

**Ethics Review Board Meeting Minutes**  
**July 19, 2016**  
**4:45 p.m.**

**Members in Attendance:** Board members Ray Martinez, Gino Campana, and Kristin Stephens; and Board Alternate Ross Cunniff.

**Also Present:** Kevin Jones, Fort Collins Chamber of Commerce;

**Staff in Attendance:** Carrie Daggett, City Attorney; Brad Yatabe, Asst. City Attorney; Jeanne Sanford, Paralegal;

A meeting of the City Council Ethics Review Board (“Board”) was held on Tuesday, July 19, 2016, in the Commons Conference Room, to continue consideration of the following issue:

That the Board consider and provide an advisory opinion regarding whether under the City Charter board and commission members, after declaring and disclosing a conflict of interest in a matter, may participate in that matter on behalf of an interested stakeholder (for example, as a technical professional providing advice to any applicant), so long as they do not personally appear before the board to advocate on behalf of another person. The inquiry also requested that the Board consider the same question as it relates to Councilmembers.

Ethics Review Board Chair Martinez called the meeting to order at 4:45 p.m. The Board reviewed the Agenda which contained the following items:

1. Review and approval of the July 12, 2016 Minutes of the Ethics Review Board.
2. Review and Approval of Ethics Opinion 2016-01, with continued consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding whether under the City Charter board and commission members, after declaring and disclosing a conflict of interest in a matter, may participate in that matter on behalf of an interested stakeholder (for example, as a technical professional providing advice to any applicant), so long as they do not personally appear before the board to advocate on behalf of another person. The inquiry also requested that the Board consider the same question as it relates to Councilmembers
3. Other Business.
4. Adjournment.

Ethics Review Board Chair Martinez stated that this is an Ethics Review Board meeting on July 19, 2016 4:45 p.m., and the Board took a roll call for all present, including Councilmember Ray Martinez, Councilmember Gino Campana, Councilmember Kristin Stephens, and Councilmember Ross Cunniff (alternate); Carrie Daggett, City Attorney; Brad Yatabe, Assistant City Attorney; Jeanne Sanford, Paralegal; and Kevin Jones, Fort Collins Area Chamber of Commerce.

The Chair stated the first item was to approve the July 12, 2016 Minutes of the Ethics Review Board.

Councilmember Campana indicated he had some comments on the Minutes. Mr. Campana stated on page one, second paragraph under staff attendance of the Minutes, it was important to point out “so long as they do not personally appear before the Board to advocate on behalf of another person”, that was the initial intent to review, but thinks the way the Opinion was written, we are not addressing that.

Councilmember Campana also stated on page two, third paragraph down in the Minutes, the phrase “several members of Landmark Committee phoned him”, may have been confused. One member (the Chair) phoned him who told him five other members were thinking of quitting because of discussion about the interpretation of the Charter.

Councilmember Campana also stated that on page three, sixth paragraph down, beginning with, “Councilmember Campana called attention to two things”, he thought he had talked about the capacity of the board members but also that there was a lot of discussion about decision vs. discussion (by board members). He noted that he couldn’t find anywhere in the Minutes where that discussion was captured. Councilmember Campana felt that was an important point.

City Attorney Daggett stated she believed that was captured on the top of page four.

Councilmember Campana agreed but stated he would like to see more on capturing the discussion between discussion and decision. Mr. Campana stated the other point he was trying to make was the distinction between discussion and decision.

Chair Martinez asked Councilmember Campana how he would like to capture that, if it was by re-listening to the recording?

Councilmember Campana indicated he would like staff to re-listen to the recording and would request that the Minutes not be approved tonight.

City Attorney Daggett stated she could edit the Minutes so the Board could read revisions right now, and then the Board might be able to approve on everything in the Minutes other than the last point. She noted her concern on the last point was in trying to make sure the Minutes were accurate to the recording, and that staff could go back and try to find more content in the recording if something had been omitted.

Councilmember Campana stated he proposed the Board not approve the Minutes and that they should be re-addressed to try to capture the key points to the opinion.

City Attorney Daggett asked about the items to be reviewed – first whether it was requested that staff clarify the initial point about personally appearing before the board to advocate for another person.

Councilmember Campana stated that was not a point that need to be addressed, and stated that he would like to better capture the issue of discussion vs. decision and the reason for the emphasis is that if a board member states a conflict, recuses himself, then presents before the board, that board member is presenting in the discussion, not the decision of the board. To support that opinion, it must be captured in the Minutes.

City Attorney Daggett commented that conceptually she may have missed something in the distinction Councilmember Campana was noting about what capacity that board member is operating in. City Attorney Daggett further stated that the distinction of what capacity a board member is operating in makes the other questions less significant in terms of interpreting the Charter. City Attorney Daggett stated that by saying that only as a Landmark Preservation Commission member one cannot participate under the Charter, then the distinction about them appearing before the Commission (to represent a party) is no longer addressed in the Charter.

Councilmember Campana stated he agreed that is where he thought the Board was going in the last meeting, but the Opinion does not read that way to him. He noted that, for example, where you have your first initial check that, okay, I am not acting as a board member or decision maker, then the rest does not apply to me, I am just a citizen, we need to adjust the Opinion so this is a moot point.

City Attorney Daggett asked if the Minutes were a concern.

Councilmember Campana replied that there needs to be more robust review to ensure that the Minutes capture what the Board dialogue was.

City Attorney Daggett stated that staff would go back and listen to the recording and look for more detailed discussion.

Chair Martinez stated the Board would hold off approving Minutes until they were changed to address Councilmember Campana's concerns.

Chair Martinez presented the second agenda item – the review of City Attorney Daggett's draft Ethics Opinion 2016-1, which had been presented to the Board. Chair Martinez asked the Board if everyone had a chance to read it.

Councilmember Stephens replied she had, and that the Opinion captured a lot of what was discussed. She asked Councilmember Campana to state where he had a problem.

Councilmember Campana read the bottom line, at page two, second sentence of the Opinion, starting with “Board recommends the City adopt City Code provisions limiting board members from other participation in those decisions, in a personal or representational capacity except where a variance for special hardship has been granted.” Mr. Campana stated he thought, in his mind, that it was mixing two different ideas the Board had discussed. One was if there was a conflict, they should not participate in any capacity in the decision and secondly, once a board member has recused himself/herself as a decision maker, they should be allowed to participate via their work without a variance, but if they want to present personally to their board, there would be a variance option process.

City Attorney Daggett clarified this was a point she didn’t see come through in discussion (so maybe more discussion would be beneficial) -- the original question about whether there is a difference between showing up at a board meeting and presenting and writing a written piece and giving it to the Board as an item for consideration, but not verbally – that was the original question that sparked the whole discussion.

Councilmember Campana asked City Attorney Daggett what her understanding of the Opinion was.

City Attorney Daggett stated her understanding of the Opinion from the discussion was that the Board is still viewing the need to limit board member appearances in a broader sense - provided there would be a process for getting an exception or variance in hardship cases.

Councilmember Campana asked about the term “broadly”, meaning their work or personally appearing?

City Attorney Daggett replied yes, their work in the sense of advocacy material prepared for the Board in contrast to somebody, for example an engineer who designed something, but is not a front and center part of policy discussion or advocacy regarding the land use code, but just part of the work force who created the project. That was the distinction she was trying to make.

Councilmember Campana stated that was not his take from the meeting and a critical point of why the Board was here. He thought discussion revolved around the first test: Do you have conflict? If so, note that, recuse yourself as a board member, then the balance of that provision does not apply. You could present yourself personally and your work. However, the Board felt it would be better if you did not present your work personally to your board, but in the event of a hardship where you are sole proprietor for example and could not get someone else to present your work, you could go through a variance process to get approval to present your work. That is different than what you are saying.

City Attorney Daggett stated that the Opinion was on track through the point of “once there is not a Charter provision that creates an issue, because you are not acting as a board member now, you are acting as a professional,” and that is the discussion about Council establishing standards

relating to that, that is the place where Councilmember Campana had different expectations than what is in the draft Opinion. She noted that she may have missed his intended meaning, but does think there was some discussion at the end of the meeting that may have confused the issue.

Chair Martinez stated that it was just explained just now and asked if City Attorney Daggett understood.

City Attorney Daggett stated that when she asked for confirmation from the Board last week, the outline she had given to confirm the Board's intention must have not been clear enough on this issue. City Attorney Daggett indicated she wanted to confirm that the points were clear.

Chair Martinez asked City Attorney Daggett about today.

City Attorney Daggett stated she understood what Councilmember Campana was saying.

Chair Martinez asked if the Board concurred.

Councilmember Stephens asked for clarification that work could come before the board so long as they are not presenting.

Councilmember Campana replied, yes, for example, if a member of the Landmark Preservation Commission was working on a project as a lead on a report, would say he has a conflict and recuses himself, his work could be presented to the Commission, but if he personally wanted to present, he would need a variance.

Chair Martinez stated that variance would need boundaries.

Councilmember Cunniff stated the variance would need to define specifically some parameters around a hardship.

Councilmember Campana stated historically that has happened before based on what board members have told him. Councilmember Campana elaborated by saying if someone in your office is ill, the key to this is once a conflict has been declared and you recuse yourself, there should not be a limitation on your ability to present to that board.

Councilmember Cunniff supported authoring of written materials, but appearing, advocating and answering questions on a project before the board should only be in extreme circumstances of hardship due to potential of appearance of influence on the board and to avoid fears by competitors that there is a special advantage here.

Councilmember Campana agreed and stated that he would like to capture this in the Opinion.

Chair Martinez asked how to define what a variance is.

City Attorney Daggett stated her Opinion probably did not capture what the Board was looking for in basic terms. Her recommendation would allow a board member as a professional to be

involved in project, communicate in writing, prepare reports, etc., but not appear personally before the Board.

Chair Martinez added, once they have recused themselves.

Councilmember Campana stated he thought it would be put in the Opinion, you are allowed to present personally, but address it in the Boards and Commissions Manual that board members shouldn't present before their own board without a variance.

City Attorney Daggett stated that the option of the Boards and Commissions Manual was discussed on July 12th, and suggested it might be preferable for sake of transparency to be in the Code as opposed to the Boards and Commissions Manual.

Councilmember Campana stated he was okay with that but didn't think that's what he took away from the meeting last week.

City Attorney Daggett stated the Opinion clearly needed to be revised. When it gets to Council, it will be decided if it will be a Code provision or Manual change.

The Board members then stated it was their strong opinion to adopt a Code provision.

City Attorney Daggett stated that the Board's input would provide good direction in revising the Opinion. There are key things which are substantially different:

1. Expectation that Code provisions would affirmatively say board and commission members can participate in projects before their boards where a conflict exists and they have recused themselves, so long as they don't personally appear before the board.

Councilmember Cunniff stated this will be a little tricky. He asked that this structure be limited to allowing authoring of work product and not creating new advocacy letters to the board. He noted it is important to separate out work product from advocacy.

The Board agreed.

City Attorney Daggett discussed the process and timing to turn out a new opinion fairly quickly so it could be reviewed and discussed by the Board prior to the Council meeting next Tuesday. A meeting was proposed for Monday, July 25, 2016 at 9:30 a.m., in the City Attorney's Large Conference Room. All agreed to the meeting time, date and place.

Councilmember Campana stated he would like to discuss something further. On the third point in the Opinion, he had a concern and question with, for example, suppose you have a

Councilmember who is an architect and the firm presents their work. He was concerned that the way the Opinion is written precludes a Councilmember from doing that.

City Attorney Daggett replied someone from the firm could, since the prohibition is on the Councilmember representing any person or interest.

Councilmember Campana added that we need language that clearly states that, because it is confusing the way it reads. Councilmember Campana further asked about presentations by the Councilmember's firm.

City Attorney Daggett said they should be able to present and additional clear language may be helpful on that.

Councilmember Campana stated the firm should be able to present.

City Attorney Daggett stated there will be a follow-up meeting on Monday, July 25, 2016, at 9:30 a.m. and that she would get out a revised opinion circulating as early as she can, along with draft revised Minutes.

Councilmember Campana stated that would be great.

Chair Martinez asked if there was any other business.

Chair Martinez presented the motion to adjourn and the Board was all in favor.

Meeting adjourned at 5:16 p.m.

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Carrie M. Daggett, City Attorney