



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 20, 2023

Marian L. Slocum  
City Attorney  
City of Brea  
350 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-23-038**

Dear Ms. Slocum:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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 City of Brea Planning Commissioner Tom Donini have a disqualifying financial interest in discussions and decisions concerning the Gaslight Square Redevelopment Project given his real property located between 500 and 1,000 feet from the project site that he uses as a rental property?

### CONCLUSION

No. Commissioner Donini is not disqualified from taking part in the decisions because it is not reasonably foreseeable the decisions will have a material financial effect on his interests in real property or his rental business. Based on the information provided, there are no facts to indicate the

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<sup>1</sup> 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.

Project would impact the development or income producing potential of his property, the use of the property, the market value, or the character of the property as his property is fairly removed from the project and the project does not change the character of the project site. Furthermore, there are no indications that the Commissioner will not lose or gain any revenue from the Project and will not incur costs due to the Project.

### **FACTS AS PRESENTED BY REQUESTER**

You are the City Attorney for the City of Brea (“City”) and are seeking advice on behalf of Brea Planning Commissioner Tom Donini. The Brea Planning Commission will soon consider the Gaslight Square Redevelopment Project (“Project”). Commissioner Donini seeks advice on whether he has a disqualifying financial interest in the Commission’s consideration of the Project given his ownership of property located more than 500 feet but less than 1,000 feet from the Project.

The Project involves demolition of four commercial/office buildings for the construction of two new commercial buildings on a parcel that is zoned for Administrative and Professional Offices. The current buildings at the site are used for office, retail, and medical spaces, two of the existing buildings will remain. The two new buildings will include a 2,000 square foot drive-through restaurant and a 6,000 square foot commercial building that includes a sit-down restaurant and medical or retail space. The Project also includes new landscaping and parking spaces. There are no specific tenants identified currently. The restaurant and retail/medical spaces are presumed to operate during daytime and evening hours, seven days per week, while the proposed drive-through restaurant is presumed to operate 24-hours per day, seven days per week.

The City has prepared a draft Environmental Impact Report (“Draft EIR”), which is currently circulating for public comment. The Project requires amendments to the City’s General Plan and Zoning Map as well as a site plan and conditional use permit. The Planning Commission is required to make recommendations to the City Council whether to approve, conditionally approve, or deny these entitlements. The Planning Commission must also make a recommendation on whether to certify the Draft EIR. Final decisions on the Project applications and the Final EIR will be made by the City Council.

Planning Commissioner Donini owns a parcel of rental property 908 feet northwest of the Project (measured by the shortest distance between property lines). Based off the map provided, the majority of the Project site is more than 1,000 feet from the Commissioner’s property. Only the northern most portion of the Project site is 1,000 to 908 feet of the Commissioner’s property. The Commissioner’s property is currently developed with residential structures that are leased for residential use. It is presumably worth more than \$2,000 but its precise value is unknown. Although the Draft EIR references the possible economic impact of the Project at a general level, it does not analyze the Project’s financial impact on any surrounding properties, nor has any appraisal been conducted to quantify the potential financial impact of the Project on the Commissioners property, if any.

The Draft EIR is extensive but some areas of note include that there is not any anticipated increase or decrease in population as the type of use remains commercial. A component of the community development plan in that area was to maintain a mixture of commercial and residential uses, which remains unchanged. The noise impacts of the Project would be less than significant to

the surrounding community. Traffic would generally remain the same as the entrances to the site will remain as they were. The Draft EIR indicates some concerns about traffic to residences immediately north of the Project site, however, there are plans in the Draft EIR to block an alleyway connecting the Project site to those residences. Given the location of Commissioner Donini's property some blocks away northwest of the Project site, it does not appear that would impact any road adjacent to his property and would still be more than 500 feet from the property.

## ANALYSIS

As a public official, Commissioner Donini is subject to the Act's conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use his official position to influence a governmental decision in which he has a financial interest. A public official has a "financial interest" in a governmental 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. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including:

- Any real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more. (Section 87103(b)).
- An interest in a source of income, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- A business entity interest, where an official has a direct or indirect investment of \$2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

Commissioner Donini's financial interests relevant to this analysis are his interest in the real property he owns within 1,000 feet of the Project site, his business entity as a landlord of the rental property within 1,000 feet of the Project, and the source of income he receives through his business as a landlord including the business and tenants.<sup>2</sup>

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

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<sup>2</sup> In regard to tenants, no specific tenant has been identified and no facts were provided in relation to this specific conflicts question that would warrant an analysis of this interest. However, to the extent the decision may impact a tenant (other than by affecting the Commissioner's rental property), Commissioner Donini should seek additional advice.

effect is “reasonably foreseeable” if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

### *Real Property Interest*

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.

Here, while some of the zoning will change due to the Project, the Project site started as commercial and will remain commercial. The Project will not change the Commissioner’s ability to develop and rent his property and there are no facts to suggest that the Project would diminish the market value of the property or leasehold considering its distance from the project.

Turning to the whether the Project will impact the use of the property or the character of the property due to factors such as traffic, air, and noise levels, Commissioner Donini’s property is located within an existing residential area and buffered by other residential properties, while the Project site is located on a busier street more than a full block away. According to the Draft EIR, the noise impacts will be less than significant and the air quality and traffic will remain mostly the same, given the similar nature of the current buildings and the proposed new buildings. While the Draft EIR indicated some concern about an alley near the Project that might have increased traffic to the residential area to the north, it appears this change would apply only to the alley connecting the project site to the residential area immediately north of the site. Moreover, the plan accounts for sufficient parking, and there is no indication that the Commissioner’s property will be in view of the Project.

Given the above facts, it does not appear reasonably foreseeable that the decision will have a material financial effect on the Commissioner’s property that would give rise to a conflict of interest in this case.

### *Business Entity and Source of Income Analysis*

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business as either a business entity or source of income is material if the business will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Under Regulation 18702.1, the Act provides that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income, is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.

- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.
- The official knows or has reason to know that the entity has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

Here, Commissioner Donini's rental property is both a business entity interest and a source of income interest. While the Draft EIR indicates some concern regarding traffic to the north of the Project site. However, as determined above, the traffic concern seems to be focused on properties immediately north of and connected to the Project site, which would still be more than 500 feet from the Commissioner's property, and it is unlikely the Project will change the market value of the property. Finally, there are no facts to suggest the Project would increase or decrease the amount of rent that the Commissioner could collect, or that the Commissioner would incur any additional expenses due to the Project. Based on the information provided, it is not reasonably foreseeable that the decision will have a material financial effect on the Commissioner's rental business as either an interest in a business entity or source of income.

Accordingly, the Commissioner is not prohibited from taking part in discussions and decisions related to the Project.

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

Sincerely,

Dave Bainbridge  
General Counsel

A handwritten signature in black ink, appearing to be 'VN' or similar initials, followed by the word 'for'.

By: Valerie Nuding  
Counsel, Legal Division

VN:aja