

RESOLUTION 2013-074  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2013-02  
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 July 23, 2013, to consider whether Councilmember Wade Troxell would have a conflict of interest in participating in any decisions of the City Council related to a proposed redevelopment project of the Front Range Community College because of the proximity of the Troxell residence to the site of the redevelopment project; 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. 2013-02 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 a regular meeting of the Council of the City of Fort Collins this 20th day of August A.D. 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**FAILED TO PASS**  
**by a vote of 3-3**

OPINION NO. 2013-02  
OF THE ETHICS REVIEW BOARD  
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

August 20, 2013

**BACKGROUND.**

This advisory opinion and recommendation is being provided to the City Council by the Ethics Review Board ("the Board") in response to an inquiry submitted to the Board by Councilmember Wade Troxell. The question submitted is whether Councilmember Troxell would have a conflict of interest in participating in any decisions of the City Council related to a proposed development project (the "Project") of the Front Range Community College ("FRCC"). This issue arises because of the proximity of the Troxell residence to the site of the FRCC project.

**SUMMARY OF OPINION AND RECOMMENDATION.**

The majority of the Board believes that Councilmember Troxell does not have a conflict of interest with regard to this matter because neither he nor his spouse would experience any direct and substantial benefit or detriment from the construction of the Project that is different in kind from that experienced by the general public. Board member Lisa Poppaw disagrees and would find that Councilmember Troxell does have a conflict of interest.

**The Information Presented to the Board.**

1. The FRCC Project.

City Planning staff presented the following information to the Board about the Project.

- It will be constructed on a lot adjacent to FRCC that is presently owned by a third party. The property, which is 8.22 acres in size, is under contract to FRCC. Covenants on a portion of the property reportedly require, in effect, that the HOA consent to the construction of the project.
- The initial building will be one story and will consist of 27,800 square feet.
- The building will be used for instructional purposes for trades such as auto repair and welding.
- FRCC plans five more phases over the next six years.
- FRCC hopes to begin construction this September.

The locations of the Project and the Troxell residence are shown on Attachment "A".

2. Effect of the Project on the Troxell residence.

City Real Estate staff presented information to the Board that had been obtained from appraisers who are familiar with the City and the FRCC and also from a local real estate broker.

The two appraisers who responded to this request are both of the opinion that the construction of the Project in the vacant ground south of the FRCC campus would not have any substantial impact on the residential market in the immediate and more outlying residential properties. The first appraiser who was contacted felt that FRCC has done a very good job of designing its buildings in the past so that they are compatible with the adjoining neighborhoods, and he anticipates that the same would be true of the Project, in which case he didn't see any impact to the residential properties in Clarendon Hills.

The second appraiser stated that it would be extremely difficult to measure an impact from the Project on an individual single family residential property value – either positive or negative. The impacts would need to be derived from market data, and markets don't tend to react to particular projects unless they are very substantial in size or unusually impactful, such as a sewer disposal plant or new mall.

The broker, on the other hand, indicated that, in her opinion, the expansion of FRCC to the vacant land would have a negative impact on the residential properties in the immediate area. She believes that the addition of the new building would intensify the impact to the residential properties in northern Clarendon Hills by increasing the number of students and vehicles in the campus area.

Councilmember Troxell stated that he does not see the proposed construction of an additional building on the FRCC campus as having any significant impact on the value of his residence or the quality of life that he and his spouse enjoy at the residence, especially in view of the fact that intervening residences and landscaping will shield their home from any noise that might be generated by the use of the new building, as well as their view of the building.

**OPINION AND RECOMMENDATION.**

In arriving at its opinion, the Board considered and discussed the City Charter definitions of "financial" and "personal" conflicts of interest, which appear on Attachment "B". It also considered the following criteria that have been previously established by the Board:

- The size of the group that will be affected by the construction of the FRCC project in the same way and to the same extent as Councilmember Troxell and his spouse;

- The magnitude of the potential financial or personal impact that the Troxell's may experience;
- The need for Councilmember Troxell to participate in any decisions of Council related to the FRCC project; and
- How close the connection may be between any such decisions and the impact on the Troxells.

In applying these factors, the Board recognizes that the Troxells are part of a relatively small group of citizens that will be directly affected by the FRCC project in that they reside within the immediately vicinity of the Project. However, Boardmembers Weitkunat and Campana believe that the effect of the Project on the Troxells and on the value of their residence will not be substantial, primarily for the reason that Councilmember Troxell indicated: it will not significantly increase the impact that the FRCC campus already has on the Troxells, primarily because the residences and landscaping between the Project and the Troxell residence will effectively buffer their residence from the new building or buildings that may be constructed on the site. As noted above, this opinion is shared by the appraisers who provided information to City staff on the subject and is consistent with Opinion No. 2012-3 of the Board, where the Board concluded that neither Mayor Weitkanut nor Councilmember Manvel had a conflict of interest in participating in Council decisions about the redevelopment of the Link-n-Greens Golf Course by Woodward, Inc. in view of the fact that they and their spouses own business properties with the notice zone of the project.

Board member Poppaw disagrees with the majority opinion of the Board. She views the situation as being similar to that reviewed by the Board in Opinion No. 2012-2, where the Board concluded that Mayor Weitkunat has a conflict of interest in Council decisions related to the redevelopment of the Foothills Mall because of the proximity of her residence to the Mall.

This advisory opinion was reviewed and approved by Mayor Weitkunat and Councilmembers Poppaw and Campana, as regular members of the Ethics Review Board, 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 \_\_\_\_\_ day of August, 2013.

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Stephen J. Roy  
City Attorney

### Landscape & Imagery Explorer

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Printed: 7/8/13



Troxell Residence

The Project



(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.

*Officer or employee* means any person holding a position by election, appointment or employment in the service of the city, whether part-time or full-time, including a member of any authority, board, committee or commission of the city, other than an authority that is:

(1) established under the provisions of the Colorado Revised Statutes;

(2) governed by state statutory rules of ethical conduct; and

(3) expressly exempted from the provisions of this Article by ordinance of the Council.

*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

## Section 9. Conflicts of interest.

*Definitions.* For purposes of construction of this Section 9, the following words and phrases shall have the following meanings:

*Business* means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity or entity.

*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;

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.

*Public body* means the Council or any authority, board, committee, commission, service area, department or office of the city.

*Relative* means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.

(b) *Rules of conduct concerning conflicts of interest.*

(1) *Sales to the city.* No officer or employee, or relative of such officer or employee, shall have a financial interest in the sale to the city of any real or personal property, equipment, material, supplies or services, except personal services provided to the city as an officer or employee, if:

a. such officer or employee is a member of the Council;

b. such officer or employee exercises, directly or indirectly, any decision-making authority concerning such sale; or

c. in the case of services, such officer or employee exercises any supervisory authority over the services to be rendered to the city.

(2) *Purchases from the city.* No officer, employee or relative shall, directly or indirectly, purchase any real or personal property from the city, except such property as is offered for sale at an established price, and not by bid or auction, on the same terms and conditions as to all members of the general public.

(3) *Interests in other decisions.* Any officer or employee who has, or whose relative has, a financial or personal interest in any decision of any public body of which he or she is a member or to which he or she makes recommendations, shall, upon discovery thereof, disclose such interest in the official records of the city in the manner prescribed in subsection (4) hereof, and shall refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.

(4) *Disclosure procedure.* If any officer or employee has any financial or personal interest requiring disclosure under subsection (3) of this section, such person shall immediately upon discovery thereof declare such interest by delivering a written statement to the City Clerk, with copies to the City Manager and, if applicable, to the chairperson of the public body of which such person is a member, which statement shall contain the name of the officer or employee, the office or position held with the city by such person, and the nature of the interest. If said officer or employee shall discover such financial or personal interest during the course of a meeting or in such other circumstance as to render it practically impossible to deliver such written statement prior to action upon the matter in question, said officer or employee shall immediately declare such interest by giving oral notice to all present, including a description of the nature of the interest.

(5) *Violations.* Any contract made in violation of this Section shall be voidable by the city. If voided within one (1) year of the date of execution thereof, the party obtaining payment by reason of such contract shall, if required by the city, forthwith return to the city all or any designated portion of the monies received by such individual from the city by reason of said contract, together with interest at the lawful maximum rate for interest on judgments.

(Res. No. 71-12, 2-11-71, approved, election 4-6-71; Ord. No. 155, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 10, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

RESOLUTION 2013-075  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2013-03  
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 July 23, 2013, to consider whether members of City boards and commissions who own property within the notice zone of a proposed land use project should utilize the same guidelines as Councilmembers in deciding, on a case-by-case basis, whether to recuse themselves from participating in quasi-judicial decisions related to such projects, or whether they should instead routinely recuse themselves from those decisions unless an opinion is rendered by the Board that they need not do so; 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. 2013-03 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 a regular meeting of the Council of the City of Fort Collins this 20th day of August A.D. 2013.

  
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Mayor

ATTEST:

  
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City Clerk



OPINION NO. 2013-03  
OF THE ETHICS REVIEW BOARD  
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

August 20, 2013

This advisory opinion and recommendation is being provided to the City Council by the Ethics Review Board (the "Board") under Section 2-569(c) of the City Code in response to a suggestion made by an alternate Ethics Review Board in Opinion No. 2012-03. In that opinion, the alternate Review Board had considered inquiries submitted by Mayor Karen Weitkunat and then Councilmember Ben Manvel as to whether either or both of them had a conflict of interest in participating in Council decisions about the redevelopment of the Link-n-Greens Golf Course by reason of the fact that they own businesses within the "notice zone" of the redevelopment, as established in Section 2.2.6 of the Land Use Code.

In formulating its opinion and recommendation in that situation, the alternate Review Board considered the following guidelines that had previously been established by the Board:

- 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;
- the magnitude of the potential financial or personal impact that the Councilmember may experience;
- how close the connection is between the upcoming decision(s) and the potential impact on the Councilmember; and
- the need for the Councilmember to participate in the upcoming decision(s) as an elected representative.

In applying those guidelines, the alternate Review Board concluded that neither Mayor Weitkunat nor Councilmember Manvel had a conflict of interest. The question that the alternate Review Board recommended for consideration by the regular Board is whether members of City boards and commissions who own property within the notice zone of a proposed land use project should utilize the same guidelines as Councilmembers in deciding, on a case-by-case basis, whether to recuse themselves from participating in quasi-judicial decisions related to such projects, or whether they should instead routinely recuse themselves from those decisions unless an opinion is rendered by the Board that they need not do so. The Board recommends the latter course of action.

The Board bases this recommendation on two considerations. First, the members of City boards and commissions are not elected representatives. Thus, in deciding whether to participate in quasi-judicial decisions that directly affect projects within the immediate vicinity of their residences or other properties in which they have an ownership interest,

they do not have to take into consideration the fourth factor that Councilmembers need to consider—the need to represent the views of their constituents. Second, quasi-judicial decisions must be guided by the principles of procedural due process, including the requirement of impartiality. The “impartiality” standard is less well defined than the conflict of interest standard contained in the City Charter, and a board and commission member might well be viewed as having a bias in a particular decision even if the member’s interest in the decision does not rise to the level of a conflict of interest.

For these reasons, the Board recommends that, if a member of a City board or commission has any kind of ownership interest in real property that is within the notice zone of a proposed land use project, he or she should not participate in any decision of his/her board or commission regarding that project unless the board or commission member receives from the Board an opinion that it would be ethically permissible to do so. A board and commission member may seek such an opinion through the Council liaison to the board or commission or through any other Councilmember.

This advisory opinion was reviewed and approved by Mayor Weitkunat and Councilmembers Poppaw and Campana, as regular members of the Ethics Review Board, 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 \_\_\_\_\_ day of August, 2013.

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Stephen J. Roy  
City Attorney