



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 08, 2022

Jeffrey Ballinger
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-22-001

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of San Juan Capistrano City Councilmember Howard Hart 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 Councilmember Hart have a disqualifying conflict of interest as to potential decisions before the Council regarding a proposed ground lease that would include the lease of a City-owned parcel and the construction of a park on a portion of the leased property, where the proposed parcel to be leased and the proposed park sites are both located more than 1,000 feet from the Councilmember’s residence?

CONCLUSION

Under the standard applicable where the official has an interest in property more than 1,000 feet from the parcel subject to the decision, Councilmember Hart may participate because there is no clear and convincing evidence that the decisions would have a substantial effect on his property.

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 18109 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

The City owns certain property located on the northwest corner of San Juan Creek Road and La Novia Avenue in the City (the “City Property”). The owner of the nearby San Juan Hills Golf Club (“Golf Club”) owns property to the West of the City Property and desires to incorporate a portion of the City Property into its Golf Club property.

The City Council will be considering decisions related to a proposed ground lease (the “Ground Lease”), pursuant to which the City would lease a portion of the City Property to the Golf Club. A portion of the leased property would be incorporated into the Golf Club development, to the West. The remainder of the City Property (to the East, and immediately adjacent to the corner San Juan Creek Rd. and La Novia Ave.) would be developed and maintained as a passive, public park. It is proposed that the Golf Club would pay the costs of ongoing maintenance of the proposed public La Novia Park site. In a follow-up email, you stated that the parcel subject to the proposed lease is 3.2 acres, and that the proposed public La Novia Park site is 3.64 acres.

Councilmember Hart owns his residence located south of San Juan Creek Road, more than 1,000 feet from the Ground Lease parcel and the proposed La Novia Park. Specifically, the Councilmember’s residence is located 1,320 feet from the Ground Lease parcel at the closest point. His residence is separated from the proposed Ground Lease parcel and the La Novia Park site by San Juan Creek Road and several homes, and he cannot see the proposed Ground Lease parcel or the La Novia Park site from his residence.

On his side of San Juan Creek Road, Councilmember Hart’s residence is less than 100 feet from the golf course (i.e. the closest fairway). However, the golf course on that side of San Juan Creek Road would not be impacted by the Council’s potential decisions regarding the Ground Lease, which would only facilitate the expansion of the Golf Club property across San Juan Creek Road. The Councilmember has no financial interest in the Golf Club, nor any other type of financial interest in decisions related to the Ground Lease.

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.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests are “[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).) Councilmembers Hart has an economic interest in his real property.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[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, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).” Councilmember Hart’s real property interest is not explicitly involved in the governmental decisions relating to the proposed Ground Lease.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[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.”

Decisions related to the proposed Ground Lease will involve property more than 1,000 feet from Councilmember Hart’s residence and are thus presumed not to have a material financial effect on his real property interest. (Regulation 18702.2(b).) This presumption may be rebutted if clear and convincing evidence indicates the decision would have a substantial effect on the Councilmember’s property. Here, the Councilmember’s residence is located 1,320 feet from the 3.2-acre Ground Lease parcel at the closest point. As his residence is separated from the Ground Lease parcel and the La Novia Park site by San Juan Creek Road and several homes, and he cannot see the Ground Lease parcel or the La Novia Park site from his residence, there are no facts indicating the decisions would have a substantial effect on his property, and thus he does not have a financial interest in the decisions concerning the proposed Ground Lease.

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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