



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

February 1, 2023

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

Re: Your Request for Advice
Our File No. A-23-001

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.

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 Councilmembers Cody Bass, Cristi Creegan, and John Friedrich and Director of Development Services Hilary Roverud take part in decisions related to the selection of a consultant or team of consultants to develop an Area Plan, given that each official have real property interests and business entity interests located within 1000 feet of the proposed Area Plan boundaries?

CONCLUSION

Yes. So long as the decision is limited solely to the selection of a consultant based on the consultant’s qualifications and the logistics of completing the work and does not include the discussion or review of specific projects or development criteria for identified properties or parcels, it is not reasonably foreseeable that the mere selection of a consultant will have a material financial

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.

effect on the officials' real property and business entity interests. To the extent it is not reasonably foreseeable the business owners' sources of income (e.g., clients, customers) would be materially financially affected by the decision, source of income interests also do not constitute a basis for disqualification. However, the officials may wish to seek additional advice regarding subsequent decisions related to the Area Plan.

FACTS AS PRESENTED BY REQUESTER²

In the City of South Lake Tahoe, the Mid Town Area Plan (formerly 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 intent of the Mid-Town Area Plan is to provide a single transformative land use plan that will replace the former adopted community plan, recreation master plan, and plan area statements and provide guidance for all future development.

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 (Mayor Pro Tem Cody Bass, Mayor Cristi Creegan, and Councilmember John Friedrich) and the Director of Development Services own real property within 500 feet of the proposed project boundary:

Development Services Director Hilary 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.

Mayor Pro Tem Bass is the sole owner of Tahoe Wellness Center, Inc. ("TWC"). Mayor Pro Tem Bass has a direct investment worth \$2,000 or more in TWC and holds a position of

² Facts incorporated by Requester's reference to *Stroud* Advice Letter, No. I-21-140.

management in TWC. Mayor Pro Tem 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 Mayor Pro Tem Bass's residence. Both parcels are within 500 feet of the proposed Area Plan boundary.

Mayor Creegan is a partner at The Press Project, LLC, and owns a 26 percent interest in the company. Additionally, Mayor 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, Mayor Creegan has real property interests exceeding \$2,000 in the property. Mayor 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. Mayor 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.

Councilmember 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.

The above facts were considered when the Commission issued *Stroud* Advice Letter, No. I-21-140. Since then, the City Planning Manager prepared and issued, with input from the City Manager, a Request for Proposals (RFP) for qualified consultants or consultant teams with experience in preparing long-range plans and environmental analysis and delivering transformative land use visions. Your request for follow-up advice included a copy of the RFP. After a bidder is selected and a contract is awarded, the contract's scope of work will include:

- Review and assessment of past and related planning efforts and community demographics;
- Preparation of an existing conditions report;
- Facilitation and solicitation of public engagement and input on the Area Plan, including engaging stakeholders and government agencies in information gathering, evaluation of options, and the overall development of the Area Plan;
- Drafting of the Area Plan with all required elements, including:
 - Introduction;
 - Current Conditions;
 - Conservation;
 - Land Use;
 - Transportation;
 - Recreation;
 - Public Service and Facilities;
 - Development/Design Standards & Substitute Standards;
 - Implementation/Infrastructure;

- Housing;
- Economic Development;
- Area-Wide Coverage Management System; and
- Alternative Parking Strategies;
- Preparation of an environmental impact analysis in compliance with the California Environmental Quality Act (CEQA);
- Preparation of Final Area Plan;
- Preparation of Meetings, including public noticing and outreach, as well as necessary presentations.

In selecting a contractor for the Area Plan project, the City will consider the following materials submitted by bidders:

- Cover letter;
- Work plan and deliverables: the RFP explains, “[u]tilizing the project objectives and scope of work included above, provide a well-conceived work plan showing the methodology to be used to successfully complete the Area Plan. Describe precursors for completing the task and any constraints that can be identified at this time. Provide specific deliverables associated with each task and anticipated format for delivery.” Work plan and deliverables relate to how the bidder proposes to logistically accomplish the item’s specified in the contract’s scope of service;
- Proposed timeline;
- Cost estimate;
- Additional information, including: planned use of existing resources to minimize timeline and costs; proposed methodology for CEQA analysis of potential impacts to vehicle miles traveled consistent with SB 743; proposed quality control methods; and a list of other project commitments.

In follow-up communications, you stated that the businesses owned by Mayor Creegan nor Mayor Pro Tem Bass do not have any sources of income that are potential contractors or subcontractors for the Area Plan project. You also clarified that the RFP is requesting bidders to detail how they plan to logistically accomplish the RFP’s assigned Tasks. The bidders will not be identifying specific projects or development standards related to specific properties or parcels. Overall substantive land use concepts, standards, and implementation policy will be derived through the public input process after the contract is awarded.

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 the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official 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 the official’s 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. Mayor Creegan and Mayor Pro Tem Bass have economic interests in their commercial real property, as well as economic interests in the businesses located on that commercial real property as business entity and sources of income interests.

Mayor Creegan and Mayor Pro Tem Bass may also have source of income interests in their businesses' clients as sources of income to their respective business interests. Under the Act, "[i]ncome of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10-percent interest or greater." (Section 82030.) Mayor Creegan and her spouse collectively own 50-percent interest in The Press Project, LLC and CoWork Tahoe, LLC. Thus, any source of income totaling \$1,000 or more to The Press Project or CoWork Tahoe constitutes a source of income to Mayor Creegan. Likewise, as the sole owner of Tahoe Wellness Center, Inc., and a co-owner of Green Bijou Properties, Mayor Pro Tem Bass has a source of income interest in any source of income of \$500 or more to those companies.

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."

In the *Stroud* Advice Letter, we advised:

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 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 have 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.

Since the *Stroud* Advice Letter was issued, the City has developed and issued an RFP with a scope including, among other responsibilities, drafting the Area Plan and preparing an environmental impact analysis. The City Council will evaluate bids that detail the respective bidder's qualifications and proposed plan and methodology for fulfilling those responsibilities, rather than evaluate bids that propose substantive land use concepts, standards, or implementation policies, which will be derived through the public input process after the contract is awarded.

In the *Stroud* Advice Letter, we advised, based on the proximity of the official's real property interests to the Area Plan boundaries:

[I]t 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.

In contrast to the more preliminary, undefined governmental decisions considered in the *Stroud* Advice Letters, the officials at issue are now seeking advice regarding a specific question—that is, whether the Act prohibits them from taking part in decisions related to the RFP but limited to the selection of a consultant for the development of the Area Plan.

Although the Area Plan will ultimately involve areas of real property that could have a reasonably foreseeable, material financial effect on the officials' economic interests, the decisions coming before the officials at this point are distinct and more limited in scope. The selection of a bidder will involve the evaluation of proposals submitted to the City. The substance of those proposals includes: (1) a cover letter; (2) a work plan including a well-conceived work plan showing the methodology to be used to successfully complete the Area Plan, as well as proposed deliverables associated with each task under the scope of services; (3) a proposed timeline; (4) a cost estimate; and (5) additional information, including proposed methodology for CEQA analysis of potential impacts to vehicle miles traveled consistent with SB 743, as well as proposed quality control methods. The actual substance of the Area Plan will be developed subsequently, such that the decision immediately before the City Council will not involve potential impacts on specific parcels within the City. Accordingly, so long as the consultant selection decision and the proposals reviewed do not include specific projects or development standards for identified properties or parcels, it does not appear reasonably foreseeable that the selection of a bidder—including the

evaluation of proposals including the contents listed above—would have a material financial effect on any of the officials' real property interests.

Regulation 18702.3 provides standards for determining the materiality of a financial effect on a source of income. The standards vary depending on the type of source of income—that is, whether the source is a business, an individual, non-profit, etc. Mayor Creegan and Mayor Pro Tem Bass have economic interests in their respective businesses as business entities under Section 87103(a) and as sources of income under Section 87103(c). Regulation 18702.3(a)(4), a financial effect on a source of income that is a business entity is material where the business will be financially affected under the materiality standards applicable under Regulation 18702.1, applying to economic interests in business entities.

Under Regulation 18702.1, where a business entity interest is not explicitly involved in a decision, a financial effect on the business is material where the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)

The reasonably foreseeable financial effect on a business entity is also material if the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

The reasonably foreseeable financial effect on a business entity is also material if the official knows or has reason to know that the entity has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.1(a)(4).)

The decision before the City Council pertains only to the selection of a bidder based on qualifications and a proposed work plan—including methodologies and deliverables—rather than based on substantive decisions regarding the content of a proposed Area Plan. Accordingly, to the extent the decisions do not include specific projects or development standards for identified properties or parcels and none of the City Councilmembers' businesses receive income from or conduct business with any of the bidders, it is not reasonably foreseeable the decision would have a material financial effect on the businesses, as business entity or source of income interests, or on the businesses' clients as source of income.

Based on the above analysis, so long as the consultant selection decision and review of the proposals do not include specific projects or development standards for identified properties or parcels, the Act does not disqualify any of the City Councilmembers or the Director of Development Services from taking part in the decision to award a contract to a consultant or team of consultants for the Area Plan project. However, the officials may wish to seek additional advice if they have any uncertainty regarding their ability to take part in subsequent decisions relating to the Area Plan including any decisions considered or reviewing proposals for identified properties or parcels.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to be 'KC', written over a horizontal line.

For Kevin Cornwall

By: Kevin Cornwall
Counsel, Legal Division

KMC:aja