



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 16, 2023

Rick Hernandez
Planning Commissioner
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94010

Re: Your Request for Advice
Our File No. A-23-090

Dear Mr. Hernandez:

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

Do you have a conflict of interest in decisions regarding the approval of a proposed two-unit residential infill development (the “Project”) where you own a residence that is located more than 1,000 feet from the Project location?

CONCLUSION

It is not reasonably foreseeable the decision concerning infill development of two residential units on a parcel located over three-quarters of a mile from your residence will have a material

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.

effect on your property. Therefore, you do not have a prohibitive interest in the decision under the Act and may take part in the decision.

FACTS AS PRESENTED BY REQUESTER

You are a Planning Commissioner for the City of Half Moon Bay. The Planning Commission will soon consider approval of the Project, a proposed residential infill development. The Project is located at 8 Jenna Lane in Half Moon Bay. The proposed location is an infill lot located between several apartment complexes to the East and a driving range to the West. The Project is located approximately slightly over three-quarters of a mile from your residence. You provided a map which shows that your property is separated from the Project site by approximately ten blocks of established residential development.

You also state that the Project applicant is a local resident and wildflower advocate who you have met several times, but do not know or socialize with. You state that you do not have any economic interest in any project with her. You also state that you know the architect of this project, and that your children are friends. However, you do not consider him a personal friend. You state that you have no financial interest in the Project.

Project Description

Planning documents linked with your request indicate that the proposed Project consists of a two-story residence totaling 3,783 square feet and a detached accessory dwelling unit (“ADU”) totaling 699 square feet. Both of the new buildings include two car garages totaling 1,171 square feet. The ADU contains its own attached two car garage. The main house contains a tower element that encloses a stairway that provides access to a 280 square foot roof deck above the second story. Gravel driveway access would extend from the existing driveway aprons to garages. Drought tolerant landscaping would be installed as part of the Project. The planning documents also state that the Project is categorically exempt from environmental review pursuant to California Environmental Quality Act (“CEQA”) guidelines.

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 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, you have a potentially disqualifying economic interest in your 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).)

The decision at issue involves Planning Commission approval of the Project. As such, your interest is not a named party in or the subject of the decision. Under Regulation 18701(b), you will have a financial interest in the proposed Project if there is a realistic possibility that the decision will have a material financial effect on your real property interest.

Real Property

Regulation 18702.2 provides the standards for determining when a government decision's reasonably foreseeable effect on an official's real property interest is material considering factors such as the proximity of the property subject to the decision and its impacts on the official's parcel.

Under Regulation 18702.2(b), the financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property. (Regulation 18702.2(b).)

The facts presented indicate that it is not reasonably foreseeable the decision, which involves approval of a two-unit residential infill proposal, on a vacant lot approximately three-quarters of a mile from your residence and separated by ten blocks of existing residential development, would have a material financial effect and there are no facts that would rebut this presumption. Therefore, you do not have a prohibitive interest in the decision under the Act and are not prohibited from taking part in the decisions based on the facts provided.

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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