



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

April 30, 2018

Damien Brower, Esq.  
Brentwood City Attorney  
150 City Park Way  
Brentwood, CA 94513

Re: Your Request for Advice  
Our File No. A-18-032

Dear Mr. Brower:

This letter responds to your request for advice on behalf of City of Brentwood Councilmembers Karen Rarey, Bailey Grewal, and Claudette Staton, as well as Planning Commissioners John Fink regarding the conflict of interest provisions of the Political Reform Act ("Act").<sup>1</sup> Please note that Commission staff are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as under the common law or Section 1090.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); 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. In addition, the Fair Political Practices Commission does not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

### QUESTIONS

Do the named officials have a disqualifying conflict of interest in making, participating in making, or influencing decisions concerning a Shadow Lakes/Deer Ridge project, under the following circumstances:

1. Councilmember Rarey's residence is within the golf communities, 925 feet from one of the housing project sites.

---

<sup>1</sup> 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.

2. Councilmember Grewal's residence is within the golf communities, 950 feet from one of the housing project sites, and the Councilmember owns a residential rental property within the golf communities, 1,600 feet from the other housing project site.

3. Councilmember Staton owns a business that manages a residential rental property within the golf communities, 950 feet from one of the housing project sites.

4. Planning Commissioner Fink manages a residential rental property outside of the golf communities, which is being rented by a consultant who represents the applicants' interests before the City.

### **CONCLUSIONS**

1-4. Based on the facts presented, the decisions regarding the project will not have a reasonably foreseeable material effect on the various interests identified. Therefore, the officials are not disqualified from taking part in the decision.<sup>2</sup>

### **FACTS AS PROVIDED BY REQUESTOR**

You are the City Attorney for the City of Brentwood. The City's borders encompass two residential subdivisions, spanning 355 acres of land and featuring two 18-hole golf courses separated by a major arterial road – Balfour Road. The golf courses are wholly owned by third parties. The residents of the subdivisions do not participate in the maintenance of the courses, and the subdivisions have no financial connection to the golf courses.

On March 9, 1993, the five-person Brentwood City Council approved the adjacent golf communities. Shadow Lakes is a "densely-populated residential area" north of Balfour Road. Its counterpart, Deer Ridge, is south of the road. Collectively, these subdivisions comprise the golf communities.

City staff was recently approached by representatives of both golf communities ("applicants"). Due to economic constraints, the applicants intend to formally propose to consolidate the golf courses into a single 18-hole golf course. This proposal will eliminate a total of 18 holes from the courses, eight from Shadow Lakes and 10 from Deer Ridge. Additionally, the applicants propose the construction of a pedestrian bridge to traverse the road.

The applicants also propose to develop two multi-family senior housing units, with one site located within each golf community. The applicants claim that the senior housing units will require a rezoning of 8.8 percent of the golf communities.

The City anticipates that the development of the multi-family senior housing units in lieu of a portion of the removed 18 holes will be a controversial proposal. Several residents purchased their residences within the golf communities with the expectation that both golf courses would remain active. In addition, there may be several physical effects imposed on the communities by the

---

<sup>2</sup> This conclusion applies only to the extent that the decision regarding the locations of the housing projects are final and that any future decisions would not affirm, nullify or alter this decision.

proposed senior housing, including increased traffic, noise, and aesthetic impacts. Furthermore, several property owners believe that their property value will decrease if the golf holes are eliminated and replaced with senior housing.

The City Council and Planning Commission will participate in the decision-making process and public hearings, including approval or denial of the project. Several public officials reside within or near the golf communities. Specifically, Councilmember Karen Rarey owns her residence within Shadow Lakes; Councilmember Bailey Grewal owns his residence within Shadow Lakes and a rental property within Deer Ridge; Councilmember Claudette Staton manages a residential rental property within Shadow Lakes, and; Planning Commissioner John Fink manages a residential rental property located outside the golf communities and its adjacent area.

Councilmember Staton owns a business called Key Realty that provides property management services at the rental property in question, as well as another property. Her business receives monthly payment for the services from the owner of the property. The duration of the agreement is unspecified.

The rental property that Commissioner Fink manages is being rented by a consultant who represents the applicants' interests before the City. Commissioner Fink does not receive any direct income from the applicants or the applicants' consultant. Instead, the Commissioner is paid a property management fee by the rental property owner.

The locations of the Councilmembers' residences and rental properties are as follows:

- Councilmember Rarey lives within Shadow Lakes, 925 feet from the Shadow Lakes project site, and approximately 450 feet from the nearest hole to be removed.<sup>3</sup>
- Councilmember Grewal lives within Shadow Lakes, 950 feet from the Shadow Lakes project site and approximately 375 feet from the nearest hole to be removed. The Councilmember also owns a residential rental property in Deer Ridge that is 1,600 feet from the other project site and approximately 400 feet from the nearest hole to be removed.
- Councilmember Staton manages a residential rental property within Shadow Lakes, 950 feet from the Shadow Lakes project site and approximately 800 feet from the nearest hole to be removed.
- Commissioner Fink manages a residential rental property outside of the golf communities and its adjacent area.

---

<sup>3</sup> It was previously advised that Councilmember Rarey is disqualified from taking part in project-related governmental decisions primarily based on the proximity of the Councilmember's residence to an "alternate site" identified for CEQA purposes. (*Lysons* Advice Letter, No. A-17-131.) That site has been removed from the project application, warranting further analysis of Councilmember Rarey's participation in project-related decisions under the conflict of interest provisions of the Act.

*Councilmember Involvement:*

The City Council continues to be tasked with several decisions related to the proposed project. As an initial matter, the City awarded a contract to a consultant to draft the initial study and environmental impact report ("EIR") for the project. The draft EIR notes that unavoidable significant impacts will result from the project in that construction will cause a substantial temporary increase in ambient noise levels; the East Contra Costa Fire Protection District will be taxed with increased medical emergencies and fire services, and; travel time will increase along State Road 4 between Balfour Road and Marsh Creek Road.

Due to project revisions that occurred after the submittal of the project application, as well as unanticipated revisions to the draft EIR, the environmental consultant's agreement needs to be amended by the City Council to increase the not-to-exceed compensation amount.

The project will also include a general plan amendment ("GPA"), zoning amendment ("ZA"), development agreement ("DA"), tentative parcel maps ("MS"), and design review ("DR"), all discretionary approvals by City Council. In addition, an agreement for legal services related to the project (and entered into by staff last year) may now need to be amended by the City Council to increase the agreement's not-to-exceed compensation amount above the staff-authorized levels. Special counsel services include aiding the City Attorney's Office related to the legal review of project and environmental documents. As with the environmental consultant agreement, the City is reimbursed by the applicants for the services of the special counsel. Amendment to the legal services agreement will also require approval by the City Council.

*Planning Commissioner Involvement:*

The Planning Commission will make recommendations to the City Council on approval or denial of the EIR, GPA, ZA, DA, MS, and DR. The Commission will, however, be the final decision making body with respect to any subsequent stand-alone DR, and their actions related to any such future DR will be appealable to the City Council.

The land previously occupied by the golf holes will be passively developed. The developer contemplates that it will use the newly vacant land for a combination of walking trails, vineyards, bike paths, community gardens, and open space. These proposed land uses will not require a rezoning. You also indicate that "it could be argued that views, traffic levels or intensity of use may be altered around [the officials'] homes because of the proposed [p]roject."

**ANALYSIS**

Under Section 87100, a public official is prohibited from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A conflict of interest may arise only when a reasonably foreseeable financial effect of a governmental decision on a public official's interests is material, and distinguishable from the effect on the public generally. A conflict of interest exists whenever a public official makes, participates in making, or uses his or her position to influence a governmental decision that has a reasonably foreseeable material financial effect on one or more of the official's interests as identified in Section 87103. Potentially disqualifying interests include:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more. (Section 87103(a).)
- Any real property in which the public official has a direct or indirect interest of at least \$2,000. (Section 87103(b).)
- Any 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).)
- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds a position of management. (Section 87103(d).)

Furthermore, a public official always has an interest in his or her personal finances. However, a financial effect on the value of real property owned directly or indirectly by a public official, and a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which a public official has a direct or indirect investment interest, are not considered separate financial effects on the official's personal finances and would not be analyzed separately under the "personal financial effects" rule. Accordingly, the personal financial effects rule does not appear to apply to the officials' circumstances, and it will not be discussed further.

#### Foreseeability:

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. (Section 87100.) The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. (Regulation 18701.) An interest is explicitly involved in a decision if the interest is a named party in, or the subject of, the governmental decision. (Regulation 18701(a).) An interest in real property is also explicitly involved in the decision whenever the decision affects a real property interest as described in Regulation 18702.2(a)(1)-(6). As pertinent to this analysis, Regulation 18702.2(a) provides that a real property interest is explicitly involved in a decision if the decision:

"(1) Involves the adoption of or amendment to a general... or specific plan, and the parcel is located within the proposed boundaries of the plan.

"(2) Determines the parcel's zoning or rezoning..."

However, while you have indicated that the governmental decisions involve a general plan amendment and rezoning, the general plan amendment and rezoning appears limited to the boundaries of the existing golf course as opposed to the surrounding residences. Accordingly, it does not appear that the official's parcels are within the boundaries of the amendment or will be subject to rezoning.

Under the facts that you have provided, the officials' properties and businesses are not explicitly involved in the decisions regarding the project. Thus, as applied to each official's respective interests, Regulation 18701(b) provides: "[i]n general, if the financial effect can be

recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.”

Materiality:

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. As relevant to the facts here, the financial effect of the decisions on the officials' respective real property interests is material if the decisions:

- 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. (Regulation 18702.2(a)(10).)
- Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18702.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property. (Regulation 18702.2(a)(11).)
- 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. (Regulation 18702.2(a)(12).)

Regulation 18702.1(b) provides the standard for materiality for interest in business entities, including sources of income, not explicitly involved in the decisions. Under this regulation, an effect on a business entity, including a source of income, is material if a prudent person with sufficient information would find it reasonably foreseeable that the decisions' financial effect would contribute to a change in the price of the business entity's publicly traded stock or the value of a privately-held business entity.

*Councilmember Karen Rarey:*

Councilmember Rarey resides 925 feet from the Shadow Lakes project site and approximately 450 feet from the nearest hole to be removed. Per the developer's website, the developer has proposed only minor development of the removed holes. As informally proposed, the newly open land will be developed to incorporate alternatives, limited to walking trails, vineyards, bike paths, community gardens, or other open space. These anticipated passive developments do not require rezoning and are consistent with the nature of the neighborhood as currently constituted. Notwithstanding the fact that the property is within 500 feet of the nearest hole to be removed, it does not appear that the merger of the golf course and removal of holes will have a measurable effect on the residence. Furthermore, the Councilmember is sufficiently buffered from the project

site by several rows of homes. As such, the facts in this case, do not establish that the decisions will have a measurable impact on her residence. Thus, Councilmember Rarey does not have a disqualifying conflict of interest in the decisions.

*Councilmember Bailey Grewal:*

Councilmember Grewal resides 950 feet from the Shadow Lakes project site and approximately 375 feet from the nearest hole to be removed. The Councilmember also owns a residential rental property in Deer Ridge that is 1,600 feet from the other project site and approximately 400 feet from the nearest hole to be removed. The Councilmember indicated that he "does not believe that the rent for this property will change because of project development. But that removal of the golf course may deter future tenants." However, this is countered by the fact that the golf course will be replaced with limited alternatives that do not significantly change the nature of the open space and do not require rezoning. Regarding the property interest in his residence and rental property, it does not appear that the decisions, including decisions regarding housing projects and the merger of the courses, will have a foreseeable and material effect on either Councilmember Grewal's residence or rental property for the same reasons as provided for Councilmember Rarey. It is also unlikely that the decisions will materially affect the value of the Councilmember's interest in the rental business.

*Councilmember Claudette Staton:*

Councilmember Staton owns a business that manages a residential rental property within Shadow Lakes that is 950 feet from the project site and approximately 800 feet from the nearest hole to be removed. Based upon the facts provided, it does not appear that the housing project or the minor development of the golf course will affect the value of residential property 950 feet from the project and 800 feet from the course. To the extent the removal of the golf course may deter potential renters, the likelihood of this must be weighed against the fact that the course will be replaced with limited alternatives that do not significantly change the nature of the open space and do not require rezoning. Accordingly, a prudent person with sufficient information would not find it reasonably foreseeable that the decisions' financial effect would contribute to a change in the value of any privately-held business entity from which the Councilmember receives property management compensation. Thus, there is no indication that the value of her business will be materially affected by project-related decisions.<sup>4</sup>

*Commissioner John Fink:*

Commissioner Fink manages rental property outside of the golf communities and its adjacent area. The property is being rented by an individual who is a consultant and represents the applicants' interests before the City. Commissioner Fink does not receive any direct income from the applicants or the applicants' consultant and is instead paid property management compensation

---

<sup>4</sup> As the owner of her property management business, it also appears that Councilmember Staton has an interest in the owner of the rental property as a source of income. However, to the extent that the decision does not have a reasonably foreseeable material effect on the rental property it does not appear that the decision will have a reasonably foreseeable material effect on the interest in the owner. However, we caution that the Councilmember's interest in the owner may result in a disqualifying conflict of interest if the Councilmember knows or has reason to know that the owner has any other interests in business entities or property implicated by the decision. (See Regulation 18702.3.)

by the rental property owner. The fact that Commissioner Fink manages property leased by a consultant of the applicants does not create a financial interest enumerated under Section 87103 in the consultant. Moreover, there is no indication of a reasonably foreseeable material effect on Councilmember's Frank's interest in his source of income in the residential rental business. Thus, Commissioner Fink does not have a disqualifying conflict of interest prohibiting him from taking part in project-related governmental decisions.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Ryan P. O'Connor  
Counsel, Legal Division

RPOC:jgl