



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 19, 2024

Brian E. Washington
County Counsel, County of Marin
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903

Re: Your Request for Advice
Our File No. A-24-072

Dear Mr. Washington:

This letter responds to your request 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

Under the Act, may Marin County Supervisor Dennis Rodoni take part in governmental decisions relating to a proposed development project at 11401 State Route 1 located within 500 feet of real property in which Supervisor Rodoni has a financial interest?

CONCLUSION

No, under the Act, there is no clear and convincing evidence the project would have no measurable impact on Supervisor Rodoni’s real property and, therefore, the Act prohibits the Supervisor from taking part in governmental decisions relating to the project.

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 County of Marin (“County”) has received an application for a Coastal Development Permit and Conditional Use Permit approval for a development project at 11401 State Route 1 in Point Reyes Station, a small community in unincorporated Marin County. The property at 11401 State Route 1 is in downtown Point Reyes Station along State Route 1 (the main road through town), between Mesa Road and A Street. The property is 25,000 square feet, and is surrounded by commercial developments in the west, east, and south. The area to the north is developed with single family residences.

Currently, the property at 11401 State Route 1 is developed with a gas station, with an associated 215-square-foot cashier’s stand with a limited retail store, an attached automotive repair shop (currently vacant), two unpermitted residential units, office spaces, and a commercial tenant space (a kayaking and hiking store), all of which are contained in one building. The building was constructed in 1957. Detached improvements on the site include a septic system, a fuel canopy, fuel dispensers, parking spaces, and other improvements typically associated with a gas station.

The proposed development project at 11401 State Route 1 would convert the existing commercially zoned structure to five residential units, while expanding the size of the existing convenience store from 215 square feet to 1,901 square feet. The proposed project includes complete interior improvements, but all proposed interior and exterior improvements would occur entirely within the existing footprint of the building on the site. Because the project would involve enclosing the existing 150 square foot porch to create habitable space, it would result in a slight increase in floor area (from 5,650 to 5,800 square feet) and floor area ratio (from 22.60 % to 23.20 %). The existing building height of 25 feet 9 inches above grade would remain unchanged.

The County’s Deputy Zoning Administrator approved the project on February 1, 2024, and that approval subsequently was appealed to the Planning Commission. On April 4, 2024, the Planning Commission voted to deny the appeal and approve the project, with modifications that would among other things require the applicant to reduce the square footage of the convenience store. Supplemental materials provided to the Planning Commission at this meeting indicate that the existing structure has historical significance as a pre-1950s agricultural building reflecting the crop farming history of Point Reyes. (Supplemental Memorandum, pg. 2.)

On April 17, 2024, the applicant appealed the Planning Commission’s decision to the Board of Supervisors.

Supervisor Rodoni owns a 20 % interest in the real property located at 155 3rd Street in Point Reyes Station, and the value of that interest exceeds \$2,000. The property at 155 3rd Street is a 7,068 square foot lot, with a 2,208 square foot single-family home, on a block exclusively made up of single-family homes. The home on the property was constructed in approximately 1920. Access to the site is provided by 3rd Street, and the property is 1.5 blocks west of State Route 1.

The nearest distance between the property line at 11401 State Route 1, and the property line at 155 3rd Street, is 489 feet. The nearest distance between the structure at 11401 State Route 1, and the property line at 155 3rd Street, is 508 feet.

The property at 155 3rd Street is separated from 11401 State Route 1 by, among other things, single family homes, parking lots, and small commercial properties. The property at 11401 State Route 1 is not visible from the property at 155 3rd Street.

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.”

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).) In this instance, the boundary of Supervisor Rodoni’s property is within 500 feet of the proposed project, such that there must be clear and convincing evidence that the decision will not have a measurable impact.

The project will be taking an existing commercially zoned structure and converting it to residential – with the aim of having three two-bedroom units and two one-bedroom units. This would include enclosing an existing covered porch area to increase habitable space. Additionally, the current 215 square feet mini mart would be expanded to 1,901 square feet. Roughly 10 times the size of the current store. Given these significant changes, there is no clear and convincing evidence that the project decisions at issue would have no measurable impact on the Supervisor’s real

property. Accordingly, he has a disqualifying financial interest in the decisions and the Act requires that he recuse himself from those decisions.²

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd".

By: Erika M. Boyd
Senior Counsel, Legal Division

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² For public meetings, Supervisor Rodoni must recuse himself from the decision, identify the disqualifying financial interest on the public record prior to the consideration of the item, and leave the room. (Regulation 18707.)