

RESOLUTION 2012-122  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2012-3  
OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council Ethics Review 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, an alternate Ethics Review Board (the "Board") was appointed by the City Council by adoption of Resolution 2012-112 to consider inquiries submitted by Mayor Karen Weitkunat and Councilmember Ben Manvel as to whether they have a conflict of interest in participating in decisions of the City Council pertaining to the possible redevelopment of the Link-n-Greens property by Woodward, Inc.; and

WHEREAS, the Board met on December 7, 2012 to consider these inquiries and has issued an advisory opinion that neither the Mayor nor Councilmember Manvel has a conflict of interest; 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 recommendation; and

WHEREAS, the City Council has reviewed the opinion and recommendation 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. 2012-3 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 18th day of December A.D. 2012.



Mayor Pro Tem

ATTEST:



City Clerk



## EXHIBIT "A"

### OPINION No. 2012-03 OF THE ETHICS REVIEW BOARD OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

December 7, 2012

#### I. BACKGROUND.

This advisory opinion and recommendation is being provided to the City Council pursuant to Section 2-569(e) of the City Code in response to inquiries submitted to the Ethics Review Board (the "Board") by Mayor Karen Weitkunat and Councilmember Ben Manvel.

##### 1. Composition of the Board.

The regular members of the Board are Councilmembers Manvel, Kottwitz and Poppaw, and the alternative is Mayor Weitkunat. Because the Mayor and Councilmember Manvel would have a conflict of interest in participating in the Board's consideration of this issue, and because Councilmember Kottwitz is temporarily unavailable for service on the Board, the City Council has appointed an alternate Board for that purpose consisting of Councilmembers Poppaw, Horak and Troxell.

##### 2. Issues.

The questions submitted to the Board are whether either Mayor Weitkunat or Councilmember Manvel have a conflict of interest in participating in decisions of the City Council related to the possible redevelopment of a parcel of property currently occupied by Link-n-Greens Golf Course, in view of the fact that they and their spouses own business properties within the "notice zone" of the redevelopment project, as established in Section 2.2.6 of the Land Use Code.

##### 3. Project.

The possible redevelopment project (the "Project") is being proposed by Woodward, Inc. and would entail a campus of office, manufacturing, and testing facilities, including buildings and parking areas served by private drives, with approximately 600,000 square feet of manufacturing and 200,000 square feet of office, commercial and retail uses. The notice zone for the Project ranges from 1,200 feet to 3,600 feet and is shown on Exhibit "A." The decisions of the Council related to the Project may include both legislative and quasi-judicial decisions. The locations of the Project and the two business properties owned by the Weitkunats and Manvels are shown on Exhibit "B."

**4. Weitkunat Property.**

The property owned by the Mayor and her spouse (the “Weitkunat Property”), is 2.75 net acres in size and is occupied by a storage facility at which both indoor and outdoor storage is offered to members of the public. It is located at 1005 E. Laurel Street, approximately 1550 feet from the closest point of the Project. The Weitkunats have owned the property for approximately 12 years. According to the Mayor, the storage units on the property are typically used by persons who are moving their residences. The vacancy rate of the units is reportedly low.

**5. Manvel Property.**

Councilmember Manvel and his spouse own a duplex at 601 Endicott Street (the “Manvel Property”). It is 1370 feet from the closest point of the Project. The Manvels have owned the property for approximately 30 years. Both units of the duplex have reportedly been regularly occupied by renters over the years.

**II. ANALYSIS.**

**1. Bottom Line.**

For the reasons stated below, the Board does not believe that either the Mayor or Councilmember Manvel has a conflict of interest in participating in City Council deliberations and decisions related to the Project.

**2. Discussion.**

Under the Charter, if an officer or employee of the City has either a financial or personal interest in participating in City decisions, then he or she is required to file a conflict of interest disclosure statement with the City Clerk and refrain from voting on, attempting to influence, or otherwise participating in those decisions in an official capacity. The Charter definition of a “financial interest” is “any interest equated with money or its equivalent.” Clearly, neither the Mayor’s nor Councilmember Manvel’s situation has a financial interest in Council decisions related to the Project. The closer question is whether either of them has a “personal interest”) which, under the Charter, would exist if, in the judgment of a reasonably prudent person, they would “realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public” as a result of the development of the Project.

Earlier this year, the Board rendered Opinion 2012-02. In arriving at its opinion and recommendation in Opinion 2012-02, the Board recommended that, if a Councilmember owns property within the notice zone of a proposed development, such proximity should automatically call for Board review of the situation, and each such situation should be considered on a case-by-case basis, applying the following factors:

Earlier this year, the Board rendered Opinion 2012-02. In arriving at its opinion and recommendation in Opinion 2012-02, the Board recommended that, if a Councilmember owns property within the notice zone of a proposed development, such proximity should automatically call for Board review of the situation, and each such situation should be considered on a case-by-case basis, applying the following factors:

- 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 these factors, it seems evident to the Board that neither the Mayor nor Councilmember Manvel has a conflict. The notice zone for this project has been expanded from the 1,000 foot minimum established in Land Use Code Section 2.2.6 primarily because the size of the Project and the resulting increase in traffic on Lemay Avenue may have a significant impact on the residential neighborhoods north of East Lincoln Avenue. There is no indication that the Project will have similar traffic impacts on the Weitkunat and Manvel Properties, both of which are located on the opposite side of two major arterials, East Mulberry Street and Riverside Avenue. Nor is there any indication that the construction of the Project would increase or decrease the revenue potential or the property values of either the Weitkunats' storage business or the Manvels' duplex. (See the summary of City's staff's research regarding property values, attached as Exhibit C).

Thus, the Board believes that the Project will have no greater effect on the financial and personal interests of the Mayor and Councilmember Manvel than it will have on the general public; that there is a strong need for both the Mayor and Councilmember Manvel to be able to represent their respective constituents by participating in Council decisions related to the Project; and that neither would experience any direct or substantial benefit from their participation in such decisions.

### **3. Additional Recommendation.**

The Board believes that it would be helpful for the regular Ethics Review Board to meet and develop guidelines for board and commission members who are faced with these kinds of

Opinion of the Ethics Review Board

Opinion 12-03

December 7, 2012

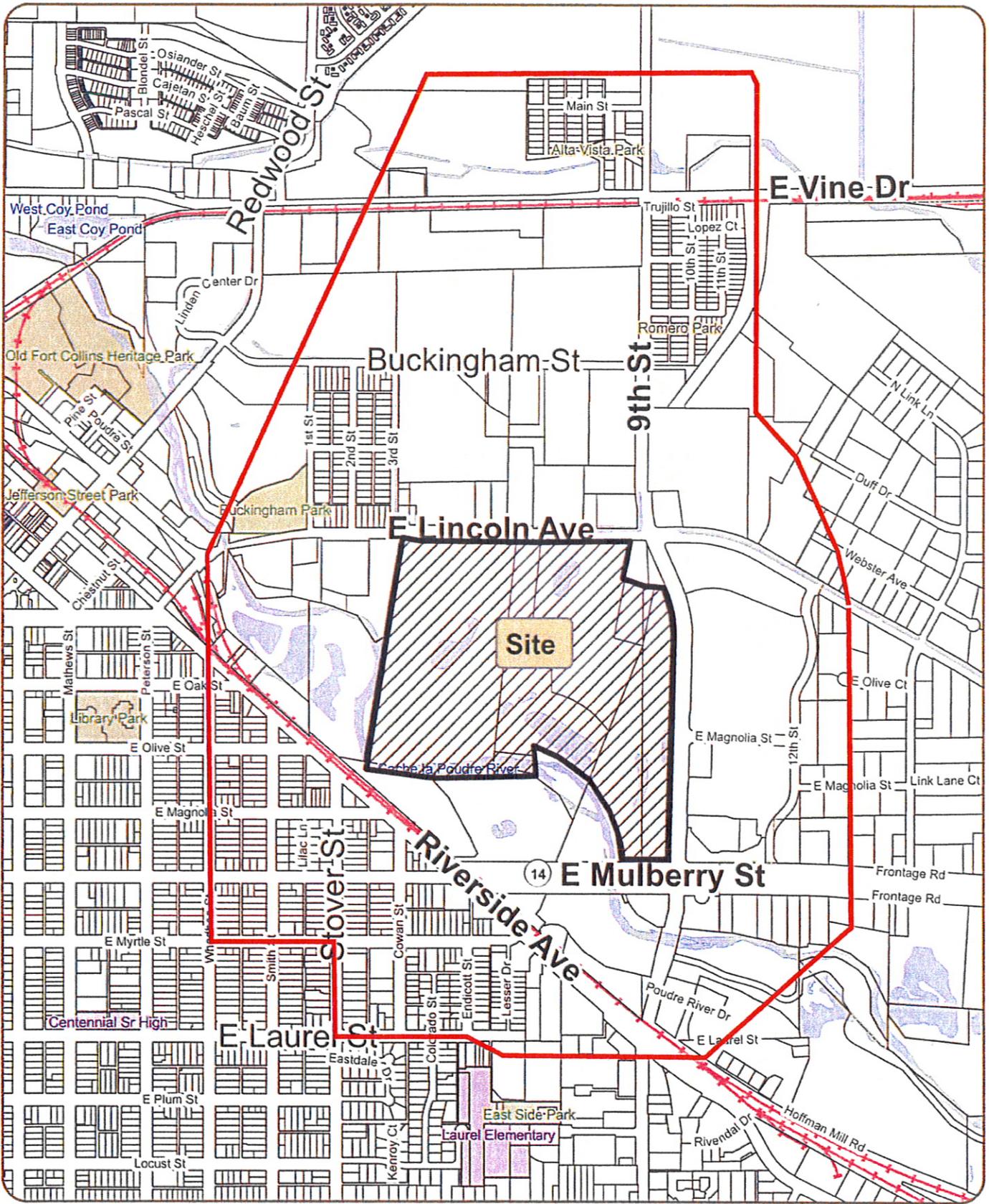
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and for distribution to the City clerk to be maintained in the permanent file of opinions of the Board.

Dated the 7<sup>th</sup> day of December, 2012.

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Stephen J. Roy  
City Attorney

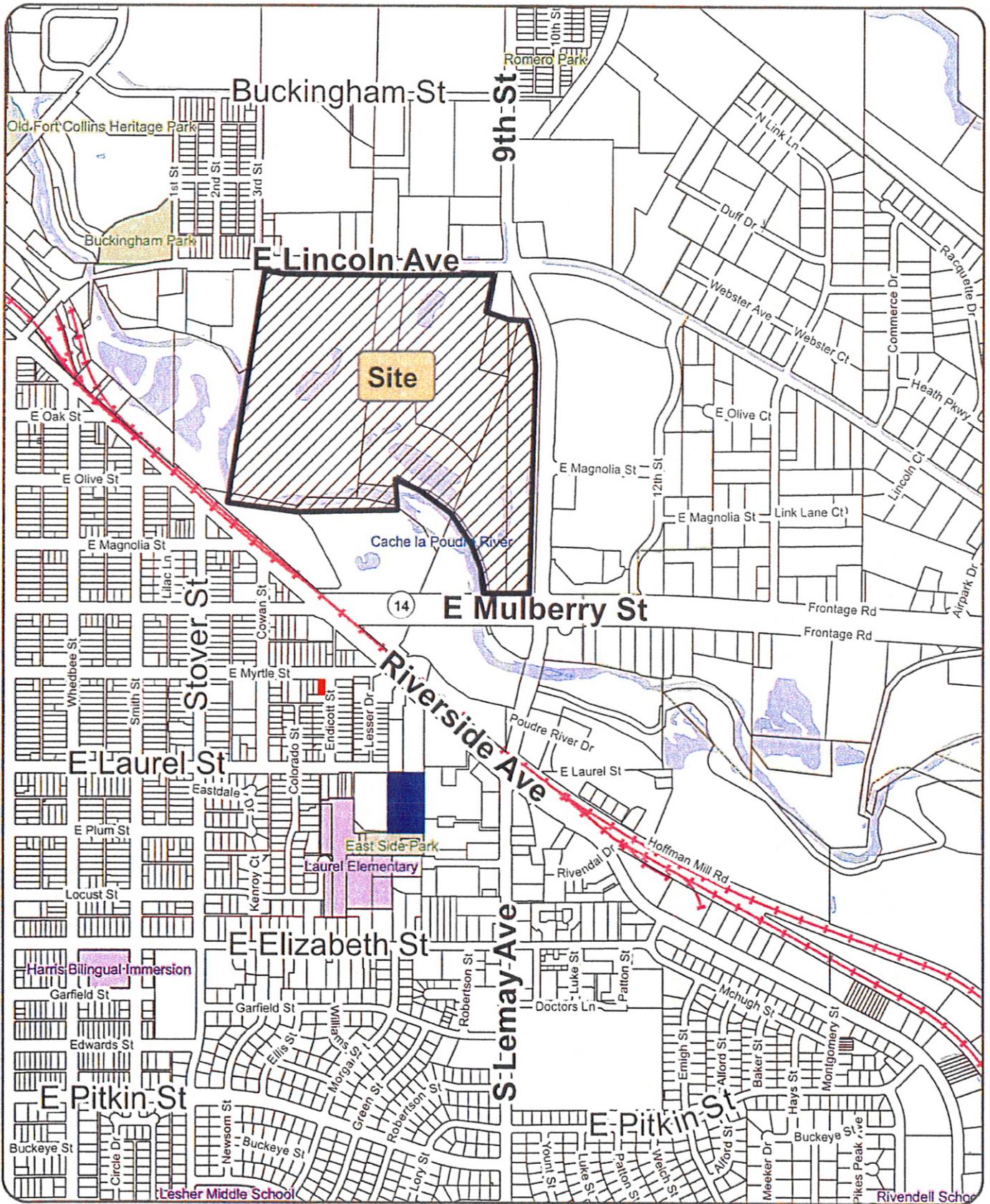


1 inch = 1,000 feet

## Link-n-Greens Vicinity Map



Exhibit "A"



1 inch = 1,000 feet

## Link-n-Greens Project Boundary

KEY: Weitkunat property shown as blue  
 Manvel property shown as red



Exhibit "B"

Ethics Review Board Meeting  
December 7, 2012

Opinions of Impact from Appraisers and Broker

I talked to two of our contract appraisers who were available and who were the most familiar with the City and the location of Link-N-Greens. Their comments were very similar and are summarized together below:

*The development and the privately owned parcels are divided by two major arterials (Mulberry and Riverside) which create distinction between the properties to the north and to the south. Impacts to properties are minimized because of this division.*

*One appraiser felt it was impossible to measure any impact on the rental property and that there might be a future speculative improvement (definitely not immediate impact) on the storage space site. This would probably be a redevelopment of the property.*

*The second appraiser felt that these properties were too far removed physically from the Woodward site to realize any specific benefit to their properties that would not apply to the community at large – more jobs, higher taxes, etc. If these properties were closer in proximity, those owners would be more likely to benefit by redeveloping their property for housing.*

I talked to a local broker for her opinion, which I have summarized below:

*A project of this magnitude will have positive impacts on rental properties far beyond these geographical boundaries. The area of impact would probably be at least from Prospect to Vine and College to Summitview. The most logical renter in the Endicott property is probably connected with the University and that probably will not change due to this project.*

*For the commercial property which is 2.7 acres and has one point of access on Laurel Street, any potential impacts to property would be far in the future and would probably involve creating assemblages and attempts to improve access.*

*Bottom line: As the crow flies, these properties may be within the notice boundaries and seem to be impacted by project; however, there are too many physical filters that affect these impacts (both negative and positive). The negative could be traffic and congestion and the positive could be increased property values or increased business. Economic impacts to residential properties in close proximity to project could have good and bad impacts that are hard to quantify.*