

RESOLUTION 2012-104
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2012-2
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 October 22, 2012 and October 30, 2012, to consider whether Mayor Karen Weitkumat has a conflict of interest in participating in decisions of the City Council and/or the Urban Renewal Authority Board pertaining to the possible redevelopment of the Foothills Mall; 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

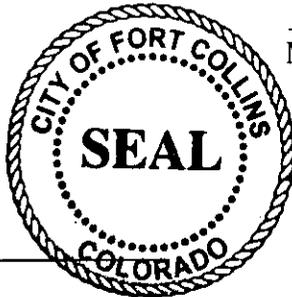
WHEREAS, the City has reviewed the opinion and recommendations of the Board and wishes to adopt the same.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2012-2 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 and recommendations contained therein.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of November A.D. 2012.

ATTEST:

Wanda Nelson
City Clerk



Jelly Ohlan
Mayor Pro Tem

EXHIBIT "A"

OPINION No. 2012-2 OF THE ETHICS REVIEW BOARD OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

October 31, 2012

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 Mayor Karen Weitkunat. The question submitted is whether the Mayor has a conflict of interest in participating in decisions of either the City Council or of the Fort Collins Urban Renewal Authority (the "URA") with regard to the possible redevelopment of the Foothills Mall (the "Mall"), in view of the fact that the Mayor's residence is located in close proximity to the Mall.

Summary of Opinion and Recommendation.

The majority of the Board believes that, in the judgment of a reasonably prudent person, the Mayor may realize or experience some direct and substantial benefit or detriment from the redevelopment of the Mall because of the proximity of her residence to the site of the redevelopment, and that this benefit or detriment would be different in kind, and not just in degree, from that experienced by the general public. Therefore, the Board recommends that the Mayor declare a conflict of interest with regard to any decisions of the City Council related to the Mall redevelopment.

The Board does not believe that a conflict of interest exists with regard to decisions that the Mayor may make with regard to the Mall redevelopment as a member of the URA Board of Directors. That is because the conflict of interest standards applicable to URA Board members are different than the City Charter standards that are applicable to decisions of the City Council, and the Mayor clearly does not have the kind of financial interest in the Mall redevelopment project that would disqualify her from participating in URA decisions related to the project.

The Information Presented to the Review Board.

No formal application has yet been submitted to the City with regard to the possible redevelopment of the Mall. However, both the City Council and the URA Board of Directors, which is comprised of the members of the City Council, will likely have proposals related to the redevelopment presented for their consideration in the near future. The decisions of the City Council may include the following:

1. Financial incentive proposals.
2. Decisions related to the Foothills Mall Metropolitan District Amended Service Plan and related intergovernmental agreement regarding the operation and maintenance of public facilities.
3. Decisions related to the Youth Activity Center lease, which the City currently operates in a building on the Mall property.

The Council would also be called upon to hear any appeal of the Planning and Zoning Board's decisions related to the Mall, if such an appeal is filed.

In addition, the URA board will be making decisions related to the Mall, including possible approval of a resolution authorizing an agreement to negotiate with Alberta Development Partners, LLC ("Alberta"), the developer of the Mall, and a resolution authorizing the acquisition of certain property interests by eminent domain actions that would, if approved, make the Mall redevelopment more likely.

Attached to this Opinion as Exhibit "1" is a general description of the work that Alberta intends to undertake during the course of the redevelopment. It appears that the redevelopment will include not only the reconstruction of retail establishments at the Mall but also multi-family residential development, both of which may significantly increase the amount of vehicular traffic in and out of the Mall property.

The Mayor's residence is located approximately 350 feet from the Mall redevelopment site, on the other side of Swallow Road. The "notice zone" within which neighboring property owners will receive written notice of the Mall redevelopment project under Section 2.2.6 of the City's Land Use Code (the "LUC") has been established at 1,000 feet. The reason that notice of a proposed development project is mailed to persons within this zone is to ensure the owners of properties that may be directly affected by the project can express their views to City staff about the project as it is being reviewed by the City, and can also appear before the City's decision makers, including the City Council, to express any concerns they might have.

The Mayor has indicated that she does not anticipate that the redevelopment project will have any significant impact on the value of her residence or the quality of life that she enjoys as a resident of the area. She points out that the Mall and its related traffic impacts already exist, and that the redevelopment proposal is unlikely to affect neighboring properties in the same way or to the same extent that a "greenfield" development proposal might.

To better assess whether the Mall redevelopment may have a direct and substantial impact on the value of properties in close proximity to the Mall, the Board inquired of City staff, who in turn contacted several appraisers and one real estate broker. Staff reported that there was a consensus

among those they interviewed that, at least over the long term (the next ten years), properties close to the Mall will increase in value as a result of the Mall redevelopment. There was also an indication that neighboring properties could experience a negative, rather than positive, impact if the redevelopment significantly impacts traffic flows or views or generates additional noise or lighting. The consensus was that properties closer to the main access areas of the Mall would be more significantly impacted, one way or the other, than those farther away.

Opinion and Recommendations.

The Board considered the information provided by the Mayor and the staff in light of the conflict of interest provisions of the City Charter, which are attached as Exhibit "2." It is clear to the Board that the Mayor does not have a "financial interest" in the upcoming Council decisions about the Mall redevelopment, as that term is defined in the Charter. The closer question is whether she has a "personal interest," that is, whether, in the judgment of a reasonably prudent person, the Mayor "would realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public" if she were to participate in City Council decisions that will make the redevelopment of the Mall more or less likely.

In view of the information presented to the Board, the majority of the Board (Councilmembers Manvel and Poppaw) believes that the Mayor does have a conflict of interest under this standard and should not participate in City Council decisions related to the Mall redevelopment. Councilmembers Manvel and Poppaw hold this opinion primarily because it appears likely, based upon the information provided by City staff, that the redevelopment of the Mall will, at least over time, significantly increase the value of the Mayor's residence, especially in view of the blighted conditions that presently exist at the Mall. Conversely, if the Mall redevelopment negatively impacts nearby properties in terms of traffic, lighting, noise and views, these impacts would be different in kind from those experienced by the rest of the community.

The third member of the Board, Councilmember Kottwitz, believes that the Mayor does not have a conflict of interest since there is no clear indication that either the property values or quality of life of persons residing in close proximity to the Mall will be directly and substantially affected by the Mall redevelopment in a way that is different from the general public.

In arriving at its opinion and recommendation, the Board considered previous opinions and recommendations provided by the Board in Opinions No. 1999-8 and 2004-1, including the various factors that the Board has recommended be considered in this kind of situation. The factors that the Board has considered include: 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; the need for the Councilmember to participate in the upcoming decision(s) as an elected representative; and how close the connection is between the upcoming decision(s) and the potential impact on the Councilmember. However, the Board disagrees with the

Opinion of the Ethics Review Board

Opinion 12-2

October 31, 2012

Page 4 of 4

recommendation contained in Opinion 1992-8 that Councilmembers who are faced with any kind of official capacity decision involving public or private property located within 500 feet of their residence should always recuse themselves on the assumption that the proximity of the property, in itself, creates a conflict of interest. Instead, the Board believes that, while such proximity should automatically call for Board review of the situation, each such situation should be considered on a case-by-case basis, applying the factors recited above.

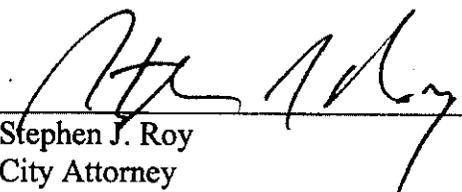
As to the Mayor's ability to participate in URA Board decisions regarding the Mall redevelopment, all three Board members agree that no conflict of interest exists under the state conflict of interest laws that are applicable to the URA Board. The statutory conflict of interest rule that applies specifically to URA Board members is limited to situations in which URA Board members have a financial interest in the projects that they are considering, and the other, more general ethical rules and principles for "local government officials and employees" do not speak to the Mayor's situation. The ethical rule that is contained in the URA statute reads as shown below.

31-25-104(3) No commissioner, other officer, or employee of an authority nor any immediate member of the family of any such commissioner, officer, or employee shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project.

Because the Mayor has no interest, direct or indirect, in the Mall redevelopment project, she has no conflict of interest in URA decisions related to the project. However, the Board believes that, because the URA Board consists of the members of the City Council, the same ethical rules should apply to the URA as apply to the City. This change can be accomplished through an amendment to Section 2-483 of the City Code because the City Charter exempts the officers and employees of its authorities from its conflict of interest rules only if the City Code expressly authorizes such an exemption, which it presently does. Therefore, the Board recommends that Section 2-483 be amended so as to eliminate that exemption.

This advisory opinion was reviewed and approved by Councilmembers Ben Manvel, Lisa Poppaw and Aislinn Kottwitz, 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 31st day of October, 2012


Stephen J. Roy
City Attorney

FOOTHILLS

Foothills is an existing one-level covered mall containing approximately 250,000 square feet of small shop GLA and three (3) single-level department stores located along the east side of College Avenue, north of Monroe Drive in Fort Collins, Colorado.

The Owner intends to undertake a major redevelopment of the project that will include the deconstruction of approximately 93,000 square feet of existing in-line tenant GLA, 67,000 square feet mall common area and back of house, two (2) anchor buildings totaling 150,000 square feet and a number of freestanding buildings located on outparcel lots surrounding the mall. The new work includes redevelopment of the entire site, incorporating mall interior renovations and new mall entries together with the development of outdoor lifestyle and entertainment components and freestanding retail buildings along College Avenue. Multi-unit residential on the eastern edge of the site offers a transition between the adjacent neighborhoods and the commercial core of the current mall area and incorporates key stormwater facilities within its design.

The proposed redevelopment will create a project that embodies a contemporary Colorado style. The design incorporates natural materials that are in harmony with the traditional architecture of historic downtown. The project will be a unique combination of indoor shopping, open air eateries and outdoor shops, as well as green spaces and a great lawn that functions as community gathering place. Outdoor spaces will be enhanced with beautiful Colorado style landscape, pedestrian amenities, entertainment opportunities, and exciting fountains. The design allows for opportunities for lifestyle, shopping, dining and entertainment. The project will be a local, as well as regional draw.

The redevelopment work will be permitted/ entitled in phases described by their corresponding DCP's roughly as follows:

- DCP 1 Selective Deconstruction and Site Preparation
- DCP 2 Overall Site Improvements
- DCP 3 Mall Renovation
- DCP 4 Parking Structure
- DCP 5 West Green Shops
- DCP 6 East Green Shops
- DCP 7 North College Avenue Shops
- DCP 8 South College Avenue Shops
- DCP 9 West and East Green Amenities
- DCP 10 Residential

DCP 1 SELECTIVE DECONSTRUCTION

1. Deconstruction of a large portion of the existing mall building (tenant GLA, common area and BOH), including provisions for temporary barricading and egress.
2. Deconstruction of existing parking fields and site areas affected by new work.

3. Inventory of existing vegetation and implementation of an approved tree harvesting, transplantation, and mitigation strategy.
4. Implementation of an approved relocation of the Larimer County Ditch currently present on the South East quadrant of the site.

DCP 2 SITE IMPROVEMENTS

1. Parking designs to reduce the site's heat island effect.
2. Pedestrian linkages throughout the site including travel through the mall structure and links to the Mason Street Corridor.
3. Pedestrian linkages throughout the site including travel through the mall structure and links to the Mason Street Corridor.
4. Drainage improvements employing 100% biological treatment for stormwater.
5. Balanced grading concepts minimizing soil import/ export from the site.
6. Enhanced landscaping, plazas, and amenities increasing open space from existing quantities.

DCP 3 MALL RENOVATION

1. Creation of a new East/ West mall concourse connection linking pedestrian traffic through the project site. New roof structure running the width of the mall connecting the new east and west entries.
2. New mall entry from the west with porte-cochere
3. New mall entry from the east
4. New mall entry near Macy's, with new retail box adjacent
5. New mall entry facing College Ave, with end court between new junior anchors
6. New junior anchor tenants and entertainment tenant at south end of mall (pad only)
7. New or enhanced exterior wall finishes on existing walls
8. New floor finishes throughout the existing interior common area
9. New ceilings and lighting throughout the existing interior common area including new clerestory windows within existing high bay exterior walls
10. New transition ramps/ stairs at four existing locations
11. New interior FFE, planters and landscaping throughout the existing interior common area
12. New fountain in center court
13. New public toilet rooms
14. New mall offices (the existing offices are in an area to be deconstructed)
15. New interior/ exterior signage and way finding package
16. Parking field modifications to the east and south
17. Parking lot lighting and exterior lighting
18. New service courts associated with modifications to the existing mall building
19. Three new exterior entries to the Macy's anchor store
20. New and modified hardscape/ landscape around the perimeter of the mall
21. Review/ rework existing mechanical, electrical, fire sprinkler and fire alarm systems throughout the existing interior common area
22. Entry icon/ signage

DCP 4 PARKING STRUCTURE

1. 4 levels or structured parking above a grade level of parking
2. Concierge Area including Valet
3. Public Family Toilets and Lounge

DCP 5 WEST GREEN SHOPS

1. Four new freestanding retail shell buildings
2. Hardscape/ landscape areas around and between the new buildings
3. Develop parking areas adjacent new buildings
4. Exterior lighting
5. Entry icon/ signage from East Foothills Parkway

DCP 6 EAST GREEN SHOPS

1. Four new freestanding restaurant shell buildings
2. New cinema building
3. Hardscape/ landscape areas around and between the new buildings
4. Parking field modifications to the southeast
5. Parking lot lighting/ exterior lighting
6. New service courts associated with restaurant buildings

DCP 7 NORTH COLLEGE AVENUE SHOPS

1. Three new freestanding retail/ restaurant buildings
2. Hardscape/ landscape areas around and between the new buildings, and along College Avenue.
3. Entry icon/ signage from College Ave
4. New service courts associated with retail/ restaurant tenant buildings
5. Develop parking areas adjacent new buildings including new parking field to the northwest.
6. Parking lot lighting/ exterior lighting

DCP 8 SOUTH COLLEGE AVENUE SHOPS

1. Three new freestanding retail/ restaurant buildings
2. Hardscape/ landscape areas around and between the new buildings, and along College Avenue.
3. Entry icon/ signage from College Ave
4. New service courts associated with retail/ restaurant tenant buildings
5. Develop parking areas adjacent new buildings including new parking field to the northwest.
6. Parking lot lighting/ exterior lighting

DCP 9 WEST AND EAST GREEN AMENITIES

1. Develop new landscaped "green" lifestyle components with seasonal features, ice skating rink/ elevated stage/ gathering area and amenities
2. Mature landscaped areas with native materials
3. Town Center presence at East Green

4. Pedestrian connection gateways at East/ West concourse to Mall and activity nodes within the pedestrian circulation network.

DCP 10 RESIDENTIAL

1. Develop Multi-Unit Residential and associated site improvements.

Execution of the project will include numerous sustainable practices during its implementation including:

- Reuse of existing building components
- Redesign of parking areas to decrease heat island effect
- Enhanced pedestrian connections to the areas surrounding the development
- Increased areas of enhanced landscaping and amenities
- Incorporation of xeric landscape materials
- Implementation of mature vegetation mitigation and relocation strategies
- Salvage and reuse of existing topsoil
- Recycling of crushed paving
- Incorporation of regional materials
- Biological treatment for stormwater management
- Balanced site design quantities
- Construction waste stream management
- Recycling of refrigerants
- Recycling of construction materials

The redevelopment of Foothills offers a comprehensive mixed use development solution to both local and regional challenges the current Foothills Fashion Mall represents. It offers market-driven opportunities with a focus on lifestyle, environment, and amenities by enhancing the current commercial environment. This proposal describes the elements that comprise this design and is offered for review and approval to the City of Ft Collins as a component of the Development Review process.

(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.

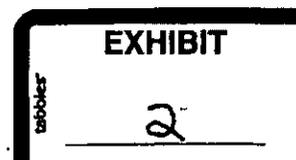
Definitions. For purposes of construction of this Section 9, the following words and phrases shall have the following meanings:

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)