



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 28, 2020

Andrew Morris
Town Attorney
Town of Mammoth Lakes
PO Box 1609
Mammoth Lakes, CA 93546

Re: Your Request for Advice
Our File No. A-20-145

Dear Mr. Morris:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”) on behalf of incoming Mammoth Lakes Town Councilmember Sarah Rea (“Councilmember Rea”).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

May Councilmember Rea take part in Town Council decisions regarding the development of hundreds of additional housing units located on a 25-acre parcel approximately 700 feet from Councilmember Rea’s rented home?

CONCLUSION

No, the Act prohibits Councilmember Rea from taking part in such decisions, as it is reasonably foreseeable that the introduction of hundreds of additional housing units and desirable new amenities on a Parcel approximately 700 feet from Councilmember Rea’s leased property would affect the potential rental value of her leasehold interest.

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.

FACTS AS PRESENTED BY REQUESTER

The Town of Mammoth Lakes (“Town”) is a four-season mountain resort community located in the eastern Sierra Nevada. The Town has a population of approximately 8,000. The seasonal nature of much of the tourism-oriented job market in Mammoth Lakes means that renters tend to “come and go,” and the demand for housing varies seasonally. The Town is only four square miles in size. Residential units are fairly concentrated in a couple of areas, including the area around the Parcel. There are 9,708 residential units in Town and approximately 1,042 of those are within 1,000 feet of the Parcel.

As with many communities in California, the Town has an acute lack of affordable housing. The Town purchased approximately 25 acres of vacant land (“Parcel”) with the intention of causing the construction of between 170-580 units of affordable housing. The Town has been in negotiations with a developer to construct this housing. The negotiations are being undertaken by Town staff, under the direction of the Town Council. A disposition and development agreement (“DDA”) is anticipated to be brought to the Town Council for approval early in 2021. In the meantime, the Town Council will continue providing direction to staff regarding priorities for inclusion in the DDA, including exact unit counts, affordability levels, community amenities, DDA term and construction timing, and the terms of the sale of the land by the Town.

Councilmember Sarah Rea lives in a rented condominium in Mammoth Lakes. Her lease is for one-year and was renewed in November 2020. The Parcel is located approximately 700 feet to the northeast of Councilmember Rea’s home. Councilmember Rea is a strong supporter of the construction of affordable housing and made housing one of the main themes of her campaign for election to the Town Council. She would like to take part in Town Council decisions regarding the Parcel.

You provided a comprehensive report of traffic analysis undertaken by the Town regarding the potential development of the Parcel. The traffic study does not suggest that there would be any impacts to the street Councilmember Rea’s home is located on as a result of the development of the Parcel.

In a follow-up email, you provided a draft of a Master Plan for the development of the Parcel, and noted that the draft calls for a new public park and some other open public space, as well as sidewalks and multi-use paths, with the overall goal of having the Parcel development fit seamlessly into the community and for it to be walkable and bikeable. The draft Master Plan also calls for additional amenities, such as “a daycare center and a community center that will provide amenities for the residents and the general public,” and the establishment of at least three bus stops within the Parcel.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he 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 his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[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).) Councilmember Rea has a potentially disqualifying interest in her real property leasehold interest.

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).” Councilmember Rea’s real property interest is not explicitly involved in the Parcel decisions.

Where 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 effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official’s actual or legally allowable use of the property; or
- (4) Impact the official’s use and enjoyment of the property.

(Regulation 18702.2(c).)

Here, the development of up to 580 additional housing units on the Parcel would not change the termination date of Councilmember Rea’s lease, nor would it change the actual or allowable use of the property. However, it is reasonably foreseeable that the development of the currently vacant 25-acre area, which includes the introduction of as many as 580 units on the Parcel and new amenities such as a childcare facility, community center, and new public park, would affect the potential rental value of Councilmember Rea’s leased property located only 700 feet away from the Parcel. Accordingly, it is reasonably foreseeable that decisions involving the development of the Parcel would have a material financial effect on Councilmember Rea’s leasehold property interest.


A governmental decision’s reasonably foreseeable, material financial effect on a public official’s economic interests only disqualifies the official from taking part in the decision if that effect is distinguishable from the effect on the public generally. (Section 87103.) A governmental decision’s financial effect on a public official’s economic interest is indistinguishable from its effect

on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's economic interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes at least 15 percent of the residential real property within the official's jurisdiction if the only interest the official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(2).) Here, however, the facts indicate only that, 10.7 percent of the Town's 9,708 residential units are located within the 1,000 foot area around the Parcel. Accordingly, the facts provided do not establish that the "public generally exception" is applicable. Rather, the Act prohibits Councilmember Rea from taking part in Town Council decisions regarding the development of additional housing units on the Parcel.

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

Sincerely,

Dave Bainbridge
General Counsel


By: Kevin Cornwall
Counsel, Legal Division

KMC:aja