



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 27, 2023

Matthew T. Summers
Colantuaono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109

Re: Your Request for Advice
Our File No. A-23-047

Dear Mr. Summers:

This letter responds to your request for advice on behalf of City of Calabasas Council Member Peter Kraut 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 1090.²

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.

QUESTIONS

1. Does Council Member Kraut have a disqualifying financial interest the City’s decisions regarding the Cruzan Park Apartments mixed-use development (“Park Apartments project”) due to his business entity and leasehold interests?

2. Does Council Member Kraut have a disqualifying financial interest the City’s decisions regarding a Caruso Affiliated mixed use housing project development within the Commons at

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.

² While you note in follow up information to your request that the governmental decisions may potentially involve development agreements that are contractual in nature, and thus implicate Section 1090, there are no such decisions at this time. We do not provide informal advice on Section 1090 and, in light of the advice provided under the Act, Council Member Kraut may wish to seek further advice, as needed, for this type of decision.

Calabasas retail center (“Caruso Affiliated project”) due to his business entity and leasehold interests?

CONCLUSIONS

1. Yes. It is reasonably foreseeable the City decisions regarding the Park Apartments project will have a material financial effect on Council Member Kraut’s leasehold interest under Regulation 18702.2(c)(2) and (4) in that the decisions will likely increase or decrease the potential value of the rental property and impact his use and enjoyment of the property. Because of this, we do not further analyze whether he is also disqualified based on his business entity and source of income interests.

2. We currently lack detailed facts regarding this project. We generally advise that to the extent that the Caruso Affiliated project is similarly anticipated to bring a mixed-use housing development to the commercial area, and during construction will likely impact area traffic and increase parking demand on the parcel where his business is located, it is reasonably foreseeable that the City decisions regarding the Caruso Affiliated project will have a material financial effect on Council Member Kraut’s leasehold interest under Regulation 18702.2(c)(2) and (4). Please seek additional advice, as needed, when the details of the project are known.

FACTS AS PRESENTED BY REQUESTER

Council Member Kraut is the sole owner of South Coast Engineering Group, Inc. (“South Coast Engineering”), an engineering professional services firm. South Coast Engineering has a sublease for office space at 23975 Park Sorrento, located within the city of Calabasas. South Coast Engineering’s master landlord is Cruzan, and South Coast Engineering is subletting the property from Innovate MR, LLC under a three-year agreement. Both the sublease and lease expire on March 31, 2025. The lease agreement includes a monthly base rent payment and does not contemplate an increase in the base rent dependent upon the surrounding environment. The lease also prohibits sublease by South Coast Engineering.

The City will be considering two separate proposed housing projects that are each on parcels within 500 feet of the Park Sorrento parcel containing Council Member Kraut’s firm’s leased office space. This consideration will involve land use entitlement decisions.

Park Apartments Project

This is a proposed project by Cruzan, as the property owner and developer, to construct a new 118,495 square-foot mixed-use building titled ‘The Park Apartments’ comprised of 1,600 square-foot commercial space and 107 residential units, 26 percent of which are proposed to be designated affordable. The project site is 24100 Park Sorrento, and currently functions as a parking lot for the adjacent Civic Center Complex, as part of a larger shared public parking program for all uses within the Calabasas Park Centre Master Plan Area, including the Calabasas City Hall, the Calabasas Library, the Calabasas Senior Center, several office buildings owned by Cruzan (including the building containing South Coast Engineering’s office), a hotel, and a large retail complex owned by Caruso Affiliated (the site of the second, separate proposed project). The project site is within the Commercial Mixed-Use (CMU) zoning district, and within the Affordable Housing Overlay (AHO) zone.

In response to our request for additional information as to the nature of the governmental decisions related to this project, you state that the Park Apartments project's application, at present, applies only for discretionary, quasi-judicial regulatory permits.

Caruso Affiliated Commons At Calabasas Project

This is a proposed project by Caruso Affiliated for a mixed-use housing project within the Commons at Calabasas retail center located at 4799 Commons Way. While the pre-application entitlement process has been started by the developer, the precise proposed project description is not yet known. In response to our request for additional information on the nature of the governmental decisions related to the Caruso Affiliated project, you stated that the Caruso Affiliated project has not yet formally applied for permits, but it is expected to be discretionary, quasi-judicial regulatory permits. There is a possibility that the Caruso Affiliated project might be adjusted to include a legislative action, such as a statutory development agreement at some point in the future.

Anticipated Impacts

The proposed governmental decisions are specific to their sites and you state the decisions are not anticipated to change the actual or legally allowable uses of the property leased by Council Member Kraut's firm. However, the Park Apartments project site, the Caruso Affiliated project site, and South Coast Engineering's office site, are part of the larger Calabasas Park Centre Master Plan area and have shared parking. Increased traffic and parking impacts related to construction at the sites are anticipated to impact the area. Council Member Kraut's firm's office is located across the street from the Park Apartments proposed development site and near the Caruso Affiliates development site. Additionally, the site of the Park Apartments project is a parking lot and constructing the project will displace those parking spaces temporarily, which may increase parking demand on the parcel containing the firm's offices. If the Park Apartments project is completed and built, then the project is expected to include additional parking spaces which may reduce or eliminate that shifted parking demand.

Additionally, you state that Council Member Kraut does not anticipate that his business will see any change in its gross revenues, or value of its assets and liabilities; nor will it incur any additional expenses as the development decisions for each site would not affect his business model or prevent clients from reaching his business. You further provide that South Coast Engineering has not been retained by, nor have any promises been made regarding income from, any person or entity with a goal related to the two proposed projects.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will 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. (Sections 87100 and 87103.) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include pertinent to these facts:

- A business interest in any business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any management position (Section 87103(d)).
- An interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).)
- A source of income interest in any source from whom the official receives \$500 or more in value in the 12 months prior to when the decision is made including a pro rata share of income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Sections 82030 and 87103(c).)

You have identified that Council Member Kraut has a business entity and source of income interest in his South Coast Engineering business and a real property interest in the business's office lease.³

Foreseeability and Materiality

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. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here, 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. (Regulation 18701(b).)

Commercial Office Space

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Where a public official's real property interest is a leasehold interest, Regulation 18702.2(c) provides that the reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

³ As the sole owner of South Coast Engineering, Council Member Kraut also has a source of income interest in any client or customer that has paid or promised \$500 or more to South Coast Engineering within the 12 months preceding the relevant governmental decision. You have not provided any facts regarding any clients or customers of South Coast Engineering but indicated that South Coast Engineering has not been retained by or had promises made regarding income by any person or entity with a goal related to the two proposed projects. To the extent that any governmental decision related to the project would have a reasonably foreseeable, material financial effect on a client or customer of South Coast Engineering, Council Member Kraut would likely be disqualified from taking part in the decision under the Act and may wish to seek additional FPPC advice, as needed.

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

1. Park Apartments Project

There is no indication from the facts that this development project would change the termination date of South Coast Engineering's lease or its actual or legally allowable use of the property. At issue then is whether the Park Apartments project decisions may increase or decrease the potential rental value of the property or impact the official's use and enjoyment of the property. (Regulations 18702.2(c)(2) and (4). It appears under the facts presented that each of these standards are met for the City decisions regarding this project.

The decisions to allow or disapprove the mixed-use housing and commercial development will likely increase or decrease the potential rental value of the official's leased property. The project will bring housing to an area that is currently commercial, retail and civic purposed. It will likely increase the desirability the commercial office space, and thus its potential rental value, in the long-term as the project will introduce potential new customers or businesses to the area. During construction the increased traffic and displaced parking demand will likely have a negative effect on the desirability and potential rental value of the commercial office space. Further, we note that while South Coast Engineering has a three-year lease and under its terms is prevented from subleasing the property and has a set base pay rent which does not contemplate an increase dependent on the surrounding development, we have previously advised that these facts do not alter the determination of whether the decision will affect the potential rental value of the leased property. (*Gallogly* Advice Letter No. A-19-112; decisions to allow higher-density development, a hotel, on a vacant parcel in a historic downtown district may change the development potential of real properties in the immediate area such that the council member with a leased residence within 500 feet had a conflict of interest under Regulation 18702.2(c)(2) regardless of the lease terms that a sublease was prohibited and the rent would not be changed due to the development.)

Additionally, the decisions to allow or disapprove the mixed-use development will likely impact the official's use and enjoyment of the business's leased office space. The proposed mixed-use building construction site will eliminate the parking lot located within 500 feet and across the street from the South Coast Engineering. This parking lot currently provides shared public parking for the Calabasas Park Centre Master Plan Area, which includes City Hall, the Library, Senior Center, several office buildings owned by Cruzan (including the building containing South Coast Engineering's office), a hotel, and the Commons at Calabasas large retail complex owned by Caruso Affiliated (the site of the second, separate proposed project). The displaced parking is likely to increase parking demand in the area, including on the parcel where his business is located, at a minimum during the construction period. Also, the project is anticipated to bring increased traffic to the area. Under these facts it is reasonably foreseeable the City decisions regarding the Park Apartments project will have a material financial effect on Council Member Kraut's leasehold interest under Regulation 18702.2(c)(2) and (4).

Because we have determined the Act prohibits Council Member Kraut from taking part in decisions pertaining to the Park Apartments project based on his leasehold interest under Regulation 18702.2(c), we do not need to further analyze whether he is also prohibited based on his business entity and source of income interests in South Coast Engineering.

2. Caruso Affiliated Commons at Calabasas Project

This mixed-use project site is similarly located near the parcel in which South Coast Engineering has its office space and is also part of the Calabasas Park Centre Master Plan Area. Because the proposed project is in the beginning stages of the pre-application entitlement process there are currently no detailed facts regarding the Caruso Affiliated project, where it will be located on the parcel, or the particular decisions at issue.

The facts do state that the project would be for mixed-use development, which would add housing to the parcel located in close proximity to Council Member Kraut's leased property and will likely increase traffic and parking demand in the Calabasas Park Centre Master Plan Area, including the leased property parcel.

Given the lack of facts available for analysis, particularly with respect to the proposed scope of the Caruso Affiliated project, we are unable to provide definitive advice as to whether decisions relating to the project would have a reasonably foreseeable, material financial effect on Council Member Kraut's leasehold interest. However, we generally advise that to the extent that the project is anticipated to bring a mixed-use housing development to the commercial area, it has the potential to increase or decrease the property's potential rental value by affecting the desirability of the office space, and impact the official's use and enjoyment of the property due to increased traffic and parking demands, it is reasonably foreseeable that the City decisions regarding the Caruso Affiliated project will similarly have a material financial effect on Council Member Kraut's leasehold interest under Regulation 18702.2(c)(2) and (4). Likewise, without sufficient facts to analyze, we are unable to advise on any potentially reasonably foreseeable, material financial effect on Council Member Kraut's business entity and source of income interests. Council Member Kraut may wish to seek additional advice once additional details regarding the project are available.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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