



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 24, 2024

Gary B. Bell
Town Attorney, Town of Yountville
333 University Ave, Suite 200
Sacramento, CA 95825

Re: Your Request for Informal Assistance
Our File No. I-24-079

Dear Mr. Bell:

This letter responds to your request for advice on behalf of Town of Yountville Mayor Margie Mohler, Vice Mayor Hillery Bolt Trippe, and Councilmember Eric Knight regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature and not limited to a specific proceeding, we are treating your request as one for informal assistance.²

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

Under the Act, given the proximity of their respective residences to the proposed site of a redevelopment project, may Mayor Mohler, Councilmember Knight, and Vice Mayor Trippe take part in decisions related to the project? If any of the officials have a conflict of interest in the decision concerning the parcel in question, does the Act’s “public generally” exception permit their participation in the decision?

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Based upon the facts provided, approximately 20 percent of the residential properties are located within a similar or closer distance than the officials' property. The public generally exception will apply so long as the decision before the Town will similarly affect all of these residential properties with no unique effect on the officials' property interests in comparison to the other properties. However, while you have identified various potential decisions that do not necessarily suggest a unique effect on the officials' property interests, you have not identified a specific decision before the Town. Accordingly, we can only offer general assistance and cannot determine whether the public generally exception applies without a full description of a specific decision before the Town. If you need assistance determining whether the public generally exception applies or whether there is unique effect on an official, you should seek further advice identifying the decision in question.

FACTS AS PRESENTED BY REQUESTER

The Town owns a parcel of real property approximately six acres in size that is located in the center of Town (the "Parcel"). The Parcel currently has split zoning: half the parcel is zoned "public facilities" and half the parcel is zoned "parks and playfields."

The Parcel is the former site of the Yountville Elementary School, which was shut down in 2020 by the Napa Valley Unified School District. The site is not currently being used, except for some recreational uses and auxiliary uses. The portion of the Parcel zoned "parks and playfields" is a baseball diamond and recreation field associated with the former school. The portion of the Parcel zoned "public facilities" contains the school buildings (classrooms and administration), which are not currently used. In a follow up email, you stated that there are some recreational uses at the property, and the Town Council recently approved an agreement for a gym in one of the buildings and an agreement for a farmstand at the snack facility associated with the baseball field.³ It will be a few weeks or months before these uses start. Currently, there are no uses other than intermittent recreational uses like baseball and a pedestrian path along the eastern border.

The Town will be considering a number of decisions with respect to the redevelopment and use of the Parcel, including decisions regarding permitted uses, zoning, design, demolition, grading, utilities undergrounding, capital improvements, construction contracts, operating agreements, joint use agreements, license agreements, professional services agreements with consultants and/or design professionals, maintenance agreements, landscaping agreements, ground leases, commercial leases, recreational programs, parking, bicycle and pedestrian trails, and accessibility plans, many or all of which will legally require approval by a majority vote of the total membership of the Town Council.

The Official's Property Interests

The property interests at issue here are the officials' primary residences. Your facts state that all officials' residences are separated from the Parcel by significant improvements and geographic

³ You state that Mayor Mohler, Councilmember Knight, and Vice Mayor Trippe fooled the Act's recusal requirements and did not participate in these decisions.

features. Our review of the map included with your request indicates that the Parcel is centrally located within the Town, and surrounded by existing development, including numerous residences, several government offices, various restaurants, a hotel, and a church.

Mayor Mohler

Mayor Mohler owns real property 433 feet from the Parcel, when measured from the two nearest property lines of the two properties; and is located on a secondary street.

Vice Mayor Trippe

Vice Mayor Trippe owns real property 797 feet from the Parcel, when measured from the two nearest property lines of the two properties; and is located at the corner entrance of a cul-de-sac.

Councilmember Knight

Councilmember Knight owns real property 428 feet from the Parcel, when measured from the two nearest property lines of the two properties; and is located on a secondary street.

Yountville and Residential Properties

You also state that the Town is 1.49 square miles in total area and, as a result, the Parcel is relatively near most other points in the Town. In a subsequent communication, you indicated that all councilmembers, including the mayor, are elected at-large. You also stated that there are a total of 750 residential real properties in the Town, and that 152, or 20 percent, are located within 500 feet of the Parcel, while 409, or 54 percent, are located within 1,000 feet of the Parcel.

ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official 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 the official’s immediate family,” or on certain specified economic interests, including “[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).)

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).”

Where, as here, 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."

Mayor Mohler and Councilmember Knight

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 Parcel is the site of an elementary school that has been shut down since 2020. It is approximately six acres in size, and includes unused buildings, a baseball diamond, and a recreation field associated with the former school. The site is not currently being used, except for some intermittent recreational uses. The decisions at issue indicate that the Town will be undertaking a major redevelopment of the Parcel. These decisions include those regarding permitted uses, zoning, design, demolition, grading, utilities undergrounding, capital improvements, construction contracts, operating agreements, joint use agreements, license agreements, professional services agreements with consultants and/or design professionals, maintenance agreements, landscaping agreements, ground leases, commercial leases, recreational programs, parking, bicycle and pedestrian trails, and accessibility plans.

No evidence has been provided to indicate that the decisions related to the approval of the development agreement and zoning change would not have a measurable impact on Mayor Mohler's and Councilmember Knight's properties, so it is reasonably foreseeable the decisions would have material financial effects on the officials' property interests. Thus, both officials are prohibited from taking part in the decision unless an exception applies such as the public generally exception discussed below.

Vice Mayor Trippe

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 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).)

As Vice Mayor Trippe's residence is located between 500 and 1,000 feet from the boundary of the Parcel, the relevant materiality standard is Regulation 18702.2(a)(8). Given that you have not identified any specific decision before the Town regarding the redevelopment of the Parcel, and considering only the potential scope of the redevelopment project and small size of the community itself, we can only conservatively advise at this preliminary phase that it is reasonably foreseeable that the redevelopment project would have a material financial effect on Vice Mayor Trippe's real property. Thus, absent further information and the identification of a specific decision before the Town, it appears Vice Mayor Trippe is also disqualified from the decision unless an exception such as the public generally exception applies.

Public Generally Exception

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of his or her interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) In general, an effect on an official's interest is indistinguishable from its effect on the public generally if a significant segment of the public is affected and the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).) A significant segment of the public includes at least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(2).) A unique effect is defined to include a disproportionate effect on an interest in real property resulting from the proximity of a project. (Regulation 18703(c).)

Here, Mayor Mohler and Councilmember Knight each own properties located within 500 feet of the Parcel, while Vice Mayor Trippe owns property located within 1,000 feet of the Parcel. The facts provided indicate that 20 percent of residential parcels are located within 500 feet of the Parcel, and 54 percent are located within 1,000 feet of the Parcel. Further, the effect of the decision concerning the Parcel on the Councilmember's property interests must not be "unique" as compared to any of the other residences identified in the significant segment for the exception to apply. However, you have identified various potential decisions that may come before the Town, and we are unable to determine whether the public generally applies without a full description of a specific decision before the Town.

More generally, we can advise only that the facts provided at this time do not suggest a unique effect on the officials. Moreover, considering the Parcel's central location with the Town, and the fact that the officials' residences are separated from the Parcel by existing residential and commercial development, it appears unlikely that any effect on these property interests would be unique. Nonetheless, if you have any questions regarding a specific decision before the Town, you should seek additional advice identifying the decision in question.

If you have other questions on this matter, please contact me by email at
znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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