040 Park Boulevard
- Constructing 74 new market rate townhomes and a new parking garage
- Changing the use of the existing building at 3250 Park Boulevard from an Auto Care Center to R&D
- Dedicating a 3.25-acre parcel to the City of Palo Alto for the purposes of public open space and future development of housing units

The Project was analyzed in a draft Environmental Impact Report, which concluded that the Project would have less than significant impacts on air quality, energy, greenhouse gas emissions, hazards and hazardous materials, land use and planning, noise, transportation, and tribal cultural resources with mitigation incorporated. The Project would have a significant and unavoidable impact on cultural resources due to partial demolition of 200-404 Portage.

Commissioner Lu's Residence

Commissioner Lu owns and uses as his primary residence, a condominium on Sheridan Avenue. The condominium is situated about 870 feet away from the proposed development site. It

is separated from the Project site by several blocks of existing residential and commercial development and the Oregon Expressway, a major road.

The condominium is in an already developed area, and the allowable uses of Commissioner Lu's property will not change. While the Project would involve rezoning the parcels subject to the development agreement, the allowable uses at the Project site will be a combination of residential, retail, office, and commercial, consistent with the current uses at the Project site and the surrounding neighborhood.

You also state that the Project will not substantially alter traffic levels, intensity of use, or parking at Commissioner Lu's condominium. The draft EIR concluded that the Project's effect on transportation would be less than significant, netting about 43 new a.m. peak hour vehicle trips and 51 trips during the p.m. peak hour. Even with these additional trips, the EIR concluded that the surrounding intersections would continue operating at acceptable levels of service, with the exception of two minor street approaches to El Camino Real, which operate at unacceptable levels of service even without additional Project traffic. Further, the proposed townhome development would be fully parked based on the current City code. While the commercial portions of the development would be under-parked, the Project would slightly improve the parking ratio on the site for the existing non-residential uses, which has historically met demand at the site. You also state that any scarcity in parking at the Project site would not likely impact Commissioner Lu's condominium, which comes with two dedicated parking spaces and access to several guest spaces in the building's garage. Finally, any marginal effects on traffic, intensity of use, or parking would be mitigated by the natural barrier formed by the Oregon Expressway.

You state that the Project would not likely affect the view or privacy at Commissioner Lu's Condominium because it does not have a window facing the Project site, and the two sites are separated by several blocks of commercial and residential development and a major roadway. Nor would the Project substantially alter the noise levels or air quality surrounding his condominium, since the draft EIR concluded that the Project's impacts on noise and air quality would be less than significant.

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 the official's 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 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts provided, those economic interests include "[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).) Accordingly, Commissioner Lu has a potentially disqualifying economic interest in his residential real property.

When a public official’s economic interest is explicitly involved in a governmental decision, Regulation 18701(a) provides that “[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, including any decision affecting a property interest as described in Regulation 18702.2(a)(1)-(6).” (Regulation 18701(a).)

Where the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) Based on the facts provided, Commissioner Lu’s interest is not a named party in, or the subject of, the decision. As such, his real property interest is not explicitly involved in the decision. Under Regulation 18701(b), he will have a financial interest in the proposed decision if there is a realistic possibility that the decision will have a material financial effect on his real property interest.

Regulation 18702.2 provides the materiality standard for real property interests, which varies depending on the proximity of the decision’s impacts to the official’s property interest. Commissioner Lu’s condominium is located approximately 870 feet from the Project site. As such, the decision involves property located more than 500 feet, but less than 1,000 feet from Commissioner Lu’s residence.

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 also 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).)

Based on the information provided, the Project involves the redevelopment of 14.65 acres, approximately 870 feet from Commissioner Lu’s condominium. His residence is separated from the Project site by several blocks of existing residential and commercial development and the Oregon Expressway, a major road. The Project includes a large commercial building whose uses currently comprise R&D space, warehouse space, and vacant retail space. The remaining parcels currently house office buildings and an auto service center. The fact that the Project site is currently developed and has long included various commercial, office, and retail uses is also significant.

Based on the facts presented, it does not appear that the Project will affect the traffic levels, intensity of use, parking availability, or views at Commissioner Lu's condominium. Commissioner Lu's condominium does not have a window facing the Project site, and the two sites are separated by several blocks of commercial and residential development and a major roadway. It also includes two dedicated parking spaces and access to several guest spaces in the building's garage. Finally, any marginal effects on traffic, intensity of use, or parking would be mitigated by the barrier formed between his residence and the Project by the Oregon Expressway. There is also nothing in the facts provided showing that the Project would substantially alter the noise levels or air quality surrounding his condominium, since the draft EIR concluded that the Project's impacts on noise and air quality would be less than significant.

Considering the relative location of the project, physical separation from Commissioner Lu's condominium, and the fact that the Project involves redevelopment of a site that currently includes commercial, retail, and office uses, it is not reasonable reasonably foreseeable that the decision would have a material effect on Commissioner Lu's real property interest under Regulation 18702.2(a)(8) and he may take part in the Project decisions.

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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