

**STAFF**

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Carrie M. Daggett, City Attorney

**SUBJECT**

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Councilmember Campana's Request for advisory opinion concerning declared boardmember conflicts of interest and related involvement on behalf of an interested stakeholder (not as a board member), and concerning the same issue as it relates to Councilmembers.

**EXECUTIVE SUMMARY**

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This matter comes before the Ethics Review Board ("Board") as a result of an inquiry from Councilmember Gino Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether under the City Charter board and commission members, after declaring and disclosing a conflict of interest in a matter, can participate in that matter on behalf of an interested stakeholder (for example, as a technical professional providing advice to an applicant), so long as they do not personally appear before the board to advocate on behalf of another person. This request also includes consideration of the same question as it relates to Councilmembers.

**BACKGROUND / DISCUSSION**

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The central issues for discussion before the Ethics Review Board are:

1. Can a board or commission member, after declaring and disclosing a conflict of interest in a matter, participate in that matter on behalf of an interested stakeholder, so long as he or she does not personally appear before the board to advocate on behalf of another person?
2. Can a Councilmember appear before Council, after declaring and disclosing a conflict of interest, and participate on behalf of an interested stakeholder so long as he or she does not personally appear before Council to advocate on behalf of another person?

In contrast to the questions commonly before the Ethics Review Board for consideration, this inquiry relates not to whether a conflict of interest must be declared, but rather to whether what the limits are on a boardmember or Councilmember once a conflict has been declared.

Article IV, Section 9(b) of the City Charter states as follows (emphasis added):

...

- (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.

The highlighted provision has been specifically addressed in two Ethics Opinions, both of which are attached. One, Ethics Opinion 93-1, was adopted by the Council Ethics Review Board before the process called for presentation of ethics opinions to the City Council for approval. In July 1993, the City Council adopted Ordinance No. 064, 1993, which changed the process for adoption of ethics opinions so as to require Council review and approval. That Ordinance, which is also attached, added to the City Code language providing that an ethics opinion approved by the Council would provide an affirmative defense to any civil or criminal action, or any other sanction, to a Councilmember or boardmember who acted in reliance on it.

Ethics Opinion 98-1, which was approved by the City Council in Resolution 98-53, addressed the question of personal appearances by a boardmember on behalf of a client in matters where the boardmember had declared a conflict of interest and was not participating in the matter as a member of the board. That opinion provided that such personal appearances would not be allowed, but did not address whether other means of advocating to the board, or providing other materials for consideration by the board, on behalf of a client would also be prohibited.

This issue has been raised in part because some City boards include, or are required under the Code to include, professionals in fields related to that board's functions. As a result, there are challenges posed by a bar on appearing in front of that board by board members, particularly those who are sole practitioners and do not have colleagues who can work on client matters as needed. In these situations, while the boardmember does not participate in the matter as a member of the board, there is a question as to the extent to which he or she must avoid any participation as an advocate for an applicant or other party.

Under the provision above regarding sales to the City there is a related question as to whether a boardmember's firm is disqualified from representing a client in front of that boardmember where the boardmember has declared a conflict. This question has not been specifically raised, though it may be helpful for the Ethics Review Board to confirm how it views this issue to relate to the question posed.

Concerning the second question, that is, may a Councilmember appear before Council, after declaring and disclosing a conflict of interest, and participate on behalf of an interested stakeholder if they do not personally appear before Council to advocate on behalf of another person, express Code language governs.

Section 2-568(2) of the Fort Collins Municipal Code provides that "No Councilmember shall represent any person or interest before the City Council or any board or commission of the City."

If the Board would like to recommend further review and consideration of alternatives to this express Code provision, it may be helpful to separate that discussion from the discussion and interpretation of the above provision, to facilitate resolution of the pending question regarding obligations of boardmembers with conflicts of interest.

## **PUBLIC OUTREACH/NOTICES**

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Boards and Commissions Coordinator, Christine Macrina contacted all board and commission members on July 5, 2016 to ask for feedback, and that request is attached. Public Notice of the Board meeting was posted both electronically and physically on July 1, 2016.

## **ATTACHMENT**

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Councilmember Campana's June 27, 2016 Request  
Public Notice  
Request for Boardmember input  
Ethics Opinion 91-3  
Ethics Opinion 98-1  
Ordinance No. 064, 1993  
Ethics Review Board Agenda for July 12, 2016

**From:** Gino Campana  
**Sent:** Monday, June 27, 2016 2:21 PM  
**To:** Wanda Winkelmann; Wade Troxell  
**Cc:** CCSL  
**Subject:** Boardmembers and Liaisons - Section 2-568. Ethical rules of conduct

Wanda, I would like the Ethics Review Board (ERB) to consider and provide an advisory opinion regarding the question of whether under the City Charter board and commission members may, after declaring and disclosing a conflict of interest in a matter, participate in that matter on behalf of an interested stakeholder (for example, as a technical professional providing advice to an applicant), so long as they do not personally appear before the board to advocate on behalf of another person.

I would like the ERB to consider Councilmembers as well.

Thanks,

Gino Campana

[gcampana@fcgov.com](mailto:gcampana@fcgov.com)

(970) 460-6329

With limited exceptions, emails and any files transmitted with them are subject to public disclosure under the Colorado Open Records Act (CORA). To promote transparency, emails will be visible in an online archive, unless the sender puts **#PRIVATE** in the subject line of the email. However, the City of Fort Collins can't guarantee that any email to or from Council will remain private under CORA.

## Cary Alton

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**From:** Christine Macrina  
**Sent:** Tuesday, July 05, 2016 5:05 PM  
**To:** Christine Macrina  
**Cc:** Carrie Daggett; Cary Alton; Wanda Winkelmann  
**Subject:** Ethic's Review Board Meeting on Conflict of Interest  
**Attachments:** Meeting Notice 2016-7-12.pdf

Board and Commission Members:

You may recall that there have been recent discussions regarding whether an individual board or commission member who has declared a conflict of interest may present materials to his or her own board on behalf of a client or project. In order to obtain more clear guidance on this issue, Councilmember Gino Campana has requested that the Council's Ethics Review Board consider this question and issue an ethics opinion. (The Ethics Review Board opinion is then presented to the City Council for review and adoption by resolution.)

The Ethics Review Board is scheduled to meet at 4:00 p.m. for one hour on Tuesday, July 12<sup>th</sup>, in the City Attorney's Office conference room at 300 LaPorte Avenue. The meeting is a public meeting and is open for all interested persons to attend. A copy of the formal notice of this meeting is attached.

You may want to provide input regarding this issue to the Ethics Review Board (either as a board/commission if you have time to meet prior to July 12, or as an individual). If so, it will facilitate with coordination and allow the Ethics Review Board to make efficient use of its meeting time for you to **provide your comments in writing in advance through me by noon on July 12,** so that I can be sure to forward that input to the Board as it is received, in addition to including the information in the Board's meeting packet.

Please feel free to call if you have any questions or concerns regarding this process or how you may comment on it.

Thank you.

**CHRISTINE MACRINA**  
Boards and Commissions Coordinator  
[City of Fort Collins](#)  
300 LaPorte Avenue  
970-416-2525 office  
[cmacrina@fcgov.com](mailto:cmacrina@fcgov.com)

91-3  
OPINION RENDERED BY THE ETHICS REVIEW BOARD  
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

August 21, 1991

BACKGROUND:

The Ethics Review Board (the "Board") met on the above-referenced date, pursuant to the provisions of Section 2-569 of the City Code, to consider questions posed by Councilmember Cathy Fromme. The questions pertain to an issue arising before the Planning and Zoning Board (and potentially before the Council, if an appeal is filed) on the subject of the Laurie PUD. An issue has also arisen regarding the question of whether the Council should direct City staff to proceed to negotiate for the acquisition of the "Ravine," which is located on the proposed Laurie PUD.

Councilmember Fromme owns and resides on property which is adjacent to the Laurie PUD and is in close geographic proximity to the "Ravine." Since Councilmember Fromme's property is within five hundred feet of the proposed PUD, she is on the Planning and Zoning Board's mailing list for the hearing to consider the PUD. Councilmember Fromme has also had a long-term and abiding interest in the preservation of the "Ravine," and has been involved with a group of her neighbors in an effort to provide partial funding for the purchase of the "Ravine."

ETHICAL QUESTIONS PRESENTED:

The ethical questions presented to the Board by Councilmember Fromme were as follows:

1. Does Councilmember Fromme have a conflict of interest in decisions of the Council related to the potential acquisition of the "Ravine?"
2. Does Councilmember Fromme have a conflict of interest with regard to issues presented to the Planning and Zoning Board and/or the Council pertaining to the Laurie PUD?
3. Is Councilmember Fromme's husband prevented from speaking to the Planning and Zoning Board and/or the Council on his own behalf regarding issues pertaining to either the acquisition of the "Ravine" or to the Laurie PUD?

APPLICABLE LAW:

The City Charter provision which pertains to this matter reads as follows:

Interests in other decisions. Any officer or employee who has, or whose relative has, a financial interest and

any officer or employee who has a 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. (Article IV, Section 9(b)(3), City Charter)

The City Charter provides a definition of a "personal interest" as follows:

Personal interest means any interest (other than a financial interest) arising from blood or marriage relationships or from close business, political or personal associations or concerns which would, in the judgment of a reasonably prudent person, tend to impair independence of judgment or action in the performance of official discretionary duties. (Article IV, Section 9, City Charter)

The City Charter also defines a "financial interest" to mean "any interest equated with money or its equivalent."

The City Code provides in Section 2-568(b)(1) as follows:

An officer or employee shall not disclose or use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others. . . . No officer or employee who has filed a statement of conflict of interest with the City Clerk under Article IV, Section 9 of the Charter shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest.

The City Code also provides in Section 2-568(b)(2) as follows:

No Councilmember shall represent any person or interest before the City Council or any board or commission of the City.

CONCLUSIONS AND RECOMMENDATIONS: <sup>not p</sup> Board p  
cipate -

After reviewing the facts presented to the Board by Councilmember Fromme, the opinion of the Board is as follows:

1. Councilmember Fromme would have a conflict of interest in participating in any Council deliberations regarding the question of whether to negotiate for the acquisition of the "Ravine." This opinion is based upon the Board's understanding that she owns and resides upon property located in close geographic proximity to the "Ravine" and, more importantly, Councilmember Fromme has been involved in an effort to raise money for the purpose of partially funding the purchase of the "Ravine." Efforts on Councilmember Fromme's part to formulate a City policy whereby the City purchases the property could be seen as a conflicting financial interest, because such purchase could alleviate, or at least diminish, the need for Councilmember Fromme to raise funds privately to accomplish such a purchase.

The Board also discussed Councilmember Fromme's participation in the discussion at the August 20, 1991 Council meeting. At that meeting, the Council requested that the City Manager return with information to guide it in determining the feasibility of negotiating for the acquisition of the "Ravine." The Board concluded that since no vote was taken by the Council at the August 20, 1991 meeting and no decision was made, the mere request for information, and Councilmember Fromme's involvement in that request, did not give rise to a conflict of interest for the purpose of that meeting.

Furthermore, the Board believes that Councilmember Fromme's potential conflict of interest regarding the "Ravine" would not preclude her from considering larger issues, such as the natural areas plan or other components of the comprehensive plan of the City, as long as she discloses her conflict with respect to the "Ravine," and as long as she refrains from participating in any decision which relates specifically to the "Ravine."

2. Councilmember Fromme would have a conflict of interest in participating in any manner in the hearing before the Planning and Zoning Board regarding the Laurie PUD, because she owns and resides upon land which is adjacent to the proposed PUD, which land is within the five hundred foot radius of the proposed development. Accordingly, Councilmember Fromme has received notice as an affected person pertaining to the PUD. Therefore, Councilmember Fromme should not participate in the hearing before the Planning and Zoning Board pertaining to the Laurie PUD, nor should she participate in any hearing pertaining to the PUD at the Council level, in the event of an appeal.

3. It is the opinion of the Board that Councilmember Fromme's husband may appear before the Planning and Zoning Board (and the Council, if the matter is appealed) to address issues of a personal concern to him regarding the Laurie PUD. Mr. Fromme is neither an "officer" nor an "employee" of the City and is not, therefore, governed by any of the proscriptions of Article IV, Section 9(b)(3) of the City Charter, nor is Mr. Fromme governed by Section 2-568 of the City Code. (The fact that he is a "relative" of Councilmember Fromme does not bring him under the proscription of Article IV, Section 9(b)(3) of the Charter, but does further support the need for non-participation in decisionmaking on the part of Councilmember Fromme.) As long as he expresses his concern as a personal concern, held by him individually as a citizen and property owner, his First Amendment right of free speech and right to petition the government is not abridged because of his marital relationship with a councilmember.

The advisory opinion was reviewed and approved by Councilmembers Maxey, Edwards and Azari, as members (or alternate members) of the Ethics Review Board of the City Council, for distribution to the 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 27<sup>th</sup> day of August, 1991.

  
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W. Paul Eckman  
Deputy City Attorney

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RESOLUTION 98-53  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ACCEPTING THE ADVISORY OPINION AND RECOMMENDATION  
NO. 98-1 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 or board and commission members of the City; and

WHEREAS, the Board met on February 25, 1998, to consider: (1) whether a member of the Landmark Preservation Commission (the "Commission") may appear before the Commission (or one of its committees) as a professional representing an applicant; (2) whether a member of the Planning and Zoning Board who has declared a conflict of interest on a matter may appear before the Board as a private citizen to urge a particular outcome; and (3) whether a member of the Planning and Zoning Board may participate in a decision of the Board and then later participate as a citizen when the matter is presented to the City Council, either on appeal or following a recommendation from the Planning and Zoning Board; and

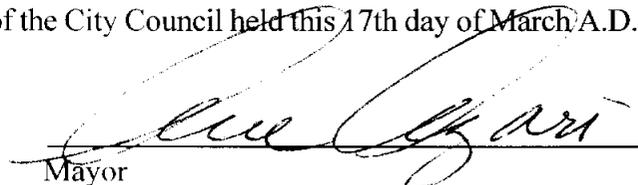
WHEREAS, the Board has issued Opinion No. 98-1 with regard to the foregoing issues; and

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

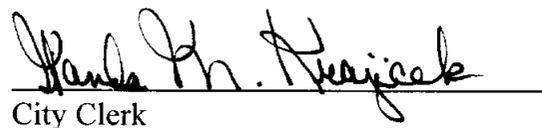
WHEREAS, the City Council has reviewed the opinion and recommendation of the Board and wishes to adopt the same.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 98-1 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 opinions and recommendations contained therein.

Passed and adopted at a regular meeting of the City Council held this 17th day of March A.D. 1998.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

98-1  
**OPINION OF THE ETHICS REVIEW BOARD  
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS**

February 25, 1998

The Ethics Review Board ("the Board") has been asked by the Council liaisons to the Landmark Preservation Commission ("the Commission") and to the Planning and Zoning Board ("the P & Z Board") to render opinions with regard to three issues. For the purposes of analysis, the first two questions have been combined.

**ISSUE NO. 1    MAY A MEMBER OF THE LANDMARK PRESERVATION COMMISSION (THE "COMMISSION") APPEAR BEFORE THE COMMISSION (OR ONE OF ITS COMMITTEES) AS A PROFESSIONAL REPRESENTING AN APPLICANT?**

AND

**ISSUE NO. 2    MAY A MEMBER OF THE PLANNING AND ZONING BOARD WHO HAS DECLARED A CONFLICT OF INTEREST ON A MATTER APPEAR BEFORE THE PLANNING AND ZONING BOARD AS A PRIVATE CITIZEN TO URGE A PARTICULAR OUTCOME?**

**Previous Ethics Board Opinions:**

In Opinion 91-2, the Ethics Review Board previously reviewed the question of whether members of City boards or commissions should appear before their own boards or commissions in a private capacity to present their views on a particular matter even though they have filed a conflict of interest disclosure statement with regard to the matter and were unable to participate in the decision as an officer or employee.

Although the conflict of interest provisions in the City Charter have been amended since the date of Opinion No. 91-2, the Charter provision relevant to this inquiry remains the same. It provides, in relevant part, as follows:

(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.* (Article IV, Section 9(b)(3). Emphasis added.)

Thus, as was true in 1991, the Charter is silent with regard to the ability of a board or commission member to appear before his or her own board or commission in a *private capacity* after a conflict of interest disclosure statement has been filed by such board or commission member.

**Factual Setting:**

In the case of the Landmark Preservation Commission, this question arises on occasions when an architect or other professional who is a member of the Commission has worked with a prospective applicant for approval of an exterior modification to a designated landmark property. Under these circumstances, the Commission member would generally file a conflict of interest disclosure statement and refrain from participating in the Commission's decision as to whether the proposed modification is acceptable under the provisions of the City Code. However, that member may have been retained by the applicant to represent his or her interests before the Commission and, for that reason, the Commission member, after filing of the conflict of interest disclosure statement, may wish to present the applicant's position to the Board in a professional capacity.

In the case of the P & Z Board, a member of that Board may file a conflict of interest disclosure statement because he or she lives in close proximity to the subject property of a development application. That P & Z Board member may then wish to express his or her views with regard to the impact that the development application may have on his or her property if approved by the P & Z Board.

**Analysis and Recommendation:**

The Board's opinion with regard to these issues remains the same as expressed in Opinion 91-2. The Board recognizes that a member of the Commission or the P & Z Board may, on occasion, need to appear in a personal capacity before his or her own commission or board in order to protect his/her own property interests. For example, in the case of a development application before the P & Z Board, a boardmember's own residence may be directly and substantially affected by the P & Z Board's decision. In that case, the P & Z Board members' right to protect his/her individual property interests should not have to be abandoned, and the Board member should be entitled to address his/her concerns to the P & Z Board.

However, when the interests involved are not entirely personal in nature but are instead professional in nature (i.e., the Commission or Board member is representing another individual as an advocate, whether with or without compensation), then the Board believes that the right to appear before the board or commission is outweighed by the City's need to protect the integrity and impartiality of the City's decision making processes. In that situation, the Board recommends that board and commission members not make such professional capacity presentations.

The Board recognizes that, in the case of the Commission, this recommendation will work a hardship on certain Commission members, since the Commission, in order to perform its functions under the Code, is required to have among its members a certain number of architects and persons educated

in historic preservation.<sup>1</sup> If Commission members are required to refrain from making presentations to the Commission during their term of service, it has been pointed out that this will likely diminish the pool of professionals who are willing to serve on the Commission. Nonetheless, the Board feels that the alternative, i.e., allowing Commission members to make presentations to the Commission on behalf of others, would create an appearance of impropriety that could call into question the impartiality of the Commission's decision-making process. Instead of allowing such presentations, the Board recommends that the Commission consider whether a shorter term of service for members of the Commission who fall within this category of professionals might be warranted, so as to minimize the period of time that they would be unable to appear before the Commission in a professional capacity. If the Commission believes that such shorter terms might be warranted, a recommendation to the City Council to that effect would be appropriate.

In summary, with regard to appearances before one's own board or commission, the Board recommends the same guidelines contained in Ethics Opinion 91-2, which are as follows:

1. Immediately upon discovery that a conflict of interest exists as defined in the City Charter, a board or commission member should file a conflict of interest statement with the City Clerk as required by the Charter. (He/she may also wish to file a disclosure statement with the Secretary of State under the relevant provisions of state law. The City Attorney should be consulted on this point.)
2. The board or commission member must thereafter refrain from participating in the discussions of the board or commission, voting on the matter or attempting to influence the decision as a board or commission member.
3. Any presentations made by the board or commission member in support of the proposal should be made in an individual capacity and not as a representative of any group or organization.
4. Each time that the board or commission member addresses the matter, he or she should clearly state that he/she is doing so in a private capacity and will

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<sup>1</sup> The City Code states, in Sec. 2-277 that, in making appointments to the Commission, the City Council shall give due consideration to maintaining a balance of interests and skills in the composition of the commission and to the individual qualifications of the candidates including but not limited to their training, experiences, knowledge or interests in any one (1) or more of the fields of architecture-landscape architecture, architectural history, structural engineering, general contracting, urban planning, mortgage lending and commerce. The regulations of the Colorado Historical Society further require that at least three members of a seven-member commission such as the Landmark Preservation Commission "shall be professionals in preservation related disciplines such as architecture, architectural history, archaeology, history planning, or other historical preservation related disciplines such as urban planning, American studies, American civilization, cultural geography or cultural anthropology.

not be participating in the decision-making process. The opportunities for input that are made available to the board or commission member should be limited to those which would be available to any other member of the general public who is similarly interested in the decision.

**ISSUE NO. 3 MAY A MEMBER OF THE PLANNING AND ZONING BOARD PARTICIPATE IN A DECISION OF THE BOARD AND THEN LATER PARTICIPATE AS A CITIZEN WHEN THE MATTER IS PRESENTED TO THE CITY COUNCIL, EITHER ON APPEAL OR FOLLOWING A RECOMMENDATION FROM THE PLANNING AND ZONING BOARD?**

Again, this question is not addressed by the provisions of the City Charter, nor is it addressed in Opinion 91-2 or other opinions of the Board. The Board believes that when the decision of the P & Z Board is a quasi-judicial one and the matter is subsequently presented to the City Council on appeal, a member of the P & Z Board should be permitted to make a presentation to the Council on appeal only if he/she has filed a conflict of interest disclosure statement and has not participated in the P & Z Board's decision regarding the matter.

As noted above, in that situation, the member should be able to protect his or her property interests. If, however, the P & Z Board member has *not* filed a conflict of interest disclosure statement and has participated in the P & Z Board's decision, then the Board believes that it would be inappropriate for that member to appear before the Council. This is because the Council's decision on appeal must be based "on the record" and the record speaks for itself with regard to the reasoning of the Board. Extrinsic evidence should not be introduced at the hearing by an individual member of the Board with regard to the reasoning behind the P & Z Board's decision.<sup>2</sup>

When the matter presented to the City Council is *legislative* in nature, the Board believes that members of the P & Z Board or other boards or commissions who have made recommendations to the Council on that same subject matter should be free to express their individual opinions to the Council. In this situation, the Board believes that there is no ethical impropriety in expressing one's individual concerns at the Council level. However, the Board strongly encourages board and commission members to actively participate in their own board or commission discussions on these topics and to not bypass that opportunity to express one's views. It is important for the Council, in receiving recommendations from its boards or commissions, to fully understand the minority views of each board or commission on a particular subject, as well as the view of the majority. Therefore,

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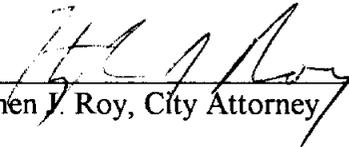
<sup>2</sup> It should also be noted that an individual board member would not generally have standing to appear before the Council as a "party in interest" with regard to any such appeal unless he/she *has* declared a conflict of interest, since those qualifying as parties in interest under the City Code are those whose property interests are likely to be immediately and directly affected by the P & Z Board's decision. (The City Charter states that a conflict of interest exists whenever a board or commission member 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.)

Ethics Opinion 98-1  
February 25, 1998  
Page 5

board and commission members should make every effort to make their views known as members of their own boards or commissions as those recommendations to the Council are being formulated.

This advisory opinion was reviewed and approved by Mayor Azari, Mayor Pro Tem Smith and Councilmember Byrne, as 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 March 17, 1998.

Dated this 25th day of February, 1998.

  
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Stephen J. Roy, City Attorney

SJR:med

ORDINANCE NO. 64, 1993  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 2-569 OF THE CODE PERTAINING TO  
OPINIONS OF THE ETHICS REVIEW BOARD

WHEREAS, Section 2-569 of the Code establishes an Ethics Review Board which is empowered to render advisory opinions regarding complaints or inquiries involving questions of compliance by Councilmembers and members of City boards and commissions with state and local rules of ethical conduct; and

WHEREAS, as presently written, the advisory opinions rendered by the Ethics Review Board are provided to the City Council, but are not subject to formal review by the Council; and

WHEREAS, the Council believes it would be desirable for opinions of the Ethics Review Board to be subject to review by the entire Council; and

WHEREAS, the Council further believes it would be in the best interests of the City if such advisory opinions, once approved by the Council, would serve as an affirmative defense to any civil or criminal action or any other sanction which might be sought against a Councilmember acting in reliance thereon.

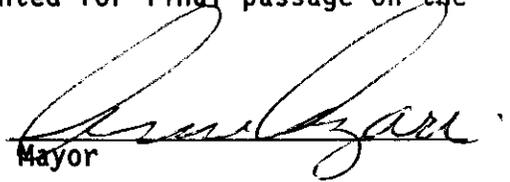
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 2-569, subsections (e) and (g), shall be amended so as to read in their entirety as follows:

**Sec. 2-569. Board of ethics.**

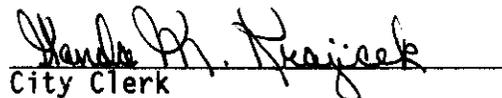
(e) In performing its review and investigation of any complaint or inquiry submitted in accordance with subsection (d) hereof, the review board shall afford all affected Councilmembers or board and commission members an opportunity to present their interpretations of the facts at issue and of the applicable provisions of law before rendering its opinion and recommendation. The review board may also request such additional materials or information from city staff or members of the public which it considers reasonably necessary or helpful to its deliberations. After investigation, the review board shall forthwith issue an advisory opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said opinion and recommendation shall 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 the same. Any Councilmember having a personal or financial interest in the opinion shall refrain from participating in any deliberations of the City Council regarding the same.

(g) Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence or nonexistence of conflicts of interest and the appropriate actions to be taken in relation thereto, shall be the responsibility of each individual Councilmember or board and commission member; provided, however, that an opinion adopted by the City Council under subparagraph (e) of this Section shall constitute an affirmative defense to any civil or criminal action or any other sanction against a Councilmember or board or commission member acting in reliance thereon.

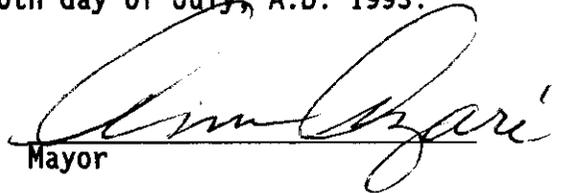
Introduced, considered favorably on first reading, and ordered published this 6th day of July, A.D. 1993, and to be presented for final passage on the 20th day of July, A.D. 1993.

  
Mayor

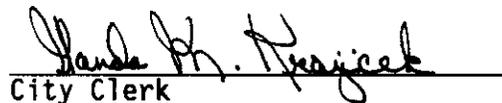
ATTEST:

  
City Clerk

Passed and adopted on final reading this 20th day of July, A.D. 1993.

  
Mayor

ATTEST:

  
City Clerk