



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 23, 2022

Todd R. Leishman
for BEST BEST & KRIEGER LLP
City Attorney
City of Indian Wells
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

Re: Your Request for Advice
Our File No. A-22-059

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 conflict of interest in the decisions of the City Council to receive a report from its consultant and consider alternatives for 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, given an Appraiser’s Opinion, and the fact that the Master Plan will focus on areas of the Golf Resort located over 1,000 feet from her residence?

2. Does Councilmember Griffith have a disqualifying financial interest in decisions regarding the Golf Resort generally, given an Appraiser’s Opinion?

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.

CONCLUSION

1. It is reasonably foreseeable that the decision would have a material financial effect on Councilmember Griffith's real property interest, and she should not take part in the decisions to receive a report from its consultant and consider alternatives for a Master Plan for the Golf Resort.

2. Councilmember Griffith will also be prohibited from taking part in decisions relating to proposals that include projects located within 500 to 1,000 feet of her residence, or to those decisions that would apply to the Golf Resort as a whole, if the decisions will change her parcel's development or income producing potential, highest and best use, character or market value. Councilmember Griffith may wish to seek additional assistance prior to taking part in any decisions related to the project once the specific nature of the decision can be identified.

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 and the Renaissance Esmeralda Resort & Spa.

Master Plan for the Golf Resort

On May 19, 2022, the City's consultant, StoneCreek Partners ("StoneCreek"), submitted to the City a report entitled "Strategic Asset Plan Alternatives for Indian Wells Golf Resort" ("Report") which identifies options to be considered by the City in determining the long-term goals and plans for the Golf Resort, and ultimately, adopting a Master Plan. Some of the alternatives presented in the Report include maintaining the status quo; repurposing the clubhouse; enhancing the experience for hotel guests; restructuring the golf course; creating a new practice facility; and creating a new "resort village" that would include activities beyond golf. You state the Report indicates that the Master Plan will encompass areas that, for the most part, are located over 1,000 feet from the Councilmember's residence.

StoneCreek presented its Report at a May 24, 2022 community meeting in order to gather additional input from the public. StoneCreek will seek additional input at another community meeting in October or November. It is anticipated that the alternatives proposed in the Report will be refined over the course of the next several months as the City (with input from other stakeholders) decides which alternatives to pursue, and then eventually considers adoption of the final Master Plan. It is likely that there will be multiple Council meetings where this matter is discussed.

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 from her home.

Appraiser's Opinion

You also requested a letter from a professional real estate appraiser, who examined the potential impacts of the Golf Resort on the Councilmember's residence. You have included the "brief opinion" prepared by the appraiser, which examines "whether the proximity of Councilmember Griffith's home to the Indian Wells Golf Resort, and any changes to any aspect of the Golf Resort's development or operations, finances or management has any measurable impact on her home." Due to the small size of the City of Indian Wells, and the central location of the Indian Wells Golf Resort, it is noted that there is no unique benefit or detriment, based upon measurable industry standards, to any properties either within close or distant proximity to the Indian Wells Golf Resort. As detailed in the opinion, the appraiser concludes that "Councilmember Griffith's home proximity to Indian Wells Golf Resort, has no measurable impact on the home, and therefore any changes to any aspect of the Golf Resort's development or operations, finances or management would not have any measurable impact on her home."

The Report

In a follow-up email, you also provided a copy of the Report prepared for the City by StoneCreek, which identifies a wide variety of options to be considered by the City in determining the long-term goals and plans for the Golf Resort and the adoption of a Master Plan. The Report begins with several observations concerning the Golf Resort operations. It states that the Golf Resort has operated at a loss over the years, and that a break-even result may be the desired objective. It also notes that clubhouse is underutilized, the menu has not been popular, and most residents do not consider the restaurant as a place to bring visiting friends and relatives. The future of the traditional golf industry is an open question as to whether Pandemic-induced new play is the "new future" or if play will return to its declining trendline. The Report is intended as a long-range and annual reference document to guide the asset management of the Golf Resort, and considers a variety of alternatives, from maintaining the status quo, to options for significant repurposing.

The Report states that the clubhouse is underutilized, and that it was overbuilt for its purpose, at 53,000 square feet. It recommends the re-use of the clubhouse 2nd level, with the addition of a destination wellness / sports performance facility, a destination restaurant, a golf entertainment concept, an eSports lounge, or a supper club. It also examines options for a new resort village, and the repurposing of the Golf Resort's two golf courses, the Players course and Celebrity course. It also states that there is limited parking for special events, and golfers on busy days.

The Report also suggests multiple different options for the addition of “golf entertainment,” which involves enhanced driving range or mini-golf experiences. They include an adult-focused version of miniature golf that includes multiple bars, lounges, and rotating DJs, and several different driving range oriented options that utilize RFID microchip or radar based technology that allows golfers to see the real-time flight and distance of a ball after it is hit. Some of these options also include full-service food, sports bars, outdoor patio, private event space and/or climate-controlled tee boxes. The Report also suggests the addition of other amenities, such as disc golf, an adventure park with obstacle course racing, a boutique hotel, expanded weddings / special events venue, a beach club, a destination restaurant, live entertainment such as intimate to major music festivals, and a convention center.

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, 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.”

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

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).)²

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.

It is likely that the Master Plan will result in major renovation of and improvements to the Golf Resort. As stated in the Report, the Golf Resort has operated at a loss over the years. These changes will need to be implemented to make the Golf Resort profitable, and the Report outlines a wide variety of options for doing so. The Report suggests a broad range of possible changes, including the renovation of existing facilities, new and improved dining, as well as the addition of a variety of other new amenities, including "golf entertainment," disc golf, an adventure park with obstacle course racing, a boutique hotel, expanded weddings / special events venue, a beach club, a destination restaurant, live entertainment such as intimate to major music festivals, and a convention center. However, as there is limited parking for special events, and golfers on busy days, this would need to be addressed if any additional used are contemplated.

You have provided an appraiser's opinion as evidence to show that these decisions will not have a measurable impact on the Councilmember's property.

Appraiser's Opinion

Reasonable reliance on an appraisal by a disinterested and otherwise qualified real estate professional, based on an accurate understanding of all pertinent facts and circumstances and proper application of pertinent Commission regulations, will generally be considered a good-faith effort by a public official to assess the financial effect of a decision on his or her real property. However, an appraisal is not determinative on conflict-of-interest issues.

In this case, you have not provided an appraisal of the property comparing the market value of the property based upon the proposed uses to the market value should the Golf Resort continue

² Although 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, this exception would not apply to decisions that would, for example, pertain to the future operational viability of a golf course operating at a loss, as such decisions would apply to the property as a whole. (See *Zaragoza* Advice Letter, No. A-19-078.).

operating at a loss and fall into disrepair. While the appraiser has provided a “brief opinion,” the appraiser’s opinion does not properly apply the Commission’s regulations and does not provide relevant and sufficient facts as support for its findings. The opinion concludes that Councilmember Griffith’s home proximity to the Golf Resort has no measurable impact on the home, and therefore any changes to any aspect of the Golf Resort’s development or operations, finances or management would not have any measurable impact on her home. However, the opinion is conclusory in finding that any potential effect could not be measured and does not provide any analysis of the specific proposed uses in comparison to the foreseeable possibility of the Golf Resort falling into disrepair due to its insolvency. The opinion also fails to examine other factors that are specified in Commission regulations including whether the decision would change the parcel’s: development potential; income producing potential; highest and best use; or character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. (Regulation 18702.2(a)(8).)

The opinion does not take into account the factors articulated in the regulation, or the extensive uses not related to golf that are offered in the Report, such as the addition of an adventure park, boutique hotel, expanded weddings / special events venue, a beach club, a destination restaurant, live entertainment such as music festivals, and a convention center. It is reasonably foreseeable that many of the uses outlined above would impact the character of the Councilmember’s property by substantially altering traffic levels, intensity of use, parking, view, privacy, and noise levels. There are no specific proposals to examine, and no analysis of the impact of such changes such as those that would be included in a traffic study prepared in connection with a specific development proposal. The letter merely concludes that the proximity of Councilmember Griffith’s property to the Golf Resort itself has no measurable impact on the home, and therefore any changes to the Golf Resort would not have an impact on the property.

Accordingly, the appraiser’s opinion fails to provide sufficient facts to rebut the presumption of materiality, and Councilmember Griffith should not take part in the decisions to receive a report from its consultant and consider alternatives for a Master Plan for the Golf Resort.

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