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Charlene Tim <charlene.tim@edcgov.us>

Dixon Ranch Agenda Item

Rich Stewart <rich.stewart@edcgov.us>
To: Charlene Tim <charlene.tim@edcgov.us>

Fri, Nov 27, 2015 at 7:56 PM

Char: Please include as part of the public record the attached letter regarding recusing myself from the Dixon Ranch agenda item. Thanks. Rich

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STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

May 13, 2015

Rich Stewart
El Dorado County Planning Commission

Re: Your Request for Advice
Our File No. A-15-030

Dear Mr. Stewart:

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. Moreover, we base this letter on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Do the Act's conflict of interest provisions prohibit you from taking part in planning commission decisions regarding a large residential project adjacent to your neighborhood but approximately a half mile from your residence?

CONCLUSION

Based upon the increased volume of traffic on Green Valley Road, a primary access route for your existing neighborhood, and the potential for increased traffic through your neighborhood and past your residence, we find the proposed project may foreseeably result in a substantial change in traffic levels, which would also likely influence the market value of your property. Accordingly, the Act prohibits you from making, participating in making, or using your position to influencing any decisions regarding the Dixon Ranch Residential Project.

FACTS

You are a member of the El Dorado County Planning Commission and reside near the intersection of Murray Court and Aberdeen Lane in the City of El Dorado Hills.

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 18110 through 18997 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.

The Dixon Ranch Residential Project has been proposed approximately a half mile from your residence. This project consists of approximately 600 homes on about 280 acres. As described in the materials submitted with your request for advice, the project site is south of Green Valley Road, near its intersection with Malcolm Dixon Road, and surrounded by residential uses. Existing or approved adjacent subdivisions include Green Springs Ranch to the east and southeast, Serrano to the southwest, and Highland View to the west. Of the approximately 600 new single-family detached residential units, approximately 160 would be age-restricted to older adults. The project includes approximately 84 acres of open space, including parks, trails, landscaped lots, and native open spaces.

As proposed, you state that the project would not connect to your neighborhood except for a single roadway planned only for Emergency Vehicle Access. However, opening this roadway to the public remains a possibility and has been identified as a possible alternative in the draft environmental impact report. In the event that the roadway is opened to the public, the draft environmental impact report estimates that 20-percent of the traffic created by the project would use the roadway and that the remaining traffic created by the project would use Green Valley Road. As stated in the report:

“This alternative would result in vehicular access from the project site to Silva Valley Parkway via Lima Way, Aberdeen Lane, and Appian Way (collectively Highland View), and would be anticipated to provide an attractive alternate route to gain access to points south, including US-50, for at least a portion of the project site. Project access through Highland View could attract project traffic away from Green Valley Road resulting in increased traffic volumes along these neighborhood roadways. Initial estimates indicated that nearly 20 percent of the project traffic would use the Highland View connection to Silva Valley Parkway, thereby reducing Green Valley Road volumes. While this shift in traffic may lessen project impacts along Green Valley Road west of the project site, it is possible that additional impacts may be realized along Highland View and/or at the Silva Valley Parkway intersection.”

The report further states “the proposed project is estimated to generate 4,931 daily trips, with 379 trips occurring during the AM peak hour, and 484 trips occurring during the PM peak hour.” Accordingly, if the Emergency Vehicle Access is opened to the public, an estimated 986 daily trips will occur through your neighborhood and most likely past your house.

Geographically, the project is not very visible from your neighborhood and is up and over a hill. Moreover, the density of the proposed project is comparable to your current neighborhood. The density of the proposed project is also comparable with an already approved project adjacent to your neighborhood and directly south.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official

has a financial interest specified in Section 87103. A public official has a “financial interest” in a government 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. (Section 87103.) Of the interests recognized under the Act, the only interest you have indicated is an interest in real property resulting from your residence. (Section 87103(b).)

Foreseeability:

For a financial interest that is not explicitly involved in a decision (such as your residence), Regulation 18701(b) states:

“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.”

Materiality:

Recently revised Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As relevant to your facts, the financial effect will be material if the decisions:

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.

[9]...[9]

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

In regard to the foreseeable effect of the project on your residence, the most concerning is the increase in traffic as the project is estimated to result in an additional 4,931 daily trips. As proposed, this increase in traffic will occur along Green Valley Road, which is a primary access route to your existing neighborhood. Moreover, if the Emergency Vehicle Access is opened to the public to relieve congestion along Green Valley Road (an alternative identified in the draft environmental impact report), daily trips through your neighborhood, and likely past your residence, will increase by an estimated 986 trips. Based upon the increased volume of traffic on Green Valley Road and the potential for increased traffic through your neighborhood and past your residence, we find the proposed project may foreseeably result in a substantial change in traffic

levels, which would also likely influence the market value of your property. Accordingly, the Act prohibits you from making, participating in making, or using your position to influencing any decisions regarding the Dixon Ranch Residential Project.

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: Brian G. Lau
Senior Counsel, Legal Division

BGL:jgl