



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 27, 2023

Heather L. Stroud
City Attorney
City of South Lake Tahoe
1901 Lisa Maloff Way
South Lake Tahoe, CA 96150

Re: Your Request for Advice
Our File No. A-23-131

Dear Ms. Stroud:

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.

QUESTIONS

1. Under the Act, may City of South Lake Tahoe (“City”) Councilmember Scott Robbins participate in governmental decisions regarding the Tourist Core Area Plan (TCAP) Amendment where a restaurant business in which he is a partner rents commercial property within the boundary of the TCAP?

2. Under the Act, may City Planning Manager John Hitchcock participate in governmental decisions regarding the Tahoe Valley Area Plan (TVAP) Amendment where his primary residence is located within 1,000 feet of the boundary of the TVAP?

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.

3. Under the Act, may City Mayor Cristi Creegan participate in governmental decisions regarding the TVAP where she rents and subleases office space within the boundary of the TVAP?

4. Under the Act, may City Mayor Pro Tem Cody Bass participate in governmental decisions regarding the TCAP where he leases property for his residence and business, Tahoe Wellness Center, is within the boundary of the TCAP and a business he owns 10 percent of, Green Bijou Properties, LLC, is within the boundary and owns property within the boundary?

CONCLUSIONS

1. Councilmember Robbins is not prohibited from participating in decisions surrounding the plans due to his business interest, as it is not reasonably foreseeable that decisions regarding the TCAP will have a material financial effect on his revenues or costs, nor will it impact the term or value of the leasehold interest held by the business.

2. City Planning Manager Hitchcock is not prohibited from participating in decisions surrounding the plans due to his real property interest in his personal residence that he owns 550 feet away from the proposed TVAP boundary because the zoning changes do not identify any new developments that would have a reasonably foreseeable material financial effect on his property and his property is outside of the boundary of any other relevant changes, as such there is no material financial effect on Planning Manager Hitchcock's property.

3. Mayor Creegan has a disqualifying financial interest in her commercial lease located within the TVAP as it would eliminate the requirement that the property maintain a special use permit. Although 25 percent of commercial buildings in South Lake Tahoe are located within the TVAP, the Public Generally exception would not apply because of the unique effect on the property surrounding the special use permit.

4. Mayor Pro Tem Bass has a disqualifying financial interest in decisions surrounding the TCAP due to his real property interest in properties owned by Green Bijou Properties, LLC (GBP), of which he owns more than 10 percent of the business. The properties owned by GBP are explicitly involved in the decision as the zoning of those properties will be changed by the TCAP, therefore a material financial effect is presumed. However, the public generally exception will apply because more than 25 percent of commercial properties are in the plan area and the effect on the properties owned by GBP is not unique from the other effected properties in the plan area.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for South Lake Tahoe (City). You are seeking advice regarding multiple City officials and their interests in relation to amendments to two City plans – the Tahoe Valley Area Plan (TVAP) and Tourist Core Area Plan (TCAP).

Generally, area plans are high-level planning documents governed by the Tahoe Regional Planning Agency (TRPA) regulations. According to the TRPA website, area plans are “intended to reflect the community's vision for its future” and include land use goals and policies, zoning, and other regulations, permit requirements, development and design standards, and goals and policies regarding transportation, conservation, recreation, and public services. A TRPA area plan is similar

to a specific plan under California state law. Area plans are developed by the local jurisdiction (here, the City) and are reviewed and approved by the City Council and the TRPA through a public process.

Updates to the TCAP and TVAP are running on a parallel track as the amendments staff are proposing to both plans are similar. The area plan updates are necessary to facilitate redevelopment of the affected areas by updating components that include density, design standards, and goals and policies. Both area plan updates propose to increase the maximum residential density to 65 units per acre and establish a minimum density of 12 units per acre for multifamily housing. The area plans update the zoning of the areas generally but do not specify any specific properties or developments. While there is reference to “incentives” for development in the area plans no specific incentive is being contemplated or included in either area plan.

There are a total of 754 commercial properties within the City of South Lake Tahoe, with 216 commercial properties within the TCAP and 268 commercial properties within the TVAP. Thus, over 25 percent of the commercial properties within the City are within each area plan boundary, with 28.6 percent of commercial properties in the City within the TCAP and 35.5 percent of commercial properties in the City within the TVAP.

The City Council has heard informational presentations on both area plans, with the councilmembers identified in this letter recusing themselves. Following each presentation, City Council provided direction to staff on the proposed amendments. The Development Services Department will be drafting the amendments to the area plans over the next few months, which would both then be brought back to the Planning Commission for a recommendation and the City Council for approval of the plans and a recommendation to the TRPA. The only decision currently before City Council is to approve the plans, not approve any new developments.

Councilmember Scott Robbins' Interests

Councilmember Scott Robbins is a partner with a direct investment worth \$2,000 or more in Shedcat, LLC, a restaurant and distillery, which has a 3-year lease for commercial space at a property within the boundary of the TCAP.

Planning Manager John Hitchcock's Interest

Planning Manager John Hitchcock owns real property within 550 feet of the proposed boundary of TVAP. Planning Manager Hitchcock's property is in a residential district outside of the TVAP so there would be no change to the zoning of his property. The properties proposed to be added to the TVAP are buffered from Planning Manager Hitchcock's property by other land uses, and thus any proposed development resulting from the TVAP amendment would not be visible or create excessive noise that would affect the Planning Manager's property. Traffic patterns would not be altered because vehicles from the properties proposed to be added to the TVAP would access their properties from a separate street than the one on which the Planning Manager's property is located.

Mayor Cristi Creegan's Interests

Mayor Cristi Creegan leases 900 square feet of office space within the TVAP boundary. She pays \$1,200 per month and subleases about half of the space to a subtenant for \$450 per month. She does not run a business through the space. The property is currently zoned for residential use, but the leased property is used as office space under a special use permit. There has been no evidence to suggest the TVAP would change the term of the lease or alter the rental value of the property. Under the proposed TVAP amendment, the building would be in an area zoned for “Town Center-Neighborhood Professional” and would continue to be a permitted use but without the need for a special use permit.

Mayor Pro Tem Cody Bass’ Interests

Mayor Pro Tem Cody Bass is the sole owner of Tahoe Wellness Center, Inc. (TWC), where he has a direct investment of more than \$2,000 and holds a management position. The Mayor Pro Tem also owns more than 10 percent of Green Bijou Properties, LLC, (GBP) a property management company. GBP owns two properties, including the commercial property where TWC is located. That 1.04-acre property includes 17,545 square feet of commercial building space. GBP leases other space on that property to businesses including a Mexican restaurant and donut shop. The other 0.35- acre property contains a total of 2,945 square feet consisting of an office used by TWC and Mayor Pro Tem Bass’s residence, which he leases from GBP. Both properties are within the boundary of the TCAP.

ANALYSIS

Applicable Law

Under Section 87100, a public official may not make, participate in making, or use the official’s position to influence a governmental decision in which he has a financial interest. A public official has a “financial interest” in a governmental 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; Regulation 18700(a).)

The standards for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in the decision. (Regulation 18701(a).) An official’s financial interest is “explicitly involved” in a decision if the interest is a “named party in, or the subject of,” the decision, and an interest is the “subject of a proceeding” if the decision involves the issuance, renewal, denial, or revocation of any license, permit, other entitlement to, or contract with, the interest. (*Ibid.*) Additionally, an official’s real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6). Where the officials’ financial interests are not explicitly involved as a named party or subject of the decision, the financial effect is “reasonably foreseeable” if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

Section 87103 identifies interests from which a conflict of interest may arise, including:

- Any real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more. (Section 87103(b)).

- Any real property of any business entity in which the individual owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82033.)
- Any real property in which the official has a leasehold interest. (Regulation 18702.2(c).)
- An interest in a source of income, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- A business entity interest, where an official has a direct or indirect investment of \$2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)

Pursuant to Section 87103, the officials in question have the following interests that may be affected by the decisions.

- Councilmember Robbins: A real property interest in the lease where his business, Shedcat, LLC, is located, and a source of income and business entity interest in Shedcat, LLC, as well as a source of income interest in the customers of the business.
- Planning Manager Hitchcock: A real property interest in his home located 550 feet from the proposed boundary of the TVAP.
- Mayor Creegan: A real property interest in her leasehold property, and a source of income a business interest in her business as a landlord of the sublease to a subtenant, as well as a source of income interest in her tenant.
- Mayor Pro Tem Bass: Real property interests in his personal rented property for both his residence and business, TWC, a real property interest in property owned by GBP, a business in which he has a more than 10 percent ownership interest, an interest in the source of income he obtains through TWC and its' customers, GBP and its' tenants.

Real Property Interests

Regulation 18702.2 includes that real property is explicitly involved in a decision if the decision involves the adoption of or amendment to a development plan or criteria applying to the parcel and if the decision determines the property's zoning or rezoning other than zoning decisions applicable to all properties designated in that category. (Regulation 18702.2 (1-2).)

Regulation 18702.2(a)(8) is the applicable materiality standard regarding an official's real property parcel that is located within 500 to 1,000 feet from property involved in a decision.

Under Regulation 18702.2(a)(8)(A)-(E), a decision's effect on an official's owned real property interest is material if the decision would change the parcels:

- Development potential;
- Income producing potential;
- Highest and best use;
- Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- Market value.

Regulation 18702.2(c) provides that the effect of a decision is material as to a leasehold interest in real property if the decision will:

- Change the termination date of the lease;
- Increase or decrease the potential rental value of the property;
- Change the official's actual or legally allowable use of the real property; or
- Impact the official's use and enjoyment of the real property.

Business Entity and Source of Income Interests

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business as either a business entity or source of income is material if the business will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Under Regulation 18702.1, the Act provides that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income, is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.
- The official knows or has reason to know that the entity has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

Councilmember Robbins

Business Entity/Source of Income Interest

Councilmember Scott Robbins is a partner with a direct investment worth \$2,000 or more in Shedcat, LLC, a restaurant and distillery. Shedcat LLC is not explicitly involved in the decision of whether to approve the TVAP or TCAP but Councilmember Robbins has an interest in Shedcat, LLC as a business entity and a source of income, as well as an interest in the lease of the building where the restaurant is located. The business is located within the TCAP boundary.

Looking to Councilmember Robbins' business and source of income interests in Shedcat LLC, we must determine whether the decision at issue would result in an increase or decrease in revenue or expenses up to the limits noted above. The zoning of the general area around the restaurant will change, however, there are no new developments currently planned and the new zoning updates will not change the allowable use of the property. We do not have exact facts regarding Shedcat, LLC's revenues, however, even applying the lowest materiality standards it is not reasonably foreseeable the decision surrounding general zoning changes in the area would increase or decrease the business' revenues by \$1,000,000 or 5%. The same can be said of Shedcat, LLC's expenses, even applying the lowest standard (\$250,000 or 1% change), it is not reasonably

foreseeable these general changes would materially effect the business' expenses. Under these facts, it is not reasonably foreseeable any decision surrounding the TCAP would result in changes to the business' gross revenues or expenses up to the amount described above.

Regarding Councilmember Robbins' interest in the leasehold interest held by Shedcat LLC, we must determine if there will be any changes to the lease term, rental value, or Shedcat LLC's use of the property. Here, there are no facts that the terms of the lease, rental value of the property, or Shedcat, LLC's allowable use of the property will change. Shedcat LLC is a restaurant and distillery that will continue to operate as it currently does regardless of any decision made surrounding the plan, and there are no facts to suggest the landlord for the building will change the lease terms as a result of the TCAP. Further, while there will be general zoning changes throughout the TCAP, it is not reasonably foreseeable that Councilmember Robbins' enjoyment of the property will change as the facts presented to not indicate that there would be an impact to the restaurant through the changes.

Here, for the reasons noted above, the Councilmember does not have a disqualifying interest in Shedcat LLC as a business or source of income and does not have a disqualifying interest in the lease for Shedcat LLC in the decision of whether to approve the area plans because it is not reasonably foreseeable there will be a material financial effect on these interests as a result of the decision.

We note that there is a possibility that Shedcat, LLC customers could be impacted by the changes as sources of income to Councilmember Robbins, however, there were no facts provided surrounding this possible interest. To the extent that customers are impacted uniquely please seek additional advice.

Planning Manager Hitchcock

Real Property Interest

Planning Manager Hitchcock owns real property, his residence, 550 feet from the proposed boundary of TVAP. The Planning Manager's property is not explicitly involved in the decision but still requires analysis given its' proximity to the proposed TVAP boundary. The residential zoning designation for the area in which Planning Manager Hitchcock's property is located will remain unchanged. The changes in the TCAP and TVAP plan are general zoning changes within the plan boundaries that will not directly impact the Planning Manager's property.

The new zoning changes are not in relation to any specific development and there is no development currently planned near Planning Manager Hitchcock's home. Any changes made to properties as a result of the TVAP will be buffered from Planning Manager Hitchcock's property as it is separated by other land uses not impacted by the potential new zoning rules. There is no anticipated change in traffic around the Planning Manager's property. There will be no direct impact to the Planning Manager's home due to the zoning because he is outside of the TVAP boundary and there are no facts to suggest any change in market value or development potential of the Planning Manager's home. In this case, it is not reasonably foreseeable that there will be any financial effect on the Planning Manager's property because of the TVAP. As such, Planning Manager Hitchcock does not have a disqualifying financial interest in his real property.

Mayor Creegan*Leasehold and Business Entity/Source of Income Interests*

Mayor Creegan rents an office space and subleases a portion of that space to a subtenant. The property in question is not explicitly named in the decision, however, it will be impacted by zoning changes as under the proposed new zoning rules the Mayor would no longer be required to maintain a special use permit for the office space as required under exiting City ordinance.

Mayor Creegan's office space is currently located in a residential zone and requires a special use permit. Under the proposed TVAP plan the zoning in that area would be redesignated as "Town Center-Neighborhood Professional" and a special use permit would no longer be required. Here, the zoning of the area would impact the leasehold interest overall because a special use permit would no longer be required. While this does not change the Mayor's actual use of the property, it does have an effect on the legal use of the property as it would now conform with the zoning rules in the area without the need for a special use permit. For these reasons it is reasonably foreseeable the decision has a material financial effect on the lease and Mayor Creegan has a disqualifying interest in the decision as a result of her lease. Because we have determined that Mayor Creegan is disqualified as a result of her leasehold interest, we do not need to further address any other interest held by the Mayor.

Mayor Pro Tem Bass*Real Property, Leasehold, Business/Source of Income Interests***Real Property – Green Bijou Properties**

Mayor Pro Tem Bass has an interest in two properties owned by GBP because he owns more than 10 percent of that business. The zoning changes would amend what types of permissible uses are allowed to be held in the area as the changes are designed to encourage mixed use properties and increase the number of multi-family units in the area.

Here, we must determine first whether the properties owned by GBP are explicitly involved. A decision impacting property is explicitly involved if it changes the zoning of the property unless the zoning decision is applicable to all properties in the same category. (Regulation 18702.2.) Here, the TCAP area, where the properties are located is only one segment of the properties in the city, in fact there is an entirely separate segment being considered as well, the TVAP. Therefore, it is clear not all properties with the same current designation as the GBP owned properties will be changed by changes to the TCAP. Because the TCAP is a designated area, which GBP's properties fall under, and the zoning of GBP's properties will be changed, the properties in question are explicitly involved and a material financial effect is presumed. There are no facts provided to rebut that presumption. As such, Mayor Pro Tem Bass is disqualified from participating in decisions surrounding the TCAP absent an exception.

TWC and Residence Leasehold Interest

Mayor Pro Tem Bass has a leasehold interest in the leases held by his business, TWC, as well as his residence. These interests are named parties in the decision, nor are the properties potentially effected by zoning owned by Mayor Pro Tem Bass as an individual and therefore are not explicitly involved in the decisions.

Mayor Pro Tem Bass leases his residence and the space for his business, TWC, within the boundary of the TCAP. Under the facts presented, there would be no change to the termination or value of the lease, the actual or legally allowable use of the property, or impact on the Mayor Pro Tem's use and enjoyment of the property. There are no facts to suggest that the Mayor Pro Tem will be required to pay additional or less rent, or that his lease may not be renewed because of the new plan. However, the new zoning of the leased buildings would allow an increase in the density allowed for multi-family units, which is not a current use of the property leased by the Mayor Pro Tem.

Business Entity/Source of Income Interests

Mayor Pro Tem Bass has a business interest as the sole owner of TWC, where he has a direct investment of more than \$2,000 and holds a management position and in GBP, a property management company, where he owns more than 10 percent of the business, which is both a business interest and source of income interest. Additionally, GBP leases property to multiple businesses, including a donut shop and Mexican restaurant, creating an interest in those leases as sources of income as well.

Turning to TWC. There are no facts to suggest that this business, a wellness center, would be impacted by the change of zoning in the area. Similarly to the restaurant interest held by Councilmember Robbins, there are no facts to suggest that there will be any significant development that would increase or decrease profits made by TWC even at the lowest materiality standard. Further there will be no change to the allowable use where TWC is located that would impact the business' ability to operate.

GBP is a property management company that rents commercial spaces to tenants. Under the facts provided, GBP already leases commercially and will continue to do so, there will be no foreseeable change to their revenues or expenses as a result of the zoning changes even at the lowest materiality standard. As such, Mayor Pro Tem Bass does not have a disqualifying financial interest in either TWC or GBP as business interests and sources of income because there is not a reasonably foreseeable material financial effect on the interests.

We note that there is a possibility that TWC or GBP customers could be impacted by the changes as sources of income to Mayor Pro Tem Bass, however, there were no facts provided surrounding this possible interest. To the extent that customers are impacted uniquely please seek additional advice.

Public Generally Exception

The Act does not generally prohibit an official from taking part in a decision if the financial effect on a public official's financial interest is indistinguishable from its effect on the public generally. Under Regulation 18703, the Public Generally Rule applies if the official establishes that a significant segment of the public is affected, and the official's financial interest is not unique compared to the effect on the significant segment. A significant segment of the public includes 25 percent of all businesses within the official's jurisdiction, all real property, commercial real property, or residential real property within the official's jurisdiction, or all individuals within the official's jurisdiction. (Regulation 18703(b)(1)(A-C).) If the only interest an official has in the

decision is the official's primary residence, then 15 percent of residential real property within the official's jurisdiction will constitute a significant segment of the public. (Regulation 18703(b)(2).)

Here, there are a total of 754 commercial properties within the City with 216 (28.6 percent) in the TCAP and 268 (35.5 percent) in the TVAP.

Mayor Creegan

Mayor Creegan has an interest in a commercial property within the TVAP boundary that would otherwise exclude her from decisions surrounding the TVAP. However, the impact on the Mayor's lease due to the changes in TVAP is unique because the building will no longer be required to operate under a special use permit. There were no facts presented suggesting that 25 percent of the properties impacted would be similarly situated. Because the effect of the decision on the property the Mayor leases is unique, the public generally exception will not apply, and the Mayor will not be permitted to participate in decisions surrounding the TVAP.

Mayor Pro Tem Bass

Here, over 25 percent of commercial buildings are in the proposed plan area, where GBP's properties are located. There are no facts to suggest that the zoning changes will have any unique impact on GBP's properties that would not be had on the rest of the properties and businesses that encompass that 28.6 percent of all business in the plan area. While there may be potential for new possible tenants, given the push for residential tenancies, that is true of any company that leases property in the plan area. There are no specific developments planned that would impact GBP in any specific way. While GBP owns two properties currently leased to commercial tenants, they are relatively small and do not account for a large portion of the 216 businesses in the area such that the effect would be unique on the company. For these reasons, the public generally exception will apply and Mayor Pro Tem Bass may participate in decisions surrounding the TCAP.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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