



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

February 26, 2024

Nicholas R. Ghirelli
Richards, Watson and Gershon
1 Civic Center Circle, PO Box 1059
Brea, California 92822-1059

Re: Your Request for Advice
Our File No. A-24-017

Dear Mr. Ghirelli:

This letter responds to your request on behalf of Rancho Cucamonga Mayor L. Dennis Michael 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 Mayor Michael from making, participating in making, or attempting to influence decisions regarding the “Strawberry Patch” Mixed-Use Project (the “Project”) due to his equity membership in a country club and/or other real property interests located in the vicinity of the Project location?

CONCLUSION

Yes. The Act prohibits Mayor Michael from taking part in decisions regarding the Project, as there is no clear and convincing evidence rebutting the presumption that the development of a large mixed-use project located adjacent to, and less than 500 feet from, a country club in which

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.

Mayor Michael has a real property interest would have a measurable impact on his real property interest.

FACTS AS PRESENTED BY REQUESTER

The “Strawberry Patch” Mixed-Use Project

The City has received an application for a mixed-use development project located at 8148 Red Hill Country Club Drive within the City.² According to City staff, the proposed mixed-use project would include approximately 308 multi-family rental units in four three-story buildings with a gross residential building area of approximately 287,434 square feet, 14,704 square feet of commercial retail space, and 22,610 square feet of leasing space and other amenities (the “Project”). The Project would provide approximately 527 surface and garage parking spaces. The Project also proposes frontage improvements (e.g., curb, gutter, signage, lighting) to adjacent streets, including Foothill Boulevard and Red Hill Country Club Drive.

According to City staff, the applicant has presently applied for a major design review to allow for the new development. In addition, the Project proposes 16 units reserved for very low-income residents. Therefore, the applicant has requested a density bonus under the State Density Bonus Law. The density bonus request includes: (1) a reduction in the number of required parking spaces; (2) an incentive to reduce the required amount of square footage reserved for non-residential use; and (3) waivers of certain building type standards, minimum parking setbacks, and building setbacks. The application was accompanied by a preliminary application under SB 330 in an effort to vest the Project to certain development standards.

The combined Project site is approximately 9.98 acres. The site has been used for agricultural purposes, most recently by a strawberry grower known as “Nicolson’s Strawberries” under a lease with the current property owner. The Project site is zoned “Center 1,” which is intended for walkable town centers, and the General Plan land use designation is “C Traditional Town Center.” The Project site is adjacent to the Red Hill Country Club (the “Country Club”).

Mayor Michael’s Financial Interests

Mayor Michael is an equity member of the Country Club. The Country Club is located on the City’s western border, north of Foothill Boulevard and bordering the City of Upland. The Project site is located adjacent to the Country Club (i.e., less than 500 feet), and more particularly the golf course’s second fairway and third tee box. In addition, the Project would likely be visible from the clubhouse and first tee, which are at a higher elevation and offer views of the valley below.

Mayor Michael is one of approximately 300 equity members in the Country Club. As such, he holds the equivalent of an approximately 1/300th share in the nonprofit corporation that owns and operates the Country Club. This means that in the event the nonprofit corporation should ever

² A very small portion of the Project site, roughly encompassing a driveway, is located within the City of Upland.

be dissolved and its assets sold, he would be entitled to a roughly 1/300th share of the resulting profits, including profits from the sale of the real property encompassing the golf course, club house, and other amenities. In addition, Mayor Michael's equity membership is transferrable and may be sold to an interested purchaser.³

The precise real estate value of each individual member's interest in the Country Club is not known. The property encompassing the Country Club is currently zoned "Parks" and the General Plan land use designation is "Open Space and Facilities." Due to the market value of memberships, the large size of the Country Club's property, and its amenities (e.g., clubhouse, swimming pool, and tennis courts), you assume that any individual member's interest in the Country Club's real property is valued at \$2,000 or more.

Mayor Michael also owns real property that is located across the street from the Country Club. He also owns a home next door. Both of these addresses contain single family residences and are valued at more than \$2,000. Both properties are located within 500 feet of the Country Club. With respect to the Project site, the first property is located approximately 1,650 feet from the Project site. The second property is approximately 1,700 feet from the Project site.

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 provided, those economic interests include "[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).)

In the *Doering* Advice Letter, No. A-12-068, we found that an official with a proprietary membership in a country club, a nonprofit corporation registered as a 501(c)(7) nonprofit mutual benefit organization, had a real property interest in the club's real property. Because the proprietary members of the club had an equitable right of ownership to the club's real and personal property, they were entitled to a proportionate share of the value of the club's assets if the club were to be dissolved. In *Doering*, we stated: "it is clear that, particularly when the resale value of a club membership is determined at least in part by the value of the club's real estate, the members have at least a beneficial interest in that real estate."

³ The Country Club offers other membership levels, such as a "social" membership, which do not convey an equity interest in the Country Club and are not transferrable.

Here, if the nonprofit corporation that owns and operates the Country Club should ever be dissolved and its assets sold, each of the approximately 300 equity members would be entitled to a roughly 1/300th share of the resulting profits, including profits from the sale of the real property encompassing the golf course, club house, and other amenities. While you have not provided the value of an individual member's interest, you have asked that we assume the value of the interest is \$2,000 or more for the purposes of this advice. Therefore, as an equity member, the Mayor's Country Club membership constitutes an "interest in real property" under the Act.

Foreseeability

A financial effect on a public official's economic interest is reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) An economic 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 economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Where a public official's economic interest is not explicitly involved in the decision, a different standard for determining the reasonable foreseeability of a financial effect is applicable. Under Regulation 18701(b):

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 decisions at issue involve various Project approvals. Mayor Michael's property is not a part of the Project. As such, Mayor Michael's real property interests are not a named party in or the subject of the decision. Under Regulation 18701(b), he will have a financial interest in the decision if there is a realistic possibility that the decision will have a material financial effect on his economic interests.

Real Property

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Relevant to the Mayor's property interest in the Country Club, Regulation 18702.2(a)(7) provides that 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 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.

Here, the proposed Project would include approximately 308 multi-family rental units in four, three-story buildings with a gross residential building area of approximately 287,434 square

feet, 14,704 square feet of commercial retail space, and 22,610 square feet of leasing space and other amenities. The Project would provide approximately 527 surface and garage parking spaces. The Project also proposes frontage improvements (e.g., curb, gutter, signage, lighting) to adjacent streets, including Foothill Boulevard and Red Hill Country Club Drive. The Project site is located adjacent to the Country Club (i.e., less than 500 feet), and would likely be visible from the clubhouse and first tee. Based on the facts presented, there is no clear and convincing evidence that the decisions concerning the Project would have no measurable impact on Mayor Michael's property interest in the Country Club. Therefore, the Act prohibits Mayor Michael from taking part in these decisions.⁴

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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⁴ In light of our conclusion that he may not participate in decisions involving the Project due to a conflict of interest resulting from his interest in the County Club, we need not further address whether the Mayor may also be disqualified as the result of his other property interests. We also do not analyze any potential disqualification based on any interests in a business entity or sources of income should either of the Mayor's residential properties include a rental property.