



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 6, 2018

Eric Lucan
Councilmember, City of Novato
26 Truman Drive
Novato, CA 94947

Re: Your Request for Advice
Our File No. A-18-002

Dear Mr. Lucan:

This letter responds to your request for advice 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

- (1) May you participate in decisions regarding the proposed Residence Inn and retail space project?
- (2) May you participate in decisions regarding the remainder of the North Redwood Boulevard Corridor?

CONCLUSION

- (1) Yes. Based on the facts provided, you are permitted to participate in decisions related to the Project because the effect of those decisions on your interests are indistinguishable from the effect on the public generally.
- (2) You have not identified a specific project or decision involving the North Redwood Boulevard Corridor. Because a conflict of interest analysis depends on the nature of the

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.

decision, we cannot generally determine whether you are disqualified from any particular decision involving the corridor. We can only advise that you are disqualified from taking part in decisions related to the corridor that have a foreseeable and material effect on any interest you have, such as your rental business and properties.

FACTS

The North Redwood Boulevard Corridor (the "Corridor") is considered one of the last major redevelopable areas in Marin County. It includes the area from San Marin Drive to Olive Avenue between Redwood Boulevard and the U.S. 101 as well as the vacant portion of Atherton Ranch and the two commercially developed parcels at the northwest corner of Olive Avenue and Redwood Boulevard. The Corridor spans a total of 30 acres, which are all located within the City of Novato.

The City of Novato recently received an application to construct a Residence Inn extended stay hotel and an adjoining commercial building on a 3.05-acre parcel located within the Corridor (referred to as the "Residence Inn Novato" project [the "Project"].). The Project will span from Golden Gate Place in the north, Redwood Boulevard in the west, the Golden Gate Transit Yard in the east, and the vacant Retail Opportunities Investment Corporation parcel in the south. You've indicated that the Project will require a zone change, master plan, precise development plan, land division and design review.

The hotel will span 77,532 square feet and vary in height from three to four stories. It will offer 103 units, each including a fully equipped kitchen and typical hotel room amenities. 160 total parking spaces will be provided, 119 onsite and an additional 41 on-street spaces. Residence Inn properties are advertised and branded as "Extended Stay Hotels." Unlike other hotels in Novato, guests at the proposed Residence Inn will be rewarded for longer stays in the form of discounted room rates and member rewards. The commercial building adjacent to the hotel will span 8,000 square feet and be one story high. It is unclear what type of business or businesses will operate in the commercial space.

Approximately 32 percent of the housing units in Novato are renter-occupied. You own two residential rental properties in the City of Novato – a duplex and a single-family home. The duplex is in the City's historic downtown area and sits approximately 1,160 feet away from the southernmost point of the Corridor, and approximately 1,800 feet from the southernmost point of the Project. The single-family home rental is located approximately 4,200 feet away from the southernmost point of the Corridor, and approximately 5,000 feet from the southernmost point of the Project.

You believe the Project will not change the character of either rental property, in that you do not anticipate substantial changes in items such as traffic levels, parking, view, privacy, noise, or air quality in the area. You further believe that this project will not affect the potential rental rates for either of your properties.

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 his or her 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 official's interests that is distinguishable from the decision's effect on the public generally.

Interests from which a conflict of interest may arise include the following:

- Any business entity in which the official has a direct or indirect investment of \$2,000 or more.
- Any real property in which the official has a direct or indirect interest of \$2,000 or more.
- Any source of income aggregating to \$500 or more provided, promised, or received in the 12 months prior to the decision. (Section 87103(a-c).)

You have identified interests in your rental businesses as a business entity and source of income and a real property interest in your rental properties.²

Foreseeability and Materiality

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. (Section 87100.) The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. (Regulation 18701.)

An interest is explicitly involved in a decision if the interest is a named party in, or the subject of, the governmental decision. (Regulation 18701(a).) An interest is the "subject" of a proceeding if the decision involves the license, permit, or other entitlement to, or contract with, the interest, including a decision affecting real property under Regulation 18702.2(a)(1-6). Based on the information provided, your property is not the subject of any existing or proposed decisions related to the Project or the Corridor.

If an interest is not explicitly involved in the decision at issue, the effect on that interest is deemed reasonably foreseeable only if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.1(b) sets forth the materiality standard applicable to a decision's financial effect on an official's interest in a business entity, including real property containing a business

² We note that you also have interests in your tenants as sources of income if their rent paid during the 12 months before a decision aggregates to \$500 or more and may be disqualified if you know or have reason to know the tenant has an interest in a business entity or real property that may be foreseeably and materially affected by the decision. (See Regulation 18702.3(a)(2).) While we conclude that you may take part in decisions regarding the project under the public generally exception, you have not identified any other interests held by your tenants. To the extent that you know or have reason to know a tenant has an interest in a business or real property (other than the rental properties you own), you should seek further advice. (See Regulation 18702.3(a)(2).)

entity, that is not explicitly involved in the decision. (See Regulation 18702.2(a)(8).) Under Regulation 18702.1(b), a financial effect is material if a prudent person with sufficient information would find it reasonably foreseeable that the effect would contribute to a change in the value of the business entity. Regulation 18702.1(b) also provides examples of decisions that may have a material effect on a business entity, including a decision that would “[i]ncrease or decrease the amount of competition in the field in which the business is engaged.” (Regulation 18702.1(b)(2).)

When examining whether a decision would increase competition for purposes of materiality, we have previously considered (1) the current level of competition in the field, (2) the proximity of the competitor(s) to the official’s business entity, and (3) whether the entity and its competitor(s) share a similar target market. (See *White Advice Letter*, No. A-17-029; *Barnhill Advice Letter*, No. A-16-144.) It is important to note as well that we advised in *Barnhill* that rental housing can be viewed as competition for extended stay hotels for purposes of the conflicts analysis. We believe that the converse is also true and applicable to the facts provided.

The hotels currently operating in Novato do not offer guests extend stays of greater than a few weeks. Thus, visitors wishing to reside in Novato for longer than a month are forced to either commute from outside of the city or lease a local rental unit like yours. The construction of the proposed Residence Inn would create a third option for such individuals.

Unlike traditional hotels, the proposed Residence Inn would not limit the length of a guest’s stay at the property. In fact, it would incentivize longer tenancies with lower room rates and member benefits such as room upgrades and discounts on travel. And while the hotel’s target market is not identical to your rental units, it is a realistic probability that the hotel and its 103 new units would serve as competition for at least some of your future tenants, especially given its proximity to your rental units and amenities.

In light of the foregoing, it appears to be reasonably foreseeable that the Project would contribute to a change in the value of your rental business.

“Public Generally” Exception

Commonly referred to as the “public generally” exception, Regulation 18703(a) permits public officials to make and participate in governmental decisions that affect their interests if the 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 (1) a significant segment of the public is affected and (2) 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).)

Regulation 18703(b)(2) provides that a significant segment of the public is at least 25 percent of all real property, commercial real property, or residential real property within the official’s jurisdiction. Residential rental units like yours make up more than 25 percent of the residential real property in the jurisdiction. And based on the information provided, there is no indication that the Project would affect your rental properties differently than other rental properties in the city limits. Accordingly, based on the fact provided, you are permitted to participate in

decisions related to the Project because the effect of those decisions on your interests are indistinguishable from the effect on the public generally.

Remainder of the North Redwood Boulevard Corridor

You also asked whether you may participate in decisions related to those parcels in the Corridor not allocated to the Project. However, you did not identify any specific projects or decisions related to those parcels. Without further information regarding potential projects and/or decisions and their potential impact on your interests, we can only advise you generally that you are disqualified from taking part in decisions related to the Corridor that have a foreseeable and material effect on any interests you have, such as your rental business and properties.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Adam Silver
Counsel, Legal Division

AS:jgl