

RESOLUTION 2013-015
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2013-01
OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board (the "Board") consisting of three members of the City Council; and

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers or board and commission members of the City; and

WHEREAS, the Ethics Review Board met on February 25, 2013, to consider whether Councilmembers Ben Manvel and Gerry Horak have a conflict of interest in participating in decisions of the City Council pertaining to the Eastside and Westside Neighborhood Character Study; and

WHEREAS, the Board has issued an advisory opinion with regard to this matter; and

WHEREAS, Section 2-569(e) of the City Code provides that all advisory opinions and recommendations of the Board be placed on the agenda for the next special or regular City Council meeting, at which time the City Council shall determine whether to adopt such opinions and recommendations; and

WHEREAS, the City has reviewed the opinion of the Board and wishes to adopt the same.

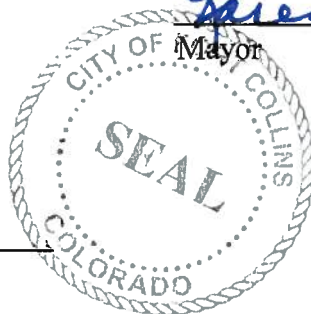
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2013-01 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 26th day of February, A.D. 2013.

ATTEST:

Wanda Nelson

City Clerk



**OPINION No. 2013-01 OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS**

February 25, 2013

Background.

This advisory opinion and recommendation is being provided to the City Council by the Ethics Review Board (the "Board") under Section 2-569(e) of the City Code in response to an inquiry submitted to the Board by Councilmember Wade Troxell. The question submitted is whether Councilmembers Ben Manvel and Gerry Horak have a conflict of interest in participating in the City Council's consideration of Ordinance No. 033, 2013, (the "Ordinance") which, if approved by the Council, would make amendments to the City's Land Use Code pertaining to the implementation of the Eastside and Westside Neighborhood Character Study (the "Study"). The issue is presented because both Councilmembers own and reside upon properties that are located within the neighborhoods that would be regulated by the Ordinance.

Summary of Opinion and Recommendation.

The majority of the Board believes that neither Councilmember Manvel nor Councilmember Horak has a conflict of interest in participating in the Council's consideration of the Ordinance.

Background

The Study was undertaken by the City to assess neighborhood compatibility issues raised by new construction projects in the Study area. The areas of the City included in the Study are shown on the attached exhibit. The Study focuses on building size and design compatibility. The Ordinance implements certain recommendations in the Study. Adoption of the Ordinance will affect additions to, and the reconstruction of, dwellings in the area. There are approximately 3,371 residential lots in area governed by the Study. Councilmembers Manvel and Horak own and reside upon properties in the area with their spouses. Neither has any present plans to enlarge, remodel or sell their residences.

Applicable Standards

The question presented to the Board is governed by the conflict of interest provisions contained in Article IV, Section 9 of the City Charter, which essentially provide that if an officer or employee of the City has either a financial or personal interest in any decision of a public body of which he or she is a member or to which he or she makes recommendations, the officer or employee must file with the City Clerk a conflict of interest disclosure statement and refrain from voting on, attempting to influence, or otherwise participating in that decision in any manner as an officer or employee.

The Charter definition of financial and personal interests read as follows:

Financial interest means any interest equated with money or its equivalent. *Financial interest* shall not include:

- (1) the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;
- (2) the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;
- (3) the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;
- (4) the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;
- (5) the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;
- (6) the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;
- (7) the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or
- (8) the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. *Personal interest* shall not include:

- (1) the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;
- (2) the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or
- (3) the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

It is clear to the Board that Councilmembers Manvel and Horak do not have a financial interest in the Council's consideration of the Ordinance. Instead, the question presented hinges upon whether either of them has a personal interest.

In previous opinions, the Board has established certain criteria for determining whether a personal interest exists in this kind of situation. In the most recent of those opinions, Opinion No.2012-3, the Board stated those criteria as follows:

- o the size of the group that will likely be affected in the same way and to the same extent as the Councilmember who is the subject of the inquiry;
- o the magnitude of the potential financial or personal impact that the Councilmember may experience;
- o how close the connection is between the upcoming decision(s) and the potential impact on the Councilmember; and
- o the need for the Councilmember to participate in the upcoming decision(s) as an elected representative.

Analysis, Opinion and Recommendations of the Board.


At the hearing, the Board first received information from City staff with regard to the likelihood that Council's adoption or rejection of the Ordinance would have a direct and substantial impact on the market value of the properties owned by Councilmembers Manvel and Horak. Information provided by a representative of the Real Estate Services Department suggested that, if passage of the Ordinance limited the amount of square footage that could be added to existing residences governed by the Ordinance, that limitation could negatively affect the market value of the properties. However, Planning staff pointed to a study conducted by a City consultant that indicated to the contrary, i.e., that while overall property values in the neighborhoods might experience some change, the Ordinance would not likely have a significant effect on the affordability of housing in the area. The study, which is included as Attachment 6 in the

February 19 Council packet (Item #27), was prepared by Urban Advisors for the Eastside Westside project to assess economic impacts of the proposed changes. The study notes that “the proposed reduction to maximum permitted FAR is unlikely to significantly affect redevelopment opportunities, (so) it is also unlikely to have a major impact on home prices in the neighborhoods, or affordability to buyers.”

After receiving this input from staff, hearing from Councilmember Horak, and considering the criteria established in previous opinions, the Board concluded that neither Councilmember Manvel nor Councilmember Horak has a personal interest in this matter for the following reasons: (1) there is no clear indication that either Councilmember will experience a direct and substantial benefit as a result of Council’s decision on the Ordinance; (2) the interest that the two Councilmembers have in the Council’s decision is shared by thousands of other homeowners; and (3) it is important that Councilmembers Manvel and Horak be able to participate in the decision because it is their constituency that will be most directly affected by the Ordinance, and those constituents deserve a representative voice in the decision.

This advisory opinion was reviewed and approved by Councilmember Lisa Poppaw and Mayor Karen Weitkunat, as alternate member to the Ethics Review Board (Aislinn Kottwitz, as regular member of the Ethics Review Board was absent), for distribution to members of the Council and for distribution to the City Clerk, to be maintained in the permanent file of opinions of the Ethics Review Board.

Dated this 26th day of February, 2013.



Stephen J. Roy
City Attorney

Eastside & Westside Neighborhoods Character Study

City of
Fort Collins
GIS

Printed: February 25, 2013



- Eastside
- Council Members
- Westside

