



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

April 16, 2021

Brittany E. Roberto
City Attorney
City of Blythe
Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835

Re: Your Request for Advice
Our File No. A-21-043

Dear Ms. Roberto:

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

Does the Act prohibit the Interim City Manager from taking part in governmental decisions relating to a proposed 130-unit residential development project (the “project”) located between 500 and 1,000 feet of her residence?

CONCLUSION

Yes. The Act prohibits the Interim City Manager from taking part in decisions relating to the project because it is reasonably foreseeable that those decisions would have a material financial effect on her financial interest in her residence.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Blythe seeking advice on behalf of Interim City Manager, Mallory Crecelius, who also serves as the Acting Planning Director. The City currently has an executive team consisting of an Interim City Manager/City Clerk, a Finance Director, a

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.

Building Official, a Police Chief, and a Fire Chief. The Planning Director position is currently frozen, and the City is currently recruiting for a Public Services Director. The Interim City Manager, Finance Director, and Building Official are collectively supported by a staff of six (6) people. Because the Planning Director position is frozen, the Interim City Manager also serves as the Acting Planning Director. The City has two staff members that provide support to the Planning Department but are not specifically assigned to such department. The City also has contract planners that provide services as requested by the City.

The first step in any development project in the City is the Project Review Committee (PRC). Through the PRC process, the City and other agencies assign project conditions. In February 2021, an applicant submitted a project review submittal to the PRC. In the submittal, the applicant describes the project, La Casa Bella, as a manufactured home development on 16 acres of vacant land located in Blythe. The land is zoned as Residential Estates (RE). The applicant desires to have 130 homes placed on 65 lots in the City. Each lot will have a home and an accessory dwelling unit. Per the submittal, the project owners intend to rent the units to the community.

The project site is located at 10th Avenue and Lovekin Boulevard in the City. According to the submittal, the developers are considering Cavco Homes Durango series manufactured homes. The units are estimated to be between 1,700 and 1,900 square feet. The set-ups will be above-ground with permanent foundations. As proposed, the developer intends to include an attached two-car garage for each unit.

Ms. Crecelius owns and resides at a one-story 1,654 square foot single-family home on a 9,583 square foot lot. Her property is on a parcel zoned as Residential Estates (RE). Her home is in the middle of a single-family residential neighborhood. The distance from the closest edge of her property to the closest edge of the project site is approximately 600 feet. She resides on Joshua Tree Lane, a north/south cul-de-sac that intersects with Ocotillo Road (an east-west road). Ocotillo Road is two blocks long – it dead ends at Lovekin Boulevard on the west and North Eucalyptus Avenue on the east. Because it is on a cul-de-sac, no vehicles would use her street to access the newly generated properties. Her property has no views of the project. It is expected that the development would be accessed either by 10th Avenue to the north, or by North Eucalyptus Avenue on the west. If access is from 10th Avenue, as expected, then the closest access point would be more than 1,000 feet away from Ms. Crecelius' property – most likely between 1,200 and 1,500 feet away along City streets. If the access point is via North Eucalyptus Avenue, then the project would start at roughly 700 feet away via City streets.

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 presented and the decision at issue, an official has a potentially disqualifying conflict if the decision will have a reasonably foreseeable and 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 must analyze the potential financial effect of the decisions at issue on Ms. Crecelius' interest in her residential property.

Where, as here, 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).) Therefore, Ms. Crecelius will have a financial interest in the project decisions if there is a realistic possibility the decisions will have a material financial effect on her real property interest.

Ms. Crecelius' home is approximately 600 feet from the project site. Regulation 18702.2(a)(8), regarding real property within 500 to 1,000 feet from the property involved in a decision, is the applicable 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 market value, 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.

Here, Ms. Crecelius' home is located on a cul-de-sac in the middle of an existing single-family residential neighborhood. From the facts provided, it does not appear that the project will affect the current use of her residence or that it will significantly affect traffic levels, intensity of use, or parking availability she currently experiences at her residence. However, we must consider whether the decisions regarding development of currently vacant property in close proximity to her residence may potentially affect the market value of the property.

We have advised on multiple occasions that the Act's conflict of interest provisions prohibit an official from taking part in decisions relating to a proposed large residential development project located on undeveloped real property between 500 and 1,000 feet from the official's residence because it is reasonably foreseeable that those decisions would have a material financial effect on the market value of the official's real property interest in a residence.²

Here, the project is a large residential development project that proposes to build 130 homes on 65 lots of currently vacant land, located approximately 600 feet from Ms. Crecelius' residence. Based on the magnitude of the project and the short proximity to the residence, there is a realistic possibility the project, as planned, will affect the value of existing residences nearby because it

² *Wisinski* Advice Letter, No. A-20-085 [councilmember disqualified from decisions relating to proposed residential project consisting of 510 units on undeveloped real property located 703 feet from councilmember's residential real property interest]; *Minner* Advice Letter, No. A-20-072 [councilmember disqualified from decisions relating to proposed mixed-use project including up to 620 residential units on largely vacant real property located 939 feet from councilmember's residential real property interest]; see also *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residences of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes].

would eliminate 16 acres of vacant land in favor of other new residences that are estimated to be between 1,700 and 1,900 square feet in size. Potentially, decisions regarding the project may ensure that the property remains vacant or is used for purposes that would be financially beneficial to residences in a close proximity. Alternatively, the decisions may protect residences in a close proximity from the negative financial impacts of a less desirable project. Therefore, it is reasonably foreseeable that decisions concerning the project will have a material financial effect on Ms. Crecelius' residence based on the project's potential to protect or increase the market value of neighboring property.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:dkv