



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 10, 2023

Heather L. Stroud
City Attorney
City of South Lake Tahoe
1901 Lisa Maloff Way, Ste. 300
South Lake Tahoe, CA 96150

Re: Your Request for Advice
Our File No. A-23-104

Dear Ms. Stroud:

This letter responds to your request for advice 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. Further, we are prohibited from offering advice on past conduct and will make no comment on past conduct in this letter. (Regulation 18329(c)(3).)

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

Under the Act, may City of South Lake Tahoe (“City”) City Councilmember, John Friedrich, take part in decisions related to the New Recreation and Aquatics Center Project (“Project”) given that Councilmember Friedrich owns property 2,000 feet from the Project?

CONCLUSION

Yes. Councilmember Friedrich may take part in future decisions related to the Project because under the Act it is presumed that there is no financial interest in property more than 1,000 feet from a decision and the facts presented do not include clear and convincing evidence that

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.

decisions surrounding the Project will have a substantial effect on the Councilmember's property to rebut that presumption.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of South Lake Tahoe ("City") and are seeking advice on behalf of City Councilmember, John Friedrich. Councilmember Friedrich seeks advice as to whether he may participate in decisions surrounding the New Recreation Center Project ("Project") given the real property he owns 2,000 feet from the Project.

In 2016, City voters passed a transient occupancy tax, providing \$2 million per year towards recreation improvements, with the Project to be funded first. In July 2020, the City Council awarded a design contract to JK Architecture Engineering in the amount of \$2,535,080. When the Project was in the initial stages there were two possible sites, one of which was within 1,000 feet of Councilmember Friedrich's residence. Ultimately a site was chosen for the Project approximately 2,000 feet from the Councilmember's property due to a property swap between the City and El Dorado County.

The Project design is now complete and the first phase of construction, consisting of site and utility work, was completed in Summer 2022. The construction contract for the second phase, consisting of vertical construction of the building, is out for bid and expected to be awarded on August 8, 2023. The City anticipates funding the construction of the project by issuing bonds, with the City Council to act on the bond issuance on August 8, 2023.

The Project is part of an overall Master Plan approved by the City Council in 2022. The Project is the first phase of the Master Plan and the only phase with identified funding. Subsequent unfunded phases include adding a "Main Street" for additional access and parking, campground renovations, adding camping cabins, adding event space and adventure and fitness play, and adding a civic center, cultural hub, Lakeview Commons extension and demolition of the existing Recreation Center and El Dorado County Vector Control building.

Councilmember Friedrich and his spouse own an approximately 0.19-acre parcel containing a 2,175 square foot single-family residence on Heavenly Valley Road, where they reside. Heavenly Valley Road is in the Bijou Pines subdivision, which is a densely developed neighborhood consisting of other single-family residences. The Councilmember's property is approximately 2,000 feet from the southeast corner of the Project parcel. The closest path to drive, walk or bike from the property to the Project is 0.7 miles because it requires winding through residential streets to access Rufus Allen Boulevard, where the closest access to the Project is located.

You previously sought advice on this matter in April 2021, the *Stroud* Advice Letter, No. A-21-059, previously advised that the Councilmember had a conflict in decisions surrounding the project as it was reasonably foreseeable the 56-acre plan would have a material financial effect on the market value of the Councilmember's property. At the time of the previous advice letter, there were two possible sites for the Project, one more than 1,000 feet away from the Councilmember's property, and one 930 feet away. The previous advice was based on the possibility of the development being constructed within 1,000 feet of the Councilmember's property and found that such a large development would have a reasonably foreseeable material impact on the property

value of a property within that distance, thereby determining the Councilmember had a disqualifying conflict of interest.

Since the issuance of that advice letter, new facts have emerged that you believe require additional analysis, importantly, the site of the Project has been moved. The new location of the Project is 2,000 feet from the Councilmember's property. Now that the Master Plan has been approved the Project is in the first phase of implementation and is proceeding independently from prior decisions. Subsequent phases of the Master Plan are dormant pending identification and funding sources.

ANALYSIS

As a public official, Councilmember Friedrich is subject to the Act's conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use the official's position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including any real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more. (Section 87103(b)). Here, Councilmember Friedrich's interest at issue is his property 2,000 feet from the Project.

The standard for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is "explicitly involved" as a named party in, or the subject of, the decision. An 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 interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). Where, as here, the official's financial interest is not explicitly involved as a named party or subject of the decision, the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.2(b) is the applicable materiality standard regarding an official's real property parcel that is located more than 1,000 feet from the property involved in a decision. Under Regulation 18702.2(b), a decision's effect on an official's real property interest is presumed not to be material for property more than 1,000 feet from the property involved in the decision. This presumption may be rebutted with clear and convincing evidence that the decision would have a substantial effect on the official's property. (Regulation 18702.2(b).)

As noted above, Councilmember Friedrich's property is 2,000 feet from the Project. Under Regulation 18702.2(b) the effect of future decisions surrounding the Project on the Councilmember's property is presumed not to be material. Based on an aerial map of the Project, there is a noticeable distance between the two locations and there are other neighborhoods and structures separating the properties. The Councilmember's property and the Project are not part of the same neighborhood or road, and one would have to drive through a winding neighborhood to get to the road where the Project is located from the Councilmember's property. The Project will

not be visible from the Councilmember's property. While the new recreation center will be large and will have a great impact on the City as a whole, there is no indication that this center will have any specific effect on the Councilmember's property. Based on the facts provided, there is no clear and convincing evidence the Councilmember's property will be substantially affected by the Project.

For the reasons above, Councilmember Friedrich does not have a conflict of interest in future decisions surrounding the Project resulting from property owned 2,000 feet away from the project.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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