



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 25, 2021

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

Re: Your Request for Advice  
**Our File No. A-21-059**

Dear Ms. Stroud:

This letter responds to your request for advice on behalf of City of South Lake Tahoe Councilmember John Friedrich regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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

Do the Act’s conflict of interest provisions prohibit City Councilmember John Friedrich from taking part in governmental decisions relating to the 56 Acres Master Plan Project (“Project”) given that the Councilmember’s single-family residence is located approximately 930 feet from the Project?

### CONCLUSION

Yes. Due to the magnitude of the development involving new amenities, civic services, and recreational spaces, it is reasonably foreseeable that the Project will have a material financial effect on the market value of the Councilmember’s home and he should not take part in any governmental decisions pertaining to the Project.

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<sup>1</sup> 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 18110 through 18997 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.

## FACTS AS PRESENTED BY REQUESTER

### *The 56 Acres Master Plan Project*

The 56 Acres Master Plan Project (“Project”) site is located in the center of the City of South Lake Tahoe at the juncture where US Highway 50 meets the shores of Lake Tahoe. This location provides an important gateway to vehicles approaching the City from the west. The property contains some of the largest remaining open spaces within City limits. It currently hosts a variety of existing features, including the Recreation Center, South Tahoe Ice Arena, a campground, a museum, a library, highway frontage, and a scenic lakeside park.

In July 2020, the City received a \$425,000 grant from the California Tahoe Conservancy to complete the Project, and the City entered into an agreement with Design Workshop to prepare the Master Plan. As stated in a staff report to City Council dated July 14, 2020, the Project objectives include creating a master plan “for future improvements, development, and operation of a locally and nationally renowned civic and recreational space,” to include facilities such as:

- A new recreation center;
- A City government center;
- An outdoor event venue/amphitheater; and
- Improved pedestrian access between sections of the 56 Acres divided by US 50 including a pedestrian overpass.

Once the Project is complete, the City and El Dorado County anticipate entering into a long-term agreement for the City to operate the “56 Acres” site, which would replace an existing long-term lease agreement expiring in 2023.

The City Council has not taken any action on the Project since Councilmember Friedrich joined the City Council in December 2020. On April 27, 2021, the City Council and El Dorado County Board of Supervisors held a joint special meeting to review the conceptual plan, Councilmember Friedrich did not participate. In Fall 2021, it is anticipated that the City Council will be asked to approve the Project and certify the environmental document under the California Environmental Quality Act. Soon thereafter, City Council will be asked to authorize execution of an agreement with El Dorado County regarding the use and operation of the 56 Acres site.

### *Councilmember Friedrich's Real Property Interest*

Councilmember Friedrich and his spouse own and reside in a single-family home located on Heavenly Valley Road. Heavenly Valley Road is in the Bijou Pines subdivision, which is a densely developed neighborhood consisting of other single-family residences. His property is approximately 930 feet from the southeast corner of the 56 Acres site. The closest path to drive, walk, or bike from the Property to the 56 Acres is 0.7 miles because it requires winding through residential streets to access Rufus Allen Boulevard, where the closest access to the 56 Acres is located. There are a number of other residences, large trees, and recreational playfields between the Property and the 56 Acres, which you state will act as a buffer to potential noise impacts from the site.

## ANALYSIS

The Act's conflict of interest provisions prohibit a public official from making, participating in making, or attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) Relevant to these facts, an official's financial interests that may give rise to a disqualifying conflict of interest are identified in Section 87103:

- An interest in any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- An interest in the official's personal finances and those of immediate family members. (Section 87103.)

As the Councilmember owns his personal residence, he has a financial interest in the real property, as well as an interest in his personal finances.<sup>2</sup>

### *Foreseeability and Materiality*

Where, as here, the Councilmember's real property financial interest is not explicitly involved in the decisions at issue, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(a) and (b).) Under this standard, the Councilmember will have a financial interest in the Project decisions if there is a realistic possibility the decisions will have a material financial effect on his real property interest.

Regulation 18702.2 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's real property interest. Because the Councilmember's residence is located more than 500 feet, but less than 1,000 feet, away from the proposed developments, the materiality standard of Regulation 18702.2(a)(8) applies. That materiality standard provides that the effect is material if the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel and would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, noise levels, or air quality; or
- (E) Market value.

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<sup>2</sup> Under Regulation 18702.5(c), an effect on an official's personal finances is not considered separately than an effect on the official's interest in a business entity or real property. Accordingly, we do not analyze the effect on Councilmember Friedrich's personal finances any further.

*The 56 Acres Master Plan Project*

As the Councilmember's home is located within an already-developed subdivision, there are no facts to indicate that the Project would affect the development potential, income producing potential, or highest and best use of the Councilmember's property interest in his single-family residence. At issue, then, is whether decisions pertaining to the Project would affect the parcel's character or market value.

While his residence is located approximately 930 feet from the southeast corner of the 56 acres, it is a 0.7 mile drive through winding residential streets to the closest corner of the Project. Additionally, there are a number of other residences, large trees, and recreational playfields between the Councilmember's property and the 56 Acres site. Given these facts, it appears unlikely that the Project will substantially alter the traffic levels, intensity of use, parking, view, noise or air quality of the Councilmember's parcel.

However, as to market value, the Project will entail development of a 56-acre site, and a majority of this site is the largest remaining open space within the City of South Lake Tahoe. In addition to revamping various existing structures, the current plans include development of an outdoor event venue/amphitheater, camping sites, a Civic Center, a City Government Center, and various areas for recreation and community gathering. Based on the magnitude of the Project and the short proximity to the Councilmember's residence, there is a realistic possibility the Project, as planned, will affect the value of existing residences nearby. Potentially, decisions regarding the Project may ensure that the property remains vacant or is used for purposes that would be financially beneficial to residences in a close proximity. Alternatively, the decisions may protect residences in a close proximity from the negative financial impacts of a less desirable project. Therefore, it is reasonably foreseeable that decisions concerning the Project will have a material financial effect on Councilmember Friedrich's residence based on the Project's potential to protect or increase the market value of neighboring properties. The Councilmember should recuse himself from the decisions.<sup>3</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Erika M. Boyd

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<sup>3</sup> Please note that when public officials who hold an office specified in Section 87200, including city council members, have a disqualifying conflict of interest in a decision noticed at a public meeting, they must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest on the record of the meeting; (2) recuse themselves; and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.)