



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 22, 2021

Kimberly Hood
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City of Galt
Best Best & Krieger
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Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-21-046

Dear Ms. Hood:

This letter responds to your request for advice on behalf of Galt City Councilmembers Kevin Papineau and Rich Lozano and Vice Mayor Paul Sandhu 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. Under the Act, may Councilmember Lozano take part in decisions regarding the Carillion Boulevard Corridor Plan, which would include various street improvements, given that his residential real property is between 500 and 1,000 feet of Carillion Boulevard?
2. Under the Act, may Councilmember Papineau and Vice Mayor Sandhu take part in decisions regarding the Corridor Plan, given that their respective residential real properties are located within 500 feet of Carillion Boulevard?

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.

CONCLUSION

1. Yes. Given the scope of the Corridor Plan and physical barriers between the project site and his residential real property located between 500 and 1,000 feet away, the Corridor Plan would not appear to affect the development potential, income producing potential, highest and best use, character, or market value of Councilmember Lozano's real property and he may take part in the Corridor Plan decisions.
2. No. Because the residences are located less than 500 feet from the project site, they are subject to a stricter standard that requires clear and convincing evidence the Corridor Plan would have no measurable effect on the residential real property. Given that the Corridor Plan would reduce a current four-lane facility into a two-lane facility and is intended to reduce noise, overall traffic, and the speed of traffic near the residences, there is no clear and convincing evidence the project would not have a measurable effect on the properties. Accordingly, Councilmember Papineau and Vice Mayor Sandhu have disqualifying conflicts of interests under the Act.

FACTS AS PRESENTED BY REQUESTER

The City of Galt ("City") was awarded a grant from the California Energy Commission (CEC) in response to its Grant Funding Opportunity Local Government Challenge notice in 2017 to prepare a Climate Action Plan, Corridor Plan and Master Plan that support the City's 2030 General Plan implementation policies and goals, in addition to regional and statewide climate and transportation policies and directives. The Carillion Boulevard Corridor Plan ("Corridor Plan") is a high-level planning level document that identifies proposed improvements that could be made when traffic demands warrant. These improvements would take place well into the future and incrementally, as warranted by traffic conditions and funding availability. The Corridor Plan contains two proposed planning options for traffic improvements, Alternative 1 and Alternative 2, though the City Council is not required to select either of these options. However, the City does not have to formally adopt or implement either Alternative contained in the Plan at this time. An environmental analysis of potential impacts was also prepared in the form of an Initial Study and Mitigated Negative Declaration.

Carillion Boulevard is a 2.2-mile corridor located east of Highway 99 between Twin Cities Road and Simmerhorn Road. Carillion is a four-lane arterial that primarily services residential housing with limited access points from collector streets. The focus of the Corridor Plan is to encourage less use of automobile travel by enhancing transportation modes, such as walking and cycling, to create a "Complete Street" road. As such, one of the Alternatives in the Plan includes a "road diet" and roundabouts or controlled signals to promote traffic calming with buffered bike lanes. However, none of the Plan Alternatives are designed to change the traffic capacity and none of the Plan Alternatives propose to increase the right-of-way along Carillion Boulevard. The environmental study for the Plan did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives, nor is the Plan anticipated to divert traffic into the neighborhoods, which consist of residential streets and cul-de-sacs accessed by other arterial and collector streets from Carillion. No residences front Carillion in the Plan area and the adjacent residential neighborhoods are separated from Carillion by 6-foot sound walls and approximately 20-foot landscape buffers.

Councilmember Papineau owns a single-family residence that is within 500 feet of Carillion Boulevard by straight line and one side of his property line abuts the sound wall along Carillion Boulevard. However, he does not have direct access to Carillion Boulevard from his residential subdivision. His property requires several turns along residential streets to access a collector street that connects to Carillion. Specifically, he has two routes to access Carillion Boulevard via the following collector streets: via Walnut Avenue, which is 1/2 mile and six turns; and (2) via Elk Hills Drive which is just over 1/3 mile and involves three turns to access Carillion Boulevard.

Councilmember Lozano owns a residential property in a residential subdivision that is more than 500 feet but within 1,000 feet via a direct line to Carillion Boulevard. However, numerous residences are between his residence and Carillion Boulevard and accessing Carillion from his property requires one turn on a residential street to access a collector street that then connects to Carillion Boulevard.

Finally, Vice Mayor Sandhu owns a residential property on an interior cul-de-sac. The real property is located approximately 304 feet from Carillion Boulevard via a straight line. However, Vice Mayor Sandhu's property has numerous residences between it and Carillion Boulevard and requires access on other residential streets before connecting to Carillion.

The Plan Alternatives for Carillion Boulevard will not change the width of the traveled right-of-way and are not anticipated to increase traffic on Carillion Boulevard or in the residential streets within the neighboring residential subdivision where the residential properties of Councilmembers Papineau and Lozano and Vice Mayor Sandhu are located. As noted above, the residential subdivisions do not have direct access to Carillion Boulevard and are separated from Carillion by a sound wall and landscaping areas. Additionally, the environmental study (Initial Study/Mitigated Negative Declaration) prepared by independent contractor, Raney Planning & Management, Inc., for the Plan did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives.

In a follow-up email, you provided a link to the Initial Study/Mitigated Negative Declaration. The Initial Study/Mitigated Negative Declaration explains that the road diet would convert the current four-lane facility into a two-lane facility and allow room for a buffered bike lane in each direction. Between Vauxhall Road and Simmerhorn Boulevard, the project would include future widening of the existing two-lane roadway to accommodate buffered bike lanes and sidewalks. Limited right-of-way expansions would be necessary in some locations, resulting in disturbance of areas that are not currently paved. The Initial Study/Mitigated Negative Declaration also states:

Upon completion of the proposed improvements, the project would not include any increases in operational noise sources relative to existing conditions. The project would not result in increased vehicle travel within the City; rather, . . . , the proposed roundabouts would reduce vehicle idling times, while the lane reductions included in the proposed road diet would reduce mid-block travel speeds. In addition, given that the proposed improvements would prioritize pedestrian and bicycle modes of transport consistent with the City's Complete Streets policies, the project would likely result in an overall decrease in passenger vehicle use within the City. Thus, traffic noise would likely be reduced as a result of the project.

A map included in the Initial Study/Mitigated Negative Declaration indicates the project includes 11 proposed roundabouts throughout the length of Carillion Boulevard, spanning numerous city blocks.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests are “[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).) Councilmembers Papineau and Lozano and Vice Mayor Sandhu have economic interests in their respective real property.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[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, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).” The residential real property of the Councilmembers and Vice Mayor Sandhu are not explicitly involved in the governmental decisions relating to the Corridor Plan.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).) The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is also material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel’s:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Because Councilmember Lozano's real property is located between 500 and 1,000 feet from the project site, the relevant materiality standard is Regulation 18702.2(a)(8). The development of the Corridor Plan would not affect the development potential or highest or best use of Councilmember Lozano's real property, nor would it affect the property's market value or income producing potential. Additionally, the Corridor Plan would not substantially alter traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality, as evidenced by the findings of the Initial Study/Mitigated Negative Declaration. Accordingly, under the Act, the decisions at issue would not have a reasonably foreseeable, material financial effect on Councilmember Lozano's real property and, therefore, he may take part in the decisions pertaining to the Corridor Plan.

Councilmember Papineau and Vice Mayor Sandhu own real property located less than 500 feet from the project site and, therefore, the relevant materiality standard is Regulation 18702.2(a)(7). Under that heightened standard, there must be clear and convincing evidence there will be no measurable impact on the official's real property. Based on the facts provided, that standard is not met. Although the Initial Study/Mitigated Negative Declaration indicates the Plan Alternatives would have "no impact" or "less-than-significant impacts" on traffic, aesthetics/views, noise, or air quality generally, those conclusions do not end our analysis. As the Initial Study/Mitigated Negative Declaration states, a "less-than-significant impact" refers to "[a]ny impact that would not be considered significant under CEQA relative to existing standards." These determinations can be influential in our analysis of facts with respect to the Act, particularly when considering whether a project's impact would be "substantial" under Regulation 18702.2(a)(8), but Regulation 18702.2(a)(7) requires clear and convincing evidence of no measurable effect on an official's real property.

Here, despite concluding that the Corridor Plan would have "less-than-significant-impact" on noise for purposes of CEQA, it also states that "traffic noise would likely be reduced as a result of the project." Likewise, although the Initial Study anticipates a less-than-significant impact on transportation, one of the Corridor Plan's primary purposes is "traffic calming" through the introduction of a "road diet" and roundabouts. The Initial Study notes that the Corridor Plan may reduce passenger vehicle use in the City, congestion, mid-block travel speeds, and vehicle idling times. In addition to potential measurable effects on noise and traffic levels, additional changes such as the replacement of vehicle lanes with bicycle lanes and improved pedestrian safety measures could also affect the market value of nearby properties. For these reasons, we do not find clear and convincing evidence that the Corridor Plan would have no measurable effect on the real properties owned by Councilmember Papineau and Vice Mayor Sandhu. Accordingly, under the Act, they have disqualifying conflicts of interest with respect to the Corridor Plan and must recuse themselves from decisions pertaining to the project.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:dkv