

Ethics Review Board Meeting Minutes
July 29, 2019
6:15 p.m.

Members in Attendance: Board members Ken Summers, Julie Pignataro and Kristin Stephens.
Staff in Attendance: Carrie Daggett, City Attorney; John Duval, Deputy City Attorney; Jeanne Sanford, Paralegal; Delynn Coldiron, City Clerk

Public in Attendance: Fort Collins citizens Jim Jantee, Lori Brunswig and 3 other unidentified citizens.

A meeting of the City Council Ethics Review Board (“Board”) was held on Monday, July 29, 2019, at 6:15 p.m. in the CIC Room, City Hall West.

The meeting began at 6:15 p.m. The Board reviewed the Agenda which contained the following items:

1. Review and Approval of the April 26, 2019 Minutes of the Ethics Review Board.
2. Consider if a complaint filed on July 17, 2019, by Christine Pardee, making various allegations regarding the conduct of Mayor Wade Troxell, sufficiently alleges a violation of state or local ethics laws and should be further investigated.
3. Consideration of proposed increase in time for Ethics Review Board screening of ethics complaints.
4. Other Business.
5. Adjournment.

Mayor Pro Tem Stephens announced this was an Ethics Review Board Meeting on July 29, 2019 at 6:15 p.m. and after roll call, declared that a quorum of the Board was present.

Ms. Stephens asked if any members of the public wished to speak.

Jim Jantee of Fort Collins spoke that his neighborhood action committee received an email that Christine Pardee resigned from the Planning & Zoning Board due to alleged harassment by Gino Campana. He then discussed that Councilmember Martinez and Mayor Troxell appeared at the Board. Mr. Jantee asked if serving on boards and commissions was a volunteer situation. He had concerns that since the Ethics Board doesn’t meet often, maybe this matter could get resolved between parties without this hearing.

Mayor Pro Tem Stephens answered that board and commission members are volunteers and this complaint was brought to the Ethics Review Board.

Fort Collins citizen Lori Brunswig stated even though Christine Pardee was not able to appear tonight, it was clear after talking to her that she experienced intimidation and threats because she stood in Mayor Troxell's way of getting what he wanted. Ms. Brunswig stated she has experienced Mayor Troxell retaliating against her as well. She was here to say that she believes it is not possible for the members of this Ethics Review Board, as much as she respects the positions and abilities to be fair, to be fair and impartial since they work so closely with Mayor Troxell.

Mayor Pro Tem Stephens then stated the Board would look at the complaint and discuss the allegations lodged by Ms. Pardee.

Deputy City Attorney Duval stated he would first explain the process. City Code Section 2-569 governs how the Ethics Review Board considers these kinds of complaints. The first task is to review the complaint and facts; the Board now has to decide if the allegations are true and if a more formal investigation is necessary. Mr. Duval explained the Board is not here to decide if a violation has occurred, but to just decide if a more formal investigation is warranted. Mr. Duval advised that the Board has Ms. Pardee's written complaint, as well as audio of a P&Z work session where her allegations are directed.

Mr. Duval then explained the first allegation is tied to the provisions of City Code and speaks about discrimination, but it is a little unclear if Mayor Troxell was at that July 2 meeting and if Ms. Pardee was asserting that. There was no evidence brought in her complaint to that effect.

Councilmember Pignataro stated she remembers participants trying to discuss other things outside the appellant land use code and such discussions were stopped.

City Attorney Daggett then provided information about what happened at that hearing. Bill Whitley asked to speak and Mayor Troxell decided he was not a party in interest in the Sunshine House so he was not allowed to speak.

Deputy City Attorney Duval stated the second allegation was based on the denial of due process.

The third allegation was based on the destruction of government operations – under State statute – that the Mayor intentionally obstructed the P& Z Board's function. Deputy City Attorney Duval stated the referenced statute in the Complaint is actually a state criminal statute so this would have to be referred to the District Attorney and prosecuted by him. Mr. Duval directed the Board that a copy of that statute was in the provided materials.

Mayor Pro Tem Stephen stated this is not in our purview to consider and Mr. Duval agreed this is not in our ethics code.

The fourth allegation was discussed – obstruction of government operations. Mr. Duval explained the referenced Code section is contained in Chapter 13, which deals with discrimination in employment and housing, and does not relate to this subject.

The fifth allegation was that Mayor Troxell violated the First Amendment – freedom of speech. Mr. Duval explained these are not provisions in the City Code or State Code of Ethics. Ms. Pardee would need another venue on these types of claims, i.e., a civil lawsuit would have to be brought in federal court. This is not the venue to make these decisions on First Amendment rights.

Mayor Pro Tem Stephens then stated the Board will start with the first discrimination complaint. Ms. Stephens explained that having been at that appeal hearing, Councilmembers and participants in the appeal can only bring up matters from the record of P&Z meetings and not new material. Participants were held to discussing what was on the record and that is normal for an appeal; that is how an appeal is conducted.

Councilmember Pignataro discussed that the appeal process is being looked at by Council in October. Council wants to make sure that it is a fair process for the appellant, since they are not experts. Ms. Pignataro explained the whole appeals process will be looked at towards fairness.

Councilmember Summers stated it is important to remember an appeals hearing is a quasi-judicial process with stringent guidelines and not dissimilar to what the Ethics Review Board is bound by.

City Attorney Daggett spoke that the focus of reviewing the appeal process will be on eliminating confusion regarding the Code and how to make it flow better. Ms. Daggett explained that she and City Clerk Coldiron were talking about looking at the City Clerk's appeal guidelines and how to make them more user-friendly. The goal is to have a fair appeal hearing which doesn't help/hurt either side.

Councilmember Summers explained the Mayor is looked at in his role as Chair of Council, while he does have the authority to make determinations, those decisions are not without the right of appeal. If we feel he is not acting along guidelines, etc., then any councilmember could appeal the decision of the Chair and can overrule the Chair.

Councilmember Pignataro stated there is a system of checks and balances. Ms. Pignataro further stated that as we look at allegations against the Mayor in that context, it is important to understand his responsibilities, but note there is accountability as well.

Deputy City Attorney Duval noted in the rules of procedure, one can overrule the Mayor on new evidence.

Mayor Pro Tem Stephens did not feel that situation was relevant in this setting. There was no personal benefit or gain from the decision. Ms. Stephens then asked, is there financial or personal benefit for a decision made? Ms. Stephens did not see this falling under any of those rules and stated the Ethics Review Board is not a criminal court so we cannot pass judgment on these

allegations. Ms. Stephens asked if there was a violation of state or local ethic rules? That's what this Board is here to find out. Ms. Stephens stated that none of these allegations fall under the category of a Mayor making a decision at a hearing; the City Code and Charter do not apply to these allegations.

Mayor Pro Tem Stephens discussed the denial of due process and stated it is not clear what the complaint is. The allegation is not really related to the state or City ethics provisions cited.

Ms. Stephens then discussed the third allegation - obstruction of government operations. This refers to a state statute which is not part of our ethics section and is actually a criminal statute. Ms. Stephens stated the Board does not need to discuss this as it is not part of our purview.

Ms. Stephens stated, after listening to the audio of the P&Z work session, the Mayor simply reminded the participants to follow the Land Use Code. Someone on the audio said it was a "scolding", but there were no threats, harsh words, etc. Ray Martinez was actually very complimentary to the Board and apologized if that's what it sounded like. The Mayor just reiterated what Ray Martinez said. Ms. Stephens explained it is not unusual to state a reminder on what is appropriate at a meeting.

Councilmember Pignataro described that part of the reason Ray Martinez and Mayor Troxell came and talked at the meeting was because many P&Z Board Members were abstaining from voting which was starting to affect the Board. Ms. Pignataro explained that part of volunteerism is to make those tough decisions and that is what she felt Ray Martinez and the Mayor were trying to do, which was trying to remind the P&Z board members what their job was.

Councilmember Summers explained it was important to note that no private meetings happened. Mr. Summers explained this case had a lot of dynamics and emotions, etc., and it seemed appropriate to try to give some reassurance, guidance and coaching on how to approach this issue.

Mayor Pro Tem Stephens discussed the fourth allegation which cited City Code Section 13-20 but stated since this Code section applies to housing and employment, it doesn't apply here.

Deputy City Attorney Duval discussed the fifth item – violation of First Amendment freedom of speech. The Complaint alleges what was said was chilling and the P&Z board members were not able to render a decision or speak their minds.

Mr. Duval explained the P&Z Board's decisions are bound by the City's Land Use Code. This allegation does not relate to state or City ethics provisions.

Mayor Pro Tem Stephens stated she did not personally see a violation of First Amendment rights.

Councilmember Pignataro agreed and stated after listening to the audio, does not see that either. Ms. Pardee was listening by phone at the meeting and there was an open discussion in the room;

there was no stifling of talk. Ms. Pignataro stated there was no intent to stifle and stated this allegation cannot be tied to a state or City ethics rule.

Mayor Pro Tem Stephens stated she wanted to thank the members of the public who came out tonight. Ms. Stephens reiterated she did not hear intimidation or threats during the P&Z meeting. She specifically listed to the audio tape because she was concerned about the allegations and stated the Board would hold a councilmember accountable if threats were made. Ms. Stephens stated she does not take those allegations lightly but does not see evidence of discrimination or threats here.

Deputy City Attorney Duval asked the Board if they felt further investigation was warranted into the Complaint. The Board stated no further investigations were warranted because the allegations do not violate any city or state ethics rules.

Councilmember Summers then made a motion that further investigation into this ethics complaint is not warranted. Councilmember Pignataro seconded the motion. The Board adopted the motion unanimously (3-0). The Board stated this matter was now to be closed.

Next item up for discussion was a consideration to change the timeframe in which to schedule an Ethics Review Board meeting under City Code Section 2-569(d)(1).

City Attorney Carrie Daggett discussed the tight timeline to schedule Ethics Review Board meetings. Ms. Daggett explained, as the Code is currently set, the Ethics Review Board meeting must be set within 10 days after a complaint comes in. and explained this has proven to be very tough and unworkable with everyone's schedules. In addition to setting the meeting, getting the background materials out and notices sent to the complainant and subjects is also a consideration. Ms. Daggett stated having more time to accomplish these tasks would be very helpful.

The Board unanimously recommended modifying the Code language to, "no more than 30 days unless extenuating circumstances arise, then an extra 14 days would be allowed after that."

City Attorney Daggett stated she would draft an ordinance for the August 20, 2019 Council meeting and would represent in the recitals that the Ethics Review Board recommended this action.

No other business was discussed.

The meeting adjourned at 7:44 p.m.