



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 19, 2021

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

Re: Your Request for Advice
Our File No. I-21-140

Dear Ms. Stroud:

This letter responds to your request for advice on behalf of South Lake Tahoe City Councilmembers John Friedrich, Cody Bass, and Cristi Creegan and Development Services Director Hilary Roverud 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. As you have sought general advice and have not yet identified specific decisions before the officials, we are providing informal assistance.²

QUESTION

Under the Act, may South Lake Tahoe City Councilmembers Friedrich, Bass, and Creegan and Development Services Director Roverud take part in decisions pertaining to the development of an Area Plan, given that each of the officials owns commercial or residential real property within 500 feet of the Area Plan site?

CONCLUSION

Under applicable regulations, an official with a property interest within 500 feet of property that is the subject of a decision is prohibited from taking part in the decision unless there is clear and convincing evidence indicating the decision would have no measurable financial effect on the

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 18109 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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

respective property or the effect on the official's economic interests is indistinguishable from the effect on the public generally. Given the lack of details available regarding the Area Plan at this point, we can only advise that the officials are generally prohibited from taking part in the decisions. Until the specific decisions that may come before the officials can be identified, it is not feasible to determine the potential effect on any business interest the official may have, whether there is clear and convincing evidence the decision would no measurable effect on the official's property, or whether the financial effect on the officials' economic interests would be indistinguishable from the effect on the public generally.

FACTS AS PRESENTED BY REQUESTER

In the City of South Lake Tahoe, the Bijou-Al Tahoe Area Plan ("Area Plan") is a high-level planning document governed by 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. Area plans are developed by local jurisdictions and reviewed and approved by the City Council and TRPA through a public process.

The Area Plan update is necessary to facilitate redevelopment of the area by updating components that may include density, design standards, and goals and policies. The area covered by the proposed Area Plan includes commercial, recreational, and governmental service amenities such as the Harrison Avenue commercial corridor, Sierra Tract commercial corridor, South Lake Tahoe Middle School, South Lake Tahoe Police Department, El Dorado County Court, Sheriff's Office, Jail, and Juvenile Treatment Facility, Lake Tahoe Community College, the recreational and governmental facility area covered by the 56 Acres Master Plan, Recreation Center, Ice Arena, South Lake Tahoe Community Playfields, Bijou Community Park, Bijou Bike Park and Skate Park, and Bijou Golf Course.

The City Council has not taken any action on the Area Plan. Development Services Department staff intends to prepare a request for proposals to select a consultant to prepare the Area Plan. The contract with the selected consultant would then be brought to the City Council. Once the Area Plan is drafted, it would be brought to the Planning Commission for a recommendation and then City Council for approval and a recommendation to the TRPA.

Three City Councilmembers and the Director of Development Services own real property within 500 feet of the proposed project boundary:

Councilmember John Friedrich and his spouse own an approximately 0.19-acre parcel containing a 2,175 sq. ft. single-family residence where they reside in the Bijou Pines subdivision, a densely developed neighborhood consisting of other single-family residences. The Friedrich residence property is approximately 375 feet outside the proposed Area Plan boundary.

Development Services Director Hilary Roverud ("Director Roverud") and her spouse own an approximately 0.12-acre parcel containing a 1,711 sq. ft. single-family residence also in the Bijou Pines subdivision, immediately adjacent to, but outside of the proposed Area Plan boundary.

City Councilmember Bass is the sole owner of Tahoe Wellness Center, Inc. (TWC). Bass has a direct investment worth \$2,000 or more in TWC and holds a position of management in TWC. Bass also owns more than 10 percent of Green Bijou Properties, LLC, a property management company. Green Bijou Properties owns two parcels, including the commercial parcel where TWC is located. That 1.04-acre parcel includes 17,545 sq. ft. of commercial building space. Green Bijou Properties leases other space on that parcel to businesses including a Mexican restaurant and donut shop. The other 0.35-acre parcel contains a total of 2,945 sq. ft. consisting of an office used by TWC and Bass's residence. Both parcels are within 500 feet of the proposed Area Plan boundary.

City Councilmember Creegan is a partner at The Press Project, LLC, and owns a 26 percent interest in the company. Additionally, Councilmember Creegan's spouse owns a 24 percent interest in the company. The Press Project, LLC, owns a commercially-zoned 0.72-acre parcel developed with approximately 10,000 sq. ft. of office space. The building contains 35 offices that are available to be rented out individually as well as one larger space. Monthly rents are between \$3.50 to \$6.50 per square foot, and all of the spaces are currently rented to commercial tenants. Because of her and her spouse's combined near-50 percent ownership in The Press Project, Councilmember Creegan has real property interests exceeding \$2,000 in the property. Councilmember Creegan is also a partner in a business called CoWork Tahoe, LLC, which is a commercial tenant at the property paying approximately \$5,000 per month to The Press Project, LLC. Councilmember Creegan owns a 26 percent interest and her spouse owns a 24 percent interest in CoWork Tahoe. The parcel is located within the boundary of the proposed Area Plan.

Fifteen percent of the residential units within the City are within 500 feet of the proposed Area Plan Boundary.

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 [their] 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 are:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, 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.) Councilmember Friedrich and Director Roverud have economic interests in their residential real property. Councilmembers Bass and Creegan have economic interests in their commercial real property, as well as the business entities located on that commercial real property.

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).)

The Area Plan is intended to guide long-term planning and community vision for the future of the area, including land use goals and policies, zoning, permit requirements, development and design standards, and goals and policies regarding transportation, conservation, recreation, and public services. However, the details of the Area Plan are not yet developed. Each of the three Councilmembers, as well as Director Roverud, own real property located 500 feet or less from the site of the Area Plan. Given this proximity, it is presumed the decisions would have a reasonably foreseeable, material financial effect on the real properties and all four officials are prohibited from taking part in decisions related to the Area Plan. Given the early stage of planning and lack of details with respect to the Area Plan, there is no clear and convincing evidence that governmental decisions regarding the Area Plan would have no measurable impact on the officials’ real property. Accordingly, even without consideration of the officials’ respective interests in any business entity, the Act generally prohibits the officials from taking part in decisions pertaining to the Area Plan unless an exception applies.

Under the “public generally exception,” a public official that has financial interest in a decision may still participate if the official demonstrates that the financial effect is indistinguishable from its effect on the public generally. (Section 87103; Regulation 18703.) A governmental decision’s financial effect on a public official’s financial interest is considered 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 his or her financial 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 residential real property within the official’s jurisdiction if the only interest an official has in the governmental decision is the official’s primary residence. (Regulation 18703(b)(2).) Here, 15 percent of the City’s residential units are within 500 feet of the proposed Area Plan.

Although it appears the Area Plan would affect a significant segment of the public with respect to primary residences, at this early stage in the planning process, with no specifics known, we cannot feasibly determine whether any decision pertaining to the Area Plan would have unique effect on any of the officials' respective economic interests. As a result, we cannot determine if the public generally exception would apply without more specific information about the Area Plan. Therefore, lacking an applicable exception, the officials at issue are generally prohibited from taking part in decisions pertaining to the Area Plan. The officials may wish to seek additional advice with respect to the Act once further details regarding the Area Plan are known.

Legally Required Participation

Even if disqualified under Section 87100, Section 87101 provides that the prohibition does not prevent a public official from making or participating in the making of a governmental decision to the extent his or her participation is *legally required* for the action or decision to be made. Section 87101 is narrowly interpreted to permit the participation of the fewest financially interested persons possible in any decision. (*In re Hudson* (1978) 4 FPPC Ops. 13; *Gillig* Advice Letter, No. A-96-150; *Hill* Advice Letter, No. I-89-160.)

Regulation 18705 states:

(c) This regulation shall be construed narrowly, and shall:

- (1) Not be construed to permit an official, who is otherwise disqualified under Section 87100, to vote to break a tie.
- (2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Section 87100, whether or not such other members are actually present at the time of the disqualification.
- (3) Require participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, the official is selected for the duration of the proceedings in all related matters until the official's participation is no longer legally required, or the need for invoking the exception no longer exist.

Regulation 18705 further specifies that the legal requirement for participation may be established only if there is no alternative source of decision, the legal basis for the determination is disclosed, the official discloses the conflict and describes with particularity the nature of their financial interest(s). Thus, a public official disqualified under Section 87100 may participate in the making of a governmental decision only if a quorum cannot be convened of other members who are not disqualified under Section 87100.

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:dkv