

RESOLUTION 2000-80
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING THE ADVISORY OPINION AND RECOMMENDATION NO. 2000-1
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 of board and commission members of the City; and

WHEREAS, the Ethics Review Board met on May 23, 2000, to consider whether Mayor Pro Tem Chuck Wanner has a conflict of interest in participating in City Council's consideration of proposed floodplain regulations for the Poudre River by reason of his employment as Executive Director of The Friends of the Poudre or as a member of the Board of Directors of the Friends of the Poudre; and

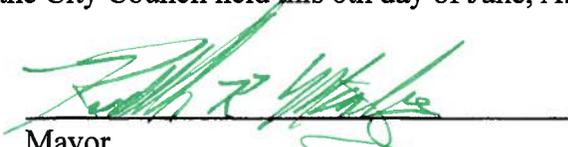
WHEREAS, the Board has issued an advisory opinion that Mayor Pro Tem Wanner does not have a conflict of interest with regard to the proposed floodplain regulations; and

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.

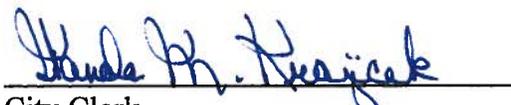
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2000-1 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion and recommendation contained therein.

Passed and adopted at a regular meeting of the City Council held this 6th day of June, A.D. 2000.



Mayor

ATTEST:



City Clerk

2000 -1
**OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS**

May 23, 2000

The City Council Ethics Review Board ("the Board") met on May 23, 2000, to render an advisory opinion on a question submitted to the Board by Mayor Pro Tem Chuck Wanner. The question presented is whether Mayor Pro Tem Wanner ("Wanner") would have a conflict of interest in continuing to participate in Council discussions and, ultimately, Council's vote, regarding the proposed new floodplain regulations for the Poudre River. The question arises because Wanner is employed by The Friends of the Poudre, a non-profit organization that has been actively involved in commenting on the new proposed floodplain regulations and that has lobbied for "Option C," the most restrictive alternative that has been presented by staff. The Friends of the Poudre is a citizen's group formed to protect the River. According to its Mission, Vision and Goals Statement (copy attached), one the goals of The Friends of the Poudre is to "preserve, restore and enhance critical areas of the Cache La Poudre watershed." Toward that end, it actively seeks ways in which to minimize development in the floodplain and to influence the kind of development that does occur. At present, the Friends of the Poudre has 160 dues-paying members and an operating budget of approximately \$45,000.

Wanner is employed as the Executive Director of The Friends of the Poudre and he is a member of its seven-member board of directors (the "Board of Directors"). He assumed both positions in the fall of last year. Wanner's term of employment with The Friends of the Poudre is of indefinite duration, and he is employed at the will of the Board of Directors. Funding for his position has been secured in the form of a grant from River Network, a national non-profit organization. The grant funding has been allocated over a ten-month period in the form of a salary to Wanner in the amount of \$1,666 per month, which will be payable through September of 2000. Wanner has indicated that, at the time of accepting his employment, he and the Board of Directors discussed the fact that Wanner would need to exercise independent judgment as a Councilmember with regard to any changes to the floodplain regulations for the Poudre River. That arrangement was reportedly acceptable to the Board of Directors, and Wanner has indicated that there have been no attempts by members of the Board of Directors to influence his position with regard to those regulations other than those lobbying efforts that have been directed to Councilmembers generally. There is no indication from Wanner or others that Wanner's employment, the amount of his compensation, or his membership on the Board of Directors is dependent upon the position that he takes with regard to the proposed floodplain regulations. Neither Wanner nor the Friends of the Poudre have a financial interest in any real property that will be affected by the proposed floodplain regulations. It is unclear whether any future funding for the Friends of the Poudre in the form of other grants might be affected by the floodplain regulations that are approved by the Friends of the Poudre, since each grant has different terms and conditions.

The question presented for the Board, is whether, under these facts, Wanner's employment with The Friends of the Poudre and/or his membership on the Board of Directors creates a conflict of interest under the City Charter or the state statutes that would prevent Wanner from participating in Council's discussion and vote on the proposed Poudre River floodplain regulations.

ANALYSIS.

1. City Charter Provisions.

The City Charter requires that any Councilmember who has a financial or personal interest in a decision of the Council disclose such interest and refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as a Councilmember. The City Charter defines two kinds of interests that can create a conflict of interest for officers or employees of the City: financial and personal interests.

a. Financial Interest.

A financial interest is defined under the Charter as "any interest equated with money or its equivalent." The Charter expressly excludes from the definition of "financial interest" the interest that a Councilmember has as an employee of a business where the Council decision may financially benefit or otherwise affect the business but entails no "foreseeable, measurable financial benefit" to the Councilmember. In reviewing the facts of this situation, it might fairly be said that the Council's decision with regard to the floodplain regulations for the Poudre River may "affect" The Friends of the Poudre since those regulations will determine the nature and extent of development that will be permitted in the Poudre River floodway, product corridor and floodplain. There is no indication, however, that that decision will financially benefit The Friends of the Poudre, much less Wanner himself. Wanner's compensation with the Friends of the Poudre is in a fixed amount, and no evidence has been presented to the effect that Wanner's salary will be changed or discontinued as a result of the Council's decision on the floodplain regulations. Therefore, the Board believes that Wanner does not have a financial interest in the proposed regulations.

b. Personal Interest.

The Charter defines a personal interest in relevant part as an interest by reason of which a Councilmember 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."

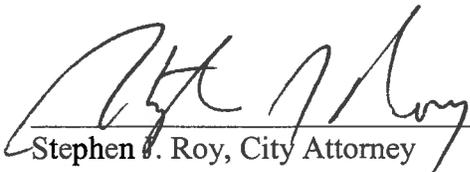
Clearly, Wanner is differently situated with regard to this matter than are the members of the general public because of his employment with The Friends of the Poudre and his membership on the Board of Directors. The Charter expressly excludes from the definition of personal interest the interest of a member of a board of directors of a non-profit organization. Therefore, the question here is

whether Wanner will realize any "direct and substantial benefit or detriment" by reason of Council's decision on the floodplain regulations because of his position of employment. Again, there is no indication that Wanner's position of employment or the amount of his compensation would be affected by his vote or Council's decision with regard to the proposed floodplain regulations. One can speculate that, if Wanner's vote proves to be inconsistent with the organization's philosophy or objectives, the Board of Directors may discontinue or decide not to renew Wanner's employment. However, the Charter standard requires that the potential benefit or detriment be "direct and substantial" and not merely indirect or speculative. The Board believes that the possibility of Council's decision affecting Wanner's employment is entirely speculative.

In summary, the Board believes that Mayor Pro Tem Wanner does not have a conflict of interest in participating in the City Council's deliberations and vote with regard to the proposed floodplain regulations. The Board recognizes that the perception of a conflict of interest may exist whenever a councilmember is employed by, or closely associated with, an organization that is strongly interested in proposed legislation. This is especially true when the councilmember is employed in a managerial capacity with that organization. However, the City Charter rules of ethical conduct have been established to distinguish situations where councilmembers and their employers may be affected and concerned about proposed legislation from those situations in which councilmembers themselves may somehow experience some personal gain or loss as result of the Council decision. Under the Charter standards, a conflict of interest would exist in this situation only if the potential personal gain or loss to Wanner was either "foreseeable and measurable" (in the case of a financial interest) or "direct and substantial" (in the case of a personal interest). After analyzing the situation presented by Mayor Pro Tem Wanner, the Board does not believe that that kind of clear and direct benefit or detriment exists in this case. To recommend that Mayor Pro Tem Wanner declare a conflict of interest in this situation would, in the Board's view, establish a very difficult precedent that would require councilmembers to regularly refrain from representing the views of their constituents with regard to proposed legislation even when the potential benefits or repercussions to councilmembers are merely hypothetical or speculative.

This advisory opinion was reviewed and approved by Councilmembers Councilmembers Byrne, Kastein and Weitkumat, members of the Ethics Review Board of the City Council. Pursuant to Section 2-569(e) of the City Code, this opinion and recommendation is to be immediately filed with the City Clerk and made available for public inspection. Additionally, this opinion shall be considered by the City Council at its meeting on June 6, 2000.

Dated this 23rd day of May, 2000.



Stephen F. Roy, City Attorney