



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

December 07, 2021

Todd R. Leishman
Best Best & Krieger
City of Indian Wells
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

Re: Your Request for Advice
Our File No. A-21-154

Dear Mr. Leishman:

This letter responds to your request for advice on behalf of City of Indian Wells (“City”) Councilmember Donna Griffith 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. Does Councilmember Griffith have a disqualifying financial interest in the decision of the City whether to amend an existing easement agreement to modify the use of a small portion the Golf Resort golf course, where that portion of the course is located just within 1,000 feet of her residence?

2. Does Councilmember Griffith have a disqualifying financial interest in the decisions of the City Council to receive and consider approval of a report from the City’s consultant that will propose a Master Plan for the Golf Resort, where a portion of the Golf Resort property is located within 500 feet of the Councilmember’s residence?

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.

CONCLUSIONS

1. No. The Councilmember does not have a conflict in a decision to amend an existing easement agreement to modify the use of a small portion the Golf Resort golf course, where that portion is within 1,000 feet of her residence, because it is not reasonably foreseeable that the decision concerning the Easement Agreement would have a material financial effect on the Councilmember's real property interest in her residence based on the facts presented.

2. Yes. Under the applicable standard, it is presumed that the reasonably foreseeable financial effect of a governmental decision to approve a Master Plan for the Golf Resort is material, and there is no clear and convincing evidence that the decision will not have any measurable impact on Councilmember Griffith's real property.

FACTS AS PRESENTED BY REQUESTER

Golf Resort

The Golf Resort is a municipal golf course operated by the City, and consists of two golf courses, a pro shop, a restaurant, and a "Shots in the Night" hi-tech golf putting game. There are no memberships available for the Golf Resort. A City discount card is available for purchase by all City residents for the price of \$50, and includes discounts on rounds of golf, pro shop items, and meals at the Golf Resort, as well as discounts at other restaurants in the City and events at the Indian Wells Tennis Garden. The Golf Resort also offers discounts to guests of the adjacent hotels, the Hyatt Regency Indian Wells Resort & Spa ("Hyatt") and the Renaissance Esmeralda Resort & Spa ("Renaissance Esmeralda").

Easement Agreement

In 1985, the former Redevelopment Agency of the City of Indian Wells ("Agency") entered into an Easement Agreement with the owners of adjacent hotels, by which the hotel owners granted to the Agency a perpetual exclusive easement over their respective properties for the purpose of allowing the Agency to construct, operate, and maintain the Golf Resort and ancillary facilities. Each of the hotel owners retain the limited right to incidentally use the easement area for emergency temporary access, and for construction, maintenance and repair of each owner's hotel and hotel property, so long as the use does not interfere with the Agency's (now City's) use.

Recently, the owners of the Renaissance Esmeralda approached the City regarding the possibility of constructing villas or similar structures on the property currently used as the 18th hole of the golf course. An amendment to the Easement Agreement would be required in order for the owners of the Renaissance Esmeralda to move forward with their plans. If the parties were to amend the Easement Agreement as requested, the 18th hole would need to be relocated by the City. The amendment to the Easement Agreement would not result in any changes regarding the Hyatt property.

The golf cart path, sand traps, and a small portion of the green near the 18th hole are located just under 1,000 feet from the Councilmember's residence.² If the 18th hole is relocated, the only possible new location for it would be further north, meaning the new 18th hole would be well over 1,000 feet from the Councilmember's residence.

The use of the Golf Resort would remain the same, as the Golf Resort property is already developed with the Golf Resort and hotel uses and neither the Councilmember's home nor her neighborhood front on the Golf Resort. The neighborhood entrance faces a different direction, and leads to other streets.

Stone Creek

The City has hired a consultant, Stone Creek, to develop a Master Plan for the Golf Resort. The Master Plan is intended to provide guidance on all aspects of the Golf Resort, and potential renovation of existing facilities, new and improved dining, entertainment, and hotel amenities, etc. Stone Creek is currently in the process of gathering input from the community as to what features should be included in the redesigned Golf Resort.

Later this year, Stone Creek plans to present a draft report to the City Council that will set forth its vision for the Master Plan. The draft report will likely be presented as part of a study session, allowing the Council and members of the community to ask questions and provide input. A final report is planned to be adopted in early 2022.

While the details of the Master Plan are not yet known, it is likely that the Master Plan will result in major renovation of and improvements to the Golf Resort.

Councilmember Griffith

The shortest driving distance from Councilmember Griffith's residence to the entrance of the Golf Resort is 5,140 feet, however when measured "as the crow flies" the Councilmember's residence is 331 feet from the closest section of the golf course. The Councilmember's residence is separated from the Golf Resort by a street; a tall, cinder-block noise-barrier wall; a berm with a landscaped area; a sidewalk; additional landscaping; a highway (Highway 111); additional landscaping; another sidewalk and another berm with a landscaped area; and then another tall, cinder-block noise-barrier wall. The Golf Resort is not visible from the Councilmember's residence. Nor can noise incident to normal operations of the Golf Resort be heard at the Councilmember's residence. There is no evidence of any sight, sound, smell, or other physical perception of the Golf Resort generally or of the 18th hole, in particular, from her home.

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

² We note that your request includes a map, which shows the Councilmember's property is 743 feet from the boundary of the area of the course where the 18th hole is located.

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, including “[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 Griffith has an economic interest in her residential real property, which is located less than 500 feet from the Golf Resort, as well as her personal finances.

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 decisions, 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.”

Easement Agreement Amendment

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Regulation 18702.2(a)(7) provides that 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 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)(8) provides that 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 decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel’s 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.

As the language of Regulation 18702.2 indicates, the relevant distance for purposes of applying the regulation is generally the distance from parcel-to-parcel. However, as discussed in the *Zaragoza* Advice Letter, No. A-19-078, which also examined the existence of a potential conflict in decisions relating to specific course facilities at a city golf course, an exception exists to the literal boundary-to-boundary measurement under the 500-foot rule, applicable in cases where the governmental decision affects only a clearly defined, specific, and isolated site, such as a particular building on a large tract of land.

If the City amends the Easement Agreement as requested, the 18th hole would need to be relocated by the City. The amendment to the Easement Agreement would not result in any changes regarding the Hyatt property.

The golf cart path, sand traps, and a small portion of the green near the 18th hole are located just under 1,000 feet from the Councilmember's residence. If the 18th hole is relocated, the new 18th hole would be relocated further north, well over 1,000 feet from the Councilmember's residence. As the decision to amend the Easement Agreement is limited to property more than 500 feet from the official's residence, the applicable materiality standard is that for a decision involving property more than 500 feet but less than 1,000 feet from the official's property.

According to your facts, the use of the Golf Resort would remain the same, as the Golf Resort property is already developed with the Golf Resort and hotel uses and neither the Councilmember's home nor her neighborhood front on the Golf Resort. The neighborhood entrance faces a different direction, and leads to other streets, while a highway, with a cinder-block noise-barrier wall; a berm with a landscaped area; a sidewalk; additional landscaping on either side, separate the Councilmember's residence from the Golf Resort.

It does not appear likely that the decision concerning the Easement Agreement would affect the development potential, income producing potential, highest and best use, or market value of the Councilmember's residence, and there is no indication that it would impact affect the traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality at her residence. Thus, based on the facts presented, it is not reasonably foreseeable that the decision concerning the Easement Agreement would have a material financial effect on the Councilmember's residence. Accordingly, the Act's conflict of interest provisions do not prohibit the Councilmember's from taking part in that determination.

Golf Resort Master Plan

The decisions at issue concern input on and subsequent approval of a Master Plan for the Golf Resort. The City has already retained a consultant, Stone Creek, to develop a Master Plan. The Master Plan is intended to provide guidance on all aspects of the Golf Resort. Potential projects include renovation of existing facilities, new and improved dining, entertainment, and hotel amenities. While you indicate that details of the Master Plan have not yet been determined, it is likely that the Master Plan will result in major renovation of and improvements to the Golf Resort. Councilmember Griffith's residence is located less than 500 feet from the Golf Resort

As noted above, 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).)

Under this standard, it is presumed that the reasonably foreseeable financial effect of a governmental decision is material, unless there is clear and convincing evidence that the decision will not have any measurable impact on Councilmember Griffith's real property. As noted above, it is likely that the Master Plan will result in major renovation of and improvements to the Golf

Resort. These improvements include renovation of existing facilities, new and improved dining, entertainment, and hotel amenities. You have not provided any evidence to show that these decisions will not have a measurable impact on the Councilmember's property. Thus, the Act prohibits Councilmember Griffith from taking part in those decisions.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:dkv