



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 25, 2022

Nancy Diamond, Esq.
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822 G. Street, Suite 3
Arcata, CA 95521

Re: Your Request for Advice
Our File No. A-22-087

Dear Ms. Diamond:

This letter responds to your request for advice on behalf of City of Arcata Councilmember Alexandra Stillman 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 Stillman have a conflict of interest which would prohibit her from participating in the City Council decision concerning the Gateway Area Plan?

CONCLUSION

The Act prohibits Councilmember Stillman from taking part in decisions relating to the Gateway Area Plan because it is reasonably foreseeable that those decisions would have a disqualifying material effect on her interest in multiple parcels of residential and commercial real property, all of which are located within 500 feet of the Gateway Area Plan boundary.

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.

FACTS AS PRESENTED BY REQUESTER

The City of Arcata has initiated a multi-pronged General Plan update called the Strategic Infill Redevelopment Program (SIRP), which implements a measure in its Housing Element (adopted in December 2019) and an Infill Market Study adopted in February 2021. As part of SIRP, the City identified several different areas, collectively called “Infill Opportunity Zones” and each given a unique name specific to its location. The topic of this request is an Infill Opportunity Zone called the Gateway Area.

The Gateway Area is approximately 138 acres in size and is proposed in the City’s current Housing Element to allow for high density residential infill development in an area that was historically used for industrial purposes. The relevant implementation measure of the City’s current Housing Element mandates creation of an “Arcata Gateway Specific Area Plan, [and creation of a] form-based code that allows high density infill development.”² The City Council action relative to the Gateway Area will be to adopt an “area plan,” to be called the “Gateway Area Plan,” which will become an element of the City’s General Plan. An environmental impact report (EIR) is expected to be brought to the Council for action at the end of this calendar year or beginning of 2023. The applicable Gateway Area zoning will be established through City Council adoption of an appropriate ordinance in 2023.

New development within the Gateway Area would occur subject to the adopted zoning standards. In its current draft, the Gateway Area Plan could allow for up to 3,500 new residential units in the Gateway Area.

You state that there are 346 residential parcels located in, and within, 500 feet of the boundaries of the Gateway Area, and 4,070 residential parcels City wide. Additionally, there are 97 commercial parcels located in, and within, 500 feet of the boundaries of the Gateway Area, and 297 City wide.

Councilmember Stillman was elected to the City Council in June 2022 and sworn in on July 11, 2022. As you clarified in your follow-up email, she owns six different parcels that are located outside of the Gateway Area but within 500 feet outside of its outermost boundary. These properties are all located in or near the City’s urbanized, commercial downtown. She purchased and developed two of them in 1996 as part of her desire to bring economic revitalization to the Arcata downtown area after a fire destroyed two preexisting commercial buildings in 1979. The replacement of those structures took approximately 20 years, the two replacement structures provide 5 apartments and 3 commercial storefronts.

Councilmember Stillman’s ownership interest in each of these parcels is worth more than \$2,000. Councilmember Stillman receives more than \$500 per year in rental income from each parcel. Except as specifically noted below, each property is owned solely by Councilmember Stillman in her capacity as trustee of her family trust and has been developed and leased by Councilmember Stillman as a sole proprietor. She does not reside at or operate any other business

² A “form-based code” is equivalent to a city’s zoning law.

from any of these properties. The commercial properties are under long term leases and residential units on month-to-month leases.

As described in for follow-up email, the parcels are described below:

- 1050 12th Street: Six residential rental units and is on the National Register of Historic Places (built in 1889, restored in the 1980's).
- 839 9th Street: A commercial building with six small offices.
- 815 9th and 893 H Street: Two retail spaces and two residential apartments.
- 833 H Street: Two retail spaces and three residential apartments.
- 853 H Street: Two commercial spaces and one residential unit. Councilmember Stillman holds a one-half ownership interest (in her capacity as trustee of her family trust).
- 863 H Street: One retail space and one residential apartment. Councilmember Stillman holds a one-half ownership interest (in her capacity as trustee of her family trust).

ANALYSIS

Sections 87100 and 87103 of the Act prohibit a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. Section 87103 identifies an official's interests that may give rise to a disqualifying conflict of interest under the Act. Based on the facts presented, those interests relevant to the question presented include:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, 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.

Relevant to your request, Councilmember Stillman has real property interests in the rental properties, as well as a business entity interest in her rental property business, and source of income interests in the business, as well as its tenants.

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and 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. In addition, an official's business interest is explicitly involved in any decision affecting the business as described in Regulation 18702.1(a)(1).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Applicable to the Gateway Area Plan within 500 feet of Councilmember Stillman's rental properties, Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property parcel is material whenever the 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.

Councilmember Stillman owns six separate parcels, each of which contain rental properties, including multiple retail and office spaces, as well as a total of 13 residential units, all located within 500 feet of the boundaries of the Gateway Area Plan. The Gateway Area Plan could allow for up to 3,500 new residential units in the Gateway Area. No facts have been presented indicating that the decisions for the Gateway Area Plan would not have such an impact on Councilmember Stillman's properties. Therefore, under Regulation 18702.2(a)(7), it is reasonably foreseeable that the decisions concerning the Gateway Area Plan will have a material financial effect on her property. Accordingly, Councilmember Stillman will be disqualified from taking part in the decisions relating to the Gateway Area Plan, unless an exception applies.³

Public Generally

You indicate that there are 97 commercial parcels located in, and within, 500 feet of the boundaries of the Gateway Area and 297 commercial parcels City wide. Thus, we must examine the application of the public generally exception, and whether the financial effect of the Gateway Area Plan decisions on Councilmember Stillman's interests is indistinguishable from the effects on the public. (Section 87103.) Under this exception, a public official, otherwise disqualified from the decision, may still take part in a decision if the official demonstrates that the financial effect of the

³ We do not further analyze the effect of the decisions related to the Gateway Plan on Councilmember Stillman's other financial interests at issue because we have already determined that those decisions would have a disqualifying financial effect on her real property interests. We note that you have also inquired whether the exception to the Act's conflict of interest provisions for general plan decisions in Regulation 18702.2(d)(2) may apply. However, based on the facts provided, there is no indication that this exception applies.

decision is (1) not unique to the official and (2) shared by a significant segment of the jurisdiction. (Section 87103, Regulation 18703.) Relevant to your inquiry, a unique effect on the official's financial interest(s) includes a disproportionate effect on any of the following:

- The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
- An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.

(Regulation 18703(c) (1-3).)

A significant segment of the public includes at least 25 percent of all: (1) businesses within the official's jurisdiction; (2) real property, commercial real property, or residential real property; or (3) individuals within the official's jurisdiction. (Regulation 18703(b).)

The facts indicate that the decisions in question will have a unique effect on Councilmember Stillman's interests due to the cumulative effects on her multiple real property interests and possible effect on the income producing potential of her properties. (Regulation 18703(c)(1) and (3).) Unlike most members of the public, Councilmember Stillman has a business and real property interest in six separate parcels, each of which contain rental properties, including multiple retail and office spaces, as well as a total of 13 residential units. Also, the facts do not establish that a significant segment of the City's residential parcels will be likewise affected by the decisions. Therefore, the public generally exception does not apply, and Councilmember Stillman has a prohibitive financial interest in the decisions relating to the Gateway Area Plan and may not take part in the decisions.

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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