



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 13, 2022

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

Re: Your Request for Advice
Our File No. A-22-124

Dear Mr. Diaz:

This letter responds to your request for advice on behalf of Councilmember Marie Chuang 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 Chuang have a prohibited interest in the Town of Hillsborough’s decision to approve an application to subdivide two parcels located 879 feet from her residential property?

CONCLUSION

No. It is not reasonably foreseeable the decision to approve the subdivision of two parcels into three developable parcels (one of which already contains a single-family residence) and the accompanying extension of Fagan Drive will have a material financial effect under Regulation 18702.2(a)(8) on the official’s residential property because her property is separated from the Project site by several streets and residential parcels, is not in proximity to the street extension area,

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.

and her parcel is not similarly eligible for potential development. Therefore, Councilmember Chuang does not have a prohibited interest in the decision related to her residential property.

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 lots ranging from 1/2 acre in size with some smaller lots of 1/3 of an acre. Any application to construct a single-family home in the Town is subject to future discretionary design review approvals. To develop a lot by constructing a single-family home, by the Town’s laws, the lot must be a minimum of ½ acre.

In May 2022, the Town received an application to subdivide an existing single-family zoned residential lot containing a single-family home, consisting of 2.18 acres on Fagan Drive, and an adjacent vacant single-family zoned residential lot, consisting of 0.9 acres, into three total lots (1.66, 0.58, and 0.68 acres respectively) (the “Project”). The lot containing the existing home would retain the existing home, and the vacant lot along with a portion of the lot containing the home would create a new third lot. The Project also includes an extension of Fagan Drive to be offered as a dedicated public right-of-way.

Under the Town’s Municipal Code, the City Council has two roles with respect the proposed Project. First, the City Council has a preliminary role in providing “conceptual review” of all proposed subdivisions in the Town. You explained by email that this is an opportunity for the Council and the community to give initial input on a proposed subdivision. Second, the City Council will have final approval authority over the tentative and final parcel map to be approved as part of the Project. The Project’s proposed subdivision of the current two lots into three lots will result in the potential for the construction of two new single-family homes with independent driveways on two of the parcels. However, the building of these homes would be subject to future discretionary design review approvals that are not part of the Project at this time. The parcels are currently zoned for single-family housing.

In approving the Project, the Town is anticipated to rely on an existing exemption under the California Environmental Quality Act (CEQA) contained at CEQA Guideline 15315 which allows for minor land divisions where the division would be in conformance with the General Plan and Zoning, and all services and access to the proposed parcels are to local standards. The Town does not anticipate any substantial impacts to traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality in the area.

Councilmember Chuang lives in and owns a single-family residence within 1,000 feet of the Project site. In response to our request for additional information, you provided by email that her residence is approximately 879 feet from the Project, and her residence is not in the same general neighborhood. You provided a map indicating that her residence is separated from the Project by three streets and at least four large intervening residential parcels. However, there are no connecting streets in this immediate area. The Councilmember’s residence is not in proximity to Fagan Drive and its proposed extension as Fagan Drive is a large cul-de-sac and the sole entrance to the cul-de-sac is more than 1,500 feet from the Councilmember’s residence. Moreover, the Project site is approximately a half mile from the residence by existing streets. Due to its location outside the Project site’s neighborhood and street extension area, the Town does not anticipate that the

Project would impact her residence or her traffic route. Additionally, based on the size of her lot, her real property parcel is not itself eligible for subdivision as it would be undevelopable under existing requirements.

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 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts presented and the decision at issue, an official has a potentially disqualifying conflict if it is reasonably foreseeable the decision will have a material financial effect on an 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 Councilmember Chuang's interest in her residential property.

Foreseeability and Materiality

Where, as here, the official's 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).) Therefore, Councilmember Chuang will have a reasonably foreseeable financial interest in the subdivision application decision if there is a realistic possibility the decision will have a material financial effect on her real property interest.

Councilmember Chuang's residence is located 878 feet from the Project properties at issue. Regulation 18702.2(a)(8), regarding real property within 500 to 1,000 feet from the property involved in a decision, is the applicable materiality standard. Under Regulation 18702.2(a)(8), 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.

The facts indicate that the decision to approve the subdivision of two parcels into three developable lots (one of which already contains a single-family residence) and the extension of Fagan Drive will not affect any of the items in Regulation 18702.2(a)(8) in regard to the official's residential property. The Project is a small development, resulting in the potential addition of two homes (one of which is already permissible on the vacant parcel) and a street extension to facilitate access. Her property is separated from the Project site by three streets and four large residential parcels with no connecting streets in the immediate area. By existing streets, the entrance to Fagan Street is more than 1,500 feet from the Councilmember's property, while the project site is approximately a half mile away. Based upon the map provided, the property is not in proximity to Fagan Street and its extension area. Further, her parcel is not eligible for a similar subdivision and

development under the Town's requirements. Therefore, the decision to approve subdividing the parcels will not change her property's development potential, income producing potential, highest and best use, character, or market value and Councilmember Chuang does not have a prohibited interest in the decision related to her residential property.

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
Counsel, Legal Division

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