

AGENDA ITEM SUMMARY

Ethics Review Board

March 6, 2020

STAFF

Carrie Daggett, City Attorney

SUBJECT

These are reference materials provided for the Ethics Review Board's use in considering Items 3a, 3b and 3c, all related to review of the complaint filed on January 21, 2020, by Rory Heath under City Code Section 2-569(d)(1) to determine whether the complaint warrants investigation.

EXECUTIVE SUMMARY

The purpose of this item is to provide references for use in the initial screening by the Ethics Review Board of a complaint filed with the Board under City Code Section 2-569(d), as described below.

BACKGROUND / DISCUSSION

Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board then considers the complaint and whether it should be further investigated. A copy of Section 2-569 is provided as an attachment to this Agenda Item Summary.

The Complaint:

The Board will consider a complaint lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Mayor Wade Troxell, Mayor Pro Tem Kristin Stephens and Councilmember Ken Summers. The Complaint (without attachments) is attached to this AIS and has been electronically provided to Council along with all attachments.

City Ethics Provisions:

Generally, the ethics provisions established by the City include City Charter Article IV, Section 9, and City Code Section 2-568. These are each provided as reference materials, attached to this Agenda Item Summary.

State Ethics Provisions:

In addition, various state laws are commonly considered ethics laws. These include:

- Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.);
- Section 24-18-109, C.R.S.;

- Sections 24-18-201 through -206, C.R.S.;
- Sections 18-8-302 through -308, C.R.S.; and
- Sections 18-8-402 through -409, C.R.S.

These statutes are all attached to this Agenda Item Summary for convenient reference. Advisory Opinion 17-04 of the Colorado Independent Ethics Commission (IEC), interpreting some of these state law provisions, and Advisory Opinion 16-05 of the IEC are also attached.

(The language of Article XXIX of the Colorado constitution – also referred to as “Amendment 41,” provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application.)

Prior Related Ethics Opinions:

Also attached for your reference is **Resolution 2014-107**, adopted by the City Council in 2014, accepting advisory opinion and recommendation no. 2014-01 of the Ethics Review Board. At that time, then Councilmember Troxell had requested an advisory opinion regarding whether he would have a conflict of interest in continuing to participate in Council discussions and, ultimately, Council’s vote, regarding the proposed new Colorado State University football stadium then under discussion. The conclusion at that time was that: 1) there was no indication that then Councilmember Troxell would receive any “foreseeable, measurable” financial benefit, so no financial interest was presented; and 2) there was no indication that his position of employment or the amount of his compensation would be affected by his vote or Council’s decision or actions with regard to the proposed football stadium, so there was no “direct and substantial gain or detriment to him and no personal interest was presented.

The Board Determination:

The Board is required under the Code to evaluate the Complaint and determine by majority vote whether to formally investigate the Complaint. In doing so, the Board should consider:

1. Whether the allegations in the Complaint, if true, would constitute a violation of state or local ethical rules;
2. The reliability and sufficiency of any facts asserted in support of the allegations; and
3. Any other facts or circumstances the Board may consider relevant.

If the Board determines that the Complaint does not warrant investigation, the Board then directs staff to send written notice to the complainant of that determination and the reasoning behind it. A copy of that notice is also sent to the subject of the Complaint and the City Council.

Summary:

1. **If the Board determines that there is no potential violation of state or local ethics laws under the facts alleged, the Board should make a motion to that effect that explains the Board’s reasoning, and then vote to make that determination. If the Board makes this determination, no further action is needed on the Complaint (other than the provision of notice as required in the Code).**

2. **If the Board determines that the Complaint states a potential a conflict of interest, then the Board will need to evaluate whether the facts asserted are reliable and sufficient enough to support the allegation in the Complaint that a violation occurred, making an investigation of the Complaint appropriate. The Board may have knowledge of information that contradicts the asserted facts, or there may be a lack of information needed to form a reasonable suspicion that the violation alleged in the Complaint occurred.**

3. **If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board should identify that information and explain how it affects the Board's decision as to whether further investigation is warranted.**

After the completion of its review of all factors, if it has not already made a determination, the Board will need to make a motion and vote on whether it has determined that further investigation is warranted, explaining the reasoning for its decision.

Next Steps:

As noted above, if the Board makes this determination, no further action is needed on the Complaint (other than the provision of notice as required in the Code).

Alternatively, if the Board determines that further investigation is warranted, staff will suggest a schedule for next steps for the Board to proceed to that phase of the process. At the end of the Board's review and investigation, if any, the Board will issue an Ethics Opinion stating the outcome of its action. The Board's Ethics Opinion is then presented to the City Council for consideration and possible adoption by resolution.

ATTACHMENTS

1. January 21, 2020, Complaint filed by Rory Heath (EXHIBITS incorporated by reference only)
2. Fort Collins City Code Section 2-569
3. Fort Collins City Charter Article IV, Section 9
4. Fort Collins City Code Section 2-568
5. Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.)
6. Section 24-18-109, C.R.S.
7. Sections 24-18-201 through -206, C.R.S.
8. Sections 18-8-302 through -308, C.R.S.
9. Sections 18-8-402 through -409, C.R.S.
10. Advisory Opinion 17-04 of the Colorado Independent Ethics Commission (IEC)
11. Resolution 2014-107, of the City Council of the City of Fort Collins, Accepting Advisory Opinion and Recommendation No. 2014-01 of the Ethics Review Board
12. Advisory Opinion 16-05 of the Colorado Independent Ethics Commission (IEC)

Disclaimer: I am not a licensed attorney in Colorado, nor purporting to be one by submitting this Ethics Complaint.

To the best of my knowledge, information contained within this ethics complaint is accurate and factual, as executed to the best of my ability.

I request that the City of Fort Collins Ethics Review Board evaluate the information given herein and that the Board take any and all appropriate procedures and actions as outlined in the applicable City, State, and Federal laws, not solely limited to the specific ones discussed within this complaint.

Due to the nature of submitting a complaint of this weight I ask that the review process be explicitly contingent upon my presence at City Hall during the Ethics Review Board Meeting.

I submit this complaint with the expressed statement that additional material may be submitted, and the complaint revised, as needed, as new information is discovered and investigated, reserving all rights to do so.

COMPLAINANT

Rory Heath
PO Box 271777
Fort Collins, CO 80527

COMPLAINÉES

Wade Troxell
Mayor, City of Fort Collins
Associate Professor, Mechanical Engineering, Colorado State University
Director, Center for Networked Distributed Energy, Colorado State University
Director, RamLab, Colorado State University

Kristin Stephens
Mayor Pro Tem, Fort Collins City Council
Councilmember representing District 4, Fort Collins City Council
Graduate Coordinator, Department of Statistics, Colorado State University
Program Assistant II, Department of Statistics, Colorado State University

Ken Summers
Councilmember representing District 5, Fort Collins City Council
Owner and Registered Agent, KGS Consulting



ALLEGATIONS

There exists a consistent betrayal of the public trust vested in the elected officials and the city staff of Fort Collins. This act was evident in varying levels throughout this process and perpetrated by various individuals. The most egregious and measurable violation of this trust was evident in the actions of 3 Fort Collins City Council Members, with questions surrounding why they voted against the overwhelming majority of citizens' wishes, continually, in strong light of each councilmembers' obvious conflicts of interest. The councilmembers in violation are Wade Troxell, Kristin Stephens and Ken Summers.

Wade Troxell and Kristin Stephens are both current employees of Colorado State University. Colorado State University, in seeking to sell a tract of land it owns to Lennar Homes, is seeking government approval before the very city council that Wade Troxell and Kristin Stephens are both voting members of. This is textbook conflict of interest and corruption at the elected official level. Each has significant personal and social interests, significant financial interests, and thus, significant related Conflicts of Interest.

Ken Summers, by all indications, owns and operates KGS Consulting, a business with the key taglines of "Opening Doors", "Providing Access" and "Empowering Influence" listed just below its' entity name, as currently seen on Ken Summers' own website, Kensummers.org. The contents of this website are an explicit billboard for "pay for play" in the political realm. Kensummers.org is a website still very much in use and regularly updated, with a post by the user "kensummers" on 12/23/2019. Ken Summers' email address and personal phone number are listed on the same page, below the list of services he is able to provide. This advertisement for influence into governmental decisions, in light of Ken Summers' present standing as councilmember brings all of his actions under justified scrutiny. Further, when seen voting opposite of the public will, his actions become that much more suspicious and in question.

Summers himself also possesses a near "sky is the limit" conflict of interest from a personal, social, and even specific business perspective, possibly even including related lobbying statutes and laws. To really understand the extent to which Summers' actions have effected his position of public trust, an intense investigation will be required; up to and including obtaining copies of financial statements, business transactions and the like. Opening up the possibility of selling influence invites all possible outside suitors into the legislative process.

The actions of the councilmembers in question have specifically affected the integrity and the procedure of Fort Collins City Government in the consideration and the voting of City Ordinance No. 138, 2019 and even the Ethics Review Board that convened on 12/16/2019.

FACTS

1. Wade Troxell is currently and gainfully employed by Colorado State University. Mr. Troxell is an Associate Professor in the Mechanical Engineering department as well as the Director of the Center

for Networked Distributed Energy, as well as Director for RamLab. Kristin Stephens is currently and gainfully employed by Colorado State University. Ms. Stephens is the Graduate Coordinator of the Department of Statistics and Program II Assistant in the Department of Statistics. (*contained within Ex. 17*)

2. Wade Troxell and Kristin Stephens both took an Oath to CSU as a condition to their employment at CSU. (*see Ex. 11*)
3. Ken Summers is the presumable owner of KGS Consulting, as displayed as a feature tab on the website kensummers.org. Kenneth G Summers is listed as the registered agent on the Colorado Secretary of State website directory for the same KGS Consulting. (*see Ex. 18*)
4. Colorado State University is the owner of a tract of land bounded to the West by Horsetooth Reservoir and it's related Open Space, and bounded to the East by South Overland trail. More particularly described by the accompanying and attached documents, and more generally referred to simply as the former site of Hughes Stadium.
5. The university is attempting to sell this land to a developer, Lennar Homes, under conditional terms, via a Purchase Agreement. (*contained within Ex. 17*)
6. The Purchase Agreement in place explicitly lists an "Additional Purchase Price" to be paid as bonus for every housing unit sold on the property. Also explicitly listed in the Purchase Agreement is a clause titled "Preliminary Entitlement Confirmation" whereby Lennar homes is given a means by which to remove itself from the agreement if a stated minimum number of units is not met. (*contained within Ex. 17*)
7. Wade Troxell has collected a paycheck, aka compensation for his employment and efforts. Wages have been exchanged as consideration for services rendered in the past and continuing to be rendered into the future.
8. Further, Mr. Troxell has gained national notoriety from his continued employment and involvement at programs housed within the CSU System and within the academic buildings of Colorado State University. (*contained within Ex. 17*)
9. Troxell is a director and by extension, a fiduciary, for the Center and the Ramlab. (*contained within Ex. 17*)
10. Wade Troxell, though currently an associate professor, could conceivably be promoted to a full professor or even further promoted to a Dean or the like, as had been the case in the past. This promotion would carry with it all of the additional benefits of the new title.
11. Kristin Stephens has collected a paycheck, aka compensation for her employment and efforts. Wages have been exchanged as consideration for services rendered in the past and continuing to be rendered into the future. (*contained within Ex. 17*)
12. Kristin Stephens, though currently listed as a Graduate Coordinator and a Program Assistant, could conceivably be promoted to a position with better career opportunities, research authoring possibilities or a myriad of other benefits.
13. Ken Summers, through his KGS Consulting, offers the following services via his website (*see Ex. 4*) :
 - "Opening Doors"
 - "Providing Access"
 - "Empowering Influence"
 - "PERSONAL CONTACT WITH LEGISLATORS to inform them of your position on a bill and why you support or oppose the legislation."
 - "COMMUNICATION WITH DEPARTMENTS that interface with your business on the writing and implementation of rules"
 - "TOURS AND RECEPTIONS that provide legislators an opportunity to learn firsthand about the work that you do"

- “Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.”
14. In 2017 Mayor Wade Troxell received campaign contributions from the National Association of Realtors Fund in the amount of \$39,722. This number was added to \$5,000 that had rolled over from a previous campaign, and \$15,000 collected during this campaign. By definition, local realtors are dependent on housing as their “inventory” by which to make their commission, an overwhelming part of their personal compensation. (*see Ex. 9*)
 15. *Thompson Area Against Stroh Quarry, Inc. et al v. Board of County Commissioners of Larimer et al, Larimer County District Court Case No. 2018CV30371*, A court decision within Larimer County, entered in August of 2019, has directly and specifically addressed the question as to whether a campaign contribution would warrant recusal by a government official, in any capacity. (*see Ex. 9*)
 16. Wade Troxell had previously recused himself in a matter related to CSU in 2017 regarding ordinance No.051, 2017. (*see Ex. 9*)
 17. When collecting research data at the Drake Centre Event regarding as to which zoning was preferred by the general public, a narrow offering of 5 different scenarios was given, with none being composed only of RF and none containing POL. (*see Ex. 2*)
 18. When asked for public comment and public feedback throughout the re-zoning process, there exists an absolute preponderance of evidence to support the conclusion that the public would support either the bare minimum of development for that parcel of land or no development at all, leaving it just how it is now, untouched. (*see Ex. 1*)

GOVERNING LAW

The governing laws presented below are only a selection of applicable laws to the Complaint. As such, consideration of the matter before the Board is not limited only to those cited below and within this Complaint.

The references made below are given in smaller snippet form. Please review the full attached exhibits, and the full verbiage of each statute, etc. *Please see Ex. 5, 6, 7, 8, 9.*

- Fort Collins City Code Sec 2-568 (a) lays out the definitions by which to define the following portions of the city code
- Fort Collins City Code Sec 2-568 (a) (11) states “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 judgement 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.” Also citing Section 9(A) of the Charter Article IV.
- Fort Collins City Code Sec 2-568 (a) (18) states: Substantial shall mean more than nominal in value, degree, amount or extent.
- Fort Collins City Code Sec 2-569 (c)(2) states: “To Review and investigate actual or hypothetical situations involving potential conflicts of interest presented by individual Councilmembers or board and commission members”
- Fort Collins City Code Sec 2-569 (d)(1) (a) states: “Any person who believes that a Councilmember or board and commission member had violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the city clerk...”

- Fort Collins City Code Sec 2-569 (d)(1) (b) states: "... the Review Board shall consider the following: (1) whether the allegations in the complaint, if true, would constitute a violation of state or local ethical rules."
- Fort Collins City Code Sec 2-569 (g) states: "Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence of 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, except as provided in..."
- Colorado Revised Statute 24-18-102 states:

"As used in this part 1, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.

(4) "Financial interest" means a substantial interest held by an individual which is:

(a) An ownership interest in a business;

(b) A creditor interest in an insolvent business;

(c) An employment or a prospective employment for which negotiations have begun;

(d) An ownership interest in real or personal property;

(e) A loan or any other debtor interest; or

(f) A directorship or officership in a business;

(5) "Local government" means the government of any county, city and county, city, town, special district, or school district.

(6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government

official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

(9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts."

- Colorado Revised Statute 24-18-103 states:

"(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee."

- Colorado Revised Statute 24-18-104 (1) states: " Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:..."
- Please consider Colorado Revised Statute 24-18-105, in it's entirety.
- Colorado Revised Statute 24-18-109 states:

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the

totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

(5) (a) Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.

(b)

(I) Except as provided in subsection (5)(b)(II) of this section, a local government official is not required to provide or file a disclosure or otherwise comply with the requirements of subsection (3) of this section unless the local government official has a financial interest in, or the local government official or an immediate family member receives services from, the nonprofit entity independent of the official's membership on the board of directors of the nonprofit entity.

(II) A local government official who serves on the board of directors of a nonprofit entity shall publicly announce his or her relationship with the nonprofit entity before voting on a matter that provides a direct and substantial economic benefit to the nonprofit entity.

In applying the laws referenced and re-stated above, there exist numerous applications, arguments and even very clear cut violations of law and worse yet, violations of the public trust given to the individuals in question.

ANALYSIS

Wade Troxell and Kristin Stephens have a direct personal Interest in CSU, a bias because of their relationship with CSU, and a means by which they can be rewarded by CSU as expertly laid out in a previous, and wholly separate ethics complaint regarding the very same ordinance. *(see Ex. 17)* Their refusal to recuse themselves from the process gave them a means by which they could exert their bias and personal/professional agenda upon the final decision. *(see Ex. 3, in lieu of a typed transcript pertaining to the 11/5/2019 Council Meeting, in addition to all other meetings as related to the Ordinance referenced within this Complaint)*

At every occasion that public comment was collected, the overwhelming majority of respondents asked for zoning that maximized open space, and minimized the number of houses placed on the parcel of land in question. The original materials for the First Reading of the ordinance relating to this parcel of land contained a breathtaking 655 pages full of citizens begging their elected officials to vote with the will of the people and approve a zoning solution best exhibited by either RF or POL zoning for the entirety of the tract. *(see Ex. 1)*

When it came time to declare their voting intentions, both Wade Troxell, Kristin Stephens, and Ken Summers, even upon being directly advised by city staff that affordable housing was unenforceable, chose to vote for higher density/ more housing units under the false rationale that this would create more affordable housing. *(see Ex. 3, in lieu of a typed transcript pertaining to the 11/5/2019 Council Meeting, in addition to all other meetings as related to the Ordinance referenced within this Complaint)*

This voting rationale, especially when told that their argument was proven invalid on record, is suspicious to say the least. By all appearances and indications, Troxell and Stephens voted in line with a course of action that would benefit their employer/ the entity that they are representatives for. Their votes were just opposite of the overwhelming public opinion. Further, the fact that they were even allowed to guide and participate in the discussion is alarming and a tainting of the sanctity of government, and especially alarming when considering their fiduciary duty to their constituents and the greater good of the Colorado public. *(see Ex. 1, and all applicable laws regarding fiduciary duty, not limited only to the ones contained within this complaint)*

Further bringing into question the sanctity of the process is the way that research data was collected and presented to Council, and similarly presented to the public. At the Drake Centre, public respondents were railroaded into choosing amongst only 5 options, with all options containing a large amount of homes to be built in their relating zoning. *(see Ex. 2)*

No options were given that had exclusive RF or POL zoning. Coupled with the slides presented by city staff summarizing support for each of the narrow options, a misrepresentation of the public's will and wishes was provided, with ease. Even the digitization of the post-it comments edited some comments by practice. *(see page 19 and 15 of Ex.1)*

Fundamentally, this is an affront to the will of the people, as perpetrated by city staff and further brings into question the trust that is placed in local government officials, and city staff. These were both actions supported by city staff and referenced by the Councilmembers in question. Also interesting was

Troxell's previous recusal when a similar conflict of interest arose in relation to his employment at CSU in 2017 regarding Ordinance No. 051, 2017.

By the wording and definitions of the State Statutes and the Fort Collins Codes that generally reference the State Statutes, (see Ex. 6, 7, 8), Troxell and Stephens are representatives and employees of CSU/ the seller of the parcel described in the ordinance. Within (Ex. 6,7,8), there are numerous applications of the terms and concepts introduced within the law, resulting in a very clear violation of nearly each applicable one.

Councilperson Summers was presented the same overwhelming number of responses from citizens begging for Open Space and at worst, RF zoning, and just like Troxell and Stephens, he voted against the wishes of the very people that he was entrusted to represent and vote in line with. This decision to vote against the people before him, against the 655 pages of public comment and against the public's wishes in general was particularly alarming when considered in the frame of his website ie "Providing Access", "Empowering Influence". When looked at in that context, a vote against the public will, and instead in line with a possible private commercial interest seems to have possibly occurred.

There is also a workplace sociological factor involved in Troxell and Stephens inherent bias towards their workplace. Not only is their future success tied to the future of CSU, but their success is also tied to their relationships with the people whom all fly the same CSU flag. It is a known psychological assertion that those together, all striving towards the same goal, especially in employment, regardless of the sector, tend to exhibit a groupthink mentality and one that is in line with supporting the endeavors of the organization as a whole, regardless of evidence to the contrary; even to the detriment of those not a part of the same organization. Key examples of this can be seen in the Milgram Experiment on Obedience to Authority, The Solomon Asch Conformity Concept, and Irving Janis' work regarding the identification and study of the idea of "groupthink." (see Ex. 12, 13, 14)

Previous opponents of the fact that employment within State Education is still employment, with all of it's associated trappings, have argued that there is somehow a difference between the two. When evaluating any differences between public and private employment, they share nearly all of the same key characteristics: They show up to perform work duties at a common location usually, get a paycheck from this work, network and socialize with their peers and fellow employees while at work. They even share the same common goal of the prosperity and continued success of that entity that they represent.

This goal in this case is firmed up by an oath to CSU which they both took. (see Ex. 11)

When evaluating the issue of conflict of interest, the *Academic Faculty and Administrative Professional Manual of Colorado State University* (see Ex. 10) states "External obligations, financial interests, and activities of each University employee must be managed so that there is no interference with the employee's primary obligation and commitment to the University." When evaluating which of Troxell and Stephen's conflicting interests will win out, it's very clear that the CSU Staff Manual dictates that The University's interests must win out. In this case, dictating that CSU's interest must win out over the public's wishes regarding this Ordinance and the fate of the associated parcel of land. This fact is laid out in writing. In fact, Troxell and Stephens are to even remove themselves from the interference, as per the same Manual.

Also in relation to this passage in the CSU Manual is the fact that Troxell and Stephens have not even properly adhered to the policies of CSU, nor the public trust placed within them by that employment, by removing themselves from the interference

All of these actions, and suspicious voting patterns, coupled with Troxell and Stephens steadfast refusal to simply recuse themselves places us on the doorsteps of a very scary political principle: corruption. Continuing on this course and allowing these individuals to vote on, much less influence the discussion on the topic, is improper and casts a shade of impropriety on the process.

Further, it has been shown again and again that this approach to determining the fate of a such a large and valuable swath of land is the wrong way to go about it. This is evidence that the fate of the Hughes Site needs to be in the hands of the thousands of people that have enjoyed it, and not just in the hands of 7 people too easily influenced by outside interests and unwilling to recognize their own inherent bias. (see Ex. 1)

At no point during this process has government aptly summarized the people's opinion for them, nor should they be allowed to.

Further disconcerting was the question as to whether the Ethics Review Board that previously met on 12/16/2019 can even be considered to be unbiased, when council themselves are asked to essentially police themselves in the manner. I feel that asking anyone to objectively judge and evaluate a peer whom shares the same duties and responsibilities as oneself is not a fair process in the least due to inherent biases. I.e., you're naturally inclined to feel sympathetic to someone who encounters the same possible challenges and possible pitfalls before them.

What personally concerns me in the matter is the voracity with which Ken Summers attacked all arguments in support of an investigation into the Ethics Complaint (see future exhibit to be added of record of the Ethics Review Board meeting having taken place on 12/16/2019). Considering Ken's own promises of "Opening Doors", "Providing Access", and "Empowering Influence" on his website, I can't help but fear that Ken's own consulting business has somehow tainted even the Ethics Review Board. And to be honest, I don't even know where to start on all of the processes that Ken could have tainted by his actions and questionable motives.

The question to consistently be asked here is: What happens when the needs and goals of a client of Ken's consulting service runs opposite of that of his constituents? The fact that the possibility even exists that he could arrive at this decision juncture is unacceptable, especially in view of the public trust that is placed upon him. In fact, the very idea of "opening doors" and "selling access" is antithetical to a properly represented constituency.

When looking to outside advice and academic legal guidance on the subject, Robert Wechsler, a graduate of Harvard College and Columbia University Law School, and contributor to Columbia Law School's Center for The Advancement of Public Integrity, offers terrific exploration of the topic through two writings, *Local Government Ethics Programs: A resource for Ethics Commission Member, Local Officials, Attorneys, Journalists, and Students*, and *A Manual for Ethics Reform EX and Local Government Ethics Programs In a Nutshell*. (see Ex. 15, 16) In the past, Wechsler has even contributed to *The Washington Post* regarding Washington D.C. politics.

Finally, regarding the topic of campaign contributions by the National Association of Realtors Fund to Mayor Troxell's election campaign, there exists case law regarding proportionally large contributions to a candidate's election campaign serving to "violate a person's due process rights to an impartial decision-making body." (see Ex. 5,9) This case law, found in the same county as the parcel in consideration, is a terrific path by which to approach Troxell's actions from an additional front.

CONCLUSION

In summary, the following has been presented:

- I. Fort Collins Mayor Wade Troxell and Fort Collins City Councilmember Kristin Stephens are both employees of Colorado State University, the very same entity seeking favorable re-zoning so that the sale of a large 165-acre parcel of land may be successfully sold to Lennar Homes, a developer.
- II. Fort Collins City Councilmember Ken Summers is currently hosting on his website kensummers.org, a page dedicated to his political consulting business/lobbyist business. This page promises direct influence of legislative matters that can be interpreted to mean either the influence of a third party, or of himself, in exchange for compensation of some sort.
- III. The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.
- IV. A consistent effort to minimize the representation of the public's wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected officials.

I request that the Ethics Review Board investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers. I request that the Board carry this out using all tools and options at its disposal and do so by taking to heart the public's explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins' Identity. I specifically request that Wade Troxell, Kristin Stephens and Ken Summers are removed from all interactions with the decision-making process, and severe remediation actions are taken to address the harm to the process already caused.

In closing, I'd like to give the opportunity for a few other members of the public to speak and have their voices heard in a more direct way:

"No westward growth. Open Space. Walking trails only."

"500-600 Homes added to this area unacceptable"

"Encourage CSU to look for a buyer that will keep it open space"

"This 'open space' has been an outdoor recreation location well-known by the community and used as such for many, many years. Development is taking this away from the community. {post-it note placed over word, illegible} allow lots of open space."

"Takes public access and enjoyment/ shared use out of the picture. Not fair when we have to stare at those houses instead of our beautiful foothills habitat every day."

Above quotes excerpted from Exhibit 1, and pages 94-112 of the First Reading Packet for Ordinance No. 138, 2019.

In light of this complaint, and consistent with the actions taken regarding past Ethics Review Board Complaints, I respectfully request a delay in any matters before Council in relation to Ordinance No. 138, 2019, commonly referred to as "The Hughes Re-Zoning." As explicitly acknowledged and stated on 11/19/2019, the mere appearance of impropriety in the process could forever stain the process and further erode the public trust in Council's actions.

Submitted with respect and severe concern to the Ethics Review Board this 21st day of January, 2020.

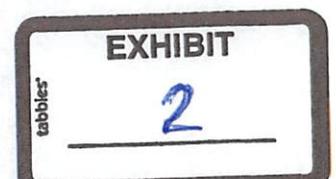
Rory Heath

Exhibits

1. All pages of previous submitted comments, pages 94-748 of the packet
2. All pages of narrow options given to drake centre attendees
3. Video of first reading
4. KGS website
5. Referenced court case by lawyer letter
6. Muni Code
7. State Statutes
8. Statutes submitted by city attorney
9. Lawyer letter
10. Excerpt from Academic Faculty and Administrative Professional Manual of Colorado State University
11. Oath of CSU
12. Voltage- Milgram Experiment
13. Group Think- asch conformity concept
14. Groupthink- Irving L Janis, <https://www.britannica.com/science/groupthink>
15. Shortened Columbia University Paper
16. Long Columbia University Paper
17. Nick Frey Complaint
18. Secretary of State Directory Result for KGS Consulting
19. Official Record of Ethics Meeting to be found in the future

Sec. 2-569. - Board of ethics.

- (a) In order to assist the Councilmembers and board and commission members in interpreting and applying the definitions, rules and procedures pertaining to ethics established by the Charter and Code and by the applicable provisions of state statute, there is hereby created a Board of the City to be known as the Ethics Review Board, hereafter referred to in this Division as the "Review Board."
- (b) The Review Board shall consist of three (3) Councilmembers elected by the City Council, one (1) of whom shall be elected by the Review Board to serve as a chairperson. One (1) alternate shall also be appointed by the City Council to serve in the event that a regular member of the Review Board is unavailable or in the event that any particular complaint or inquiry is directed towards a member of the Review Board.
- (c) Subject to the provisions of Subsection (d) below, the duties and responsibilities of the Review Board shall be as follows:
 - (1) To review and investigate complaints of unethical conduct filed against Councilmembers or board and commission members by any person;
 - (2) To review and investigate actual or hypothetical situations involving potential conflicts of interest presented by individual Councilmembers or board and commission members;
 - (3) After review and investigation, to render advisory opinions or interpretations pertaining to such complaints or inquiries under the relevant provisions of the Charter and Code and the applicable provisions of state law, if any, and to make written recommendations to the City Council and any affected board or commission concerning the same; and
 - (4) To propose any revisions to the provisions of the Charter or Code or other regulations, rules or policies of the City pertaining to ethical conduct as the Review Board may deem necessary and appropriate in the best interests of the City.
- (d) Complaints and inquiries shall be submitted to the Review Board only according to the following procedures:
 - (1) *Complaints.*
 - a. Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the chairperson of the Review Board, the Councilmembers or board and commission members named in the complaint and the City Council. The complaint shall be promptly scheduled for consideration by the Review Board as soon as reasonably practicable. No more than thirty (30) working days after the date of filing of the complaint, the Review Board shall meet and consider the complaint. In the event extenuating circumstances arise in the scheduling and preparation for such meeting, the time for meeting shall be extended by fourteen (14) calendar days. All Councilmembers or board and commission members named in the complaint, as well as the complainant, shall be given written notice of such meeting at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant shall be posted along with the meeting notice.
 - b. Upon receipt of any such complaint, the Review Board shall, after consultation with the City Attorney, decide by majority vote whether to formally investigate the complaint. In making such determination, the Review Board shall consider the following: (1) whether the allegations in the complaint, if true, would constitute a violation of state or local ethical rules; (2) the reliability and sufficiency of any facts asserted in support of the allegations; and (3) any other facts or circumstances that the Review Board may consider relevant. If the Review Board determines that the complaint does not warrant investigation, the Review Board shall send written notice to the complainant of its determination and the reasoning behind that determination, and shall provide a copy of such notice, together with



a copy of the complaint, to all Councilmembers or board or commission members named in the complaint, as well as the City Council.

- c. In the event that a complaint is filed with the City Clerk under the provisions of this Subsection which alleges a violation on the part of two (2) or more members of the Review Board (including the alternate), such complaint shall not be referred to the regular Review Board for review but shall instead be submitted to an alternate Review Board consisting of all remaining Councilmembers who are not named in the complaint; provided, however, that if five (5) or more Councilmembers are named in the complaint, the alternate Review Board shall also include as many members of City boards and commissions as are necessary to constitute a seven-member board. Said Board and commission members shall be selected at random by the City Clerk within ten (10) working days of the date upon which the complaint is filed with the City Clerk. Any board and commission members selected by the City Clerk who elect not to serve on the alternate Review Board shall immediately so notify the City Clerk, who shall thereafter select as many additional board and commission members as are necessary to constitute the seven-member alternate Review Board. The procedures utilized by the alternate Review Board for reviewing and investigating the complaint and rendering an advisory opinion and recommendation shall be as provided in Subsections (b) and (e) of this Section, except that: (i) the opinion and recommendation of such Board shall be final and shall not be submitted to the City Council for review or adoption by the City Council unless at least three (3) Councilmembers remain available to consider and take action on the opinion and recommendation; and (ii) the City Council and City staff shall, upon request by the alternate Review Board, make available to such Board all information in the possession of the city that is relevant to the Board's investigation, including, without limitation, tape recordings of any relevant executive sessions, unless the release of said information is prohibited by state or federal law; and, in reviewing and discussing such information, the Board shall abide by any local, state or federal confidentiality requirements that might limit or prohibit the release of such information to third parties.
- (2) *City Council inquiries.* Any Councilmember may present directly to the Review Board any inquiry regarding the application of ethical rules of conduct under state statute or the Charter or Code to any actual or hypothetical situation of a Councilmember or board and commission member.
- (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. In addition, in the case of a complaint, the Review Board shall have the power to compel by subpoena the attendance and testimony of witnesses and the production of such documents as the Review Board may consider necessary to its investigation. 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 submitted to city Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same. Any whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the opinion.
 - (f) The City Attorney shall provide legal advice to the Review Board and shall prepare and execute all advisory opinions and recommendations of the review board.
 - (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, except as provided in Subparagraph 2-568(c)(1)(g). An opinion adopted by the City Council under Subsection (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.

(Ord. No. 112, 1989, § 1, 8-1-89; Ord. No. 17, 1993, 2-16-93; Ord. No. 64, 1993, 7-20-93; Ord. 132, 2001, § 2, 9-18-01; Ord. No. 110, 2002, §§ 1—3, 8-20-02; Ord. No. 144, 2014, 11-4-14; Ord. No. 102, 2019, § 2, 9-3-19)

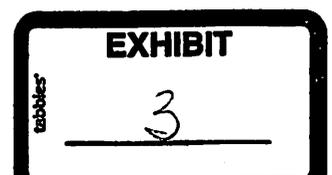
Section 9. - Conflicts of interest.

- (a) *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;
- (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 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 on behalf of the city concerning such sale; or
 - c. in the case of services, such officer or employee exercises any supervisory authority in his or her role as a city officer or employee 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.

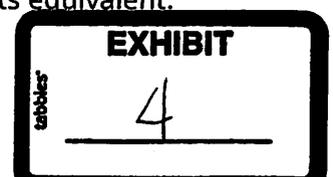
- (5) *Violations*. Any contract made in violation of this Section shall be voidable by the city. If voided within one (1) year of the date of execution thereof, the party obtaining payment by reason of such contract shall, if required by the city, forthwith return to the city all or any designated portion 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; Ord. No. 003, 2017, § 2, 1-17-17, approved, election 4-4-17)

Sec. 2-568. - Ethical rules of conduct.

- (a) Definitions. The following words, terms and phrases, when used in this Section, Section 2-569 and in Section 9 of the Charter Article IV, shall have the following meanings:
- (1) *Attempt to influence or influence*, as it pertains to this Section, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.
 - (2) *Benefit* shall mean an advantage or gain.
 - (3) *Board and commission member* shall mean a member of any appointive board or commission of the City.
 - (4) *Confidential information or information received in confidence* shall mean:
 - a. Information contained in any writing that may properly be withheld from public inspection under the provisions of the Colorado Open Records Act and that is marked "confidential" when provided to the officer or employee;
 - b. All information exchanged or discussed in any executive session properly convened under § 2-31 or 2-71 of the Code, except to the extent that such information is also contained in a public record available to the general public under the provisions of the Colorado Open Records Act; or
 - c. All communications between attorneys representing the City and officers or employees of the City that are subject to the attorney-client privilege, whether oral or written, unless the privilege has been waived.
 - (5) *Councilmember* shall mean a member of the City Council.
 - (6) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.
 - (7) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.
 - (8) *Detriment* shall mean disadvantage, injury, damage or loss.
 - (9) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

Financial interest means any interest equated with money or its equivalent.



Financial interest shall not include:

- a. 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;
- b. 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;
- c. 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;
- d. 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;
- e. 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;
- f. 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;
- g. 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
- h.

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.

- (10) *Officer or employee* shall mean any person holding a position by election, appointment or employment in the service of the City, whether part-time or full-time, including any member of the City Council and any member of any authority, board, committee or commission of the City, other than an authority that is:
- a. Established under the provisions of the Colorado Revised Statutes;
 - b. Governed by state statutory rules of ethical conduct; and
 - c. Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.

- (11) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:

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 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:

- a. 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;
 - b. 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
 - c. the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.
- (12) *Public body* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

Public body means the Council or any authority, board, committee, commission, service area, department or office of the city.

- (13) *Public services* shall mean city services provided to or made available for the public's benefit.
- (14) *Related entity* shall mean any corporation, limited liability company, partnership, sole proprietorship, joint venture, trust, estate, foundation, association, business, company or any other organization, whether or not operated for profit, with respect to which an officer or employee, or a relative of the same, has a substantial ownership interest in, is employed by, is an agent for or otherwise represents in any legal capacity.
- (15) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:
- 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.
- (16) *Routine City matter* shall mean a usual and ordinary registration, reservation, or other request or application, within a program or for public services or City approval, such as a registration for a recreation class, reservation of a park shelter, request for standard utility services or application for a building permit, development approval or variance, or an appeal, provided that the same is carried out using a routine process or system or in a manner consistent with standard practices.
- (17) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.
- (18) *Substantial* shall mean more than nominal in value, degree, amount or extent.
- (b) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Section by a member of the City Council shall not be prosecuted in the Municipal Court as a misdemeanor criminal offense but shall instead be referred to the Ethics Review Board for an advisory opinion and recommendation under the provisions of § 2-569.
- (c) Rules of conduct.
- (1)

Use and disclosure of confidential information. The following rules shall apply to the use and disclosure of confidential information by officers and employees of the City. In the event of any conflict among these provisions, the more specific provision shall take precedence over the more general provision.

- a. No use for personal gain. No officer or employee shall knowingly use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others.
- b. Disclosure of confidential information, generally. No officer or employee shall knowingly disclose any confidential information to any person who is not an officer or employee or to an officer or employee whose official duties are unrelated to the subject matter of the confidential information or to maintaining an official record of such information on behalf of the City, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.
- c. Disclosure of confidential information provided to the City Council. All information received in confidence by the City Council shall remain confidential, and no officer or employee shall knowingly disclose any such confidential information to any person to whom such information was not originally distributed by City staff unless and until the City Council has, by majority vote, consented to its release, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.
- d. Disclosure of information discussed in executive session. No officer or employee shall knowingly disclose any confidential information discussed in an executive session to any person who was not present during such discussion, other than members of such body who were unable to attend the executive session, without the prior knowledge and consent of the body holding such executive session, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices. In the event that a matter discussed in

executive session comes before the City Council or a board or commission of the City for formal action at an open meeting, or if such formal action is anticipated, nothing herein shall be construed as prohibiting a member of the body that will be taking such formal action from stating his or her position or opinion with regard to the matter, as long as such statements do not divulge confidential information received from others during the executive session.

- e. Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs c. and d. above, the City Manager and City Attorney may further distribute confidential information provided to the City Council and may disclose confidential information discussed in any executive session of the City Council, or of a Council committee, to such staff members and/or board and commission members as they may consider reasonably necessary to enable them to fully advise the City Council or to implement any direction given by the City Council or to advise other officers and employees of the City whose official duties are related to the subject matter of the confidential information or to maintaining a record of the same on behalf of the City.
- f. No disclosure of confidential information to officer or employee having conflict of interest. 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, or who has been determined by the City Council under the provisions of Subparagraph g. below to have a conflict of interest, shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest, nor shall any such officer or employee attend or participate in an executive session of the City Council, or of a Council committee or board or commission of the City, pertaining to said subject matter.
- g. The City Council may determine that a Councilmember shall not receive confidential information or attend executive sessions on a particular topic if the City Council first determines that said Councilmember has a conflict of interest in the subject matter of such confidential information and/or executive session. Any such determination by the City Council

shall be made only after the City Council has received an advisory opinion and recommendation of the Ethics Review Board on the question, rendered in accordance with the provisions of § 2-569.

- (2) With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board of commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate Section 2-568(c)(5) or (c)(6).
- (3) In any action in which a member of a City board or commission member ("member") declares a conflict of interest, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:
 - a. the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.
 - b. the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.
 - c. if a member has declared a conflict of interest in a matter in accordance with the City Charter and Code and so is precluded from participating in or influencing the decision of his or her board or commission, he or she may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:
 1. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.

2. The member must demonstrate that without the variance, he or she would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;
 3. The City Council must act by resolution to approve or disapprove the requested variance.
 - d. This limitation does not apply to other members, partners, or other parties of the member's or firm or entity, who may continue to work on the project and may advocate to such member's board or commission, provided that the member has declared the conflict and refrains from participating in the matter consistent with the application limitations.
- (4) All officers and employees shall refrain from accepting payment for any speeches, debates or other public events and shall further refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the officer's or employee's independence of judgment in the performance of his or her official duties. The following shall not constitute prohibited gifts or favors under this Section:
- a. Campaign contributions reported as required by Chapter 7, Article V of this Code;
 - b. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;
 - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which an officer or employee is scheduled to participate;
 - d. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to an officer or employee which is not extraordinary when viewed in light of the position held by such officer or employee;
 - e. Items of perishable or nonpermanent value that are insignificant in value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events; and
 - f. Payment of salary from employment, including other employment in addition to that earned from being an officer or employee.

- (5) No officer or employee shall request on his or her own behalf, or for or through a relative or related entity, from any other officer or employee, or grant to any other officer or employee, or relative or related entity of the same, any consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or program or in the provision of public services, that is substantially different from that available to other persons in the same circumstances or having the same need.
- (6) If any Councilmember contacts an officer or employee regarding a request in connection with that contacted officer's or employee's role and in relation to a matter that is not a routine City matter and is not within the Councilmember's role as an officer of the City, said Councilmember shall no later than 5:00 p.m. on the next business day after such contact deliver a written disclosure to the City Clerk and the City Manager and to all other members of City Council. The written disclosure must describe the date, time and general subject matter of the contact, together with the identity of the officer or employee contacted. Any private or confidential information, such as tax, utility account, or other personal information may be excluded or redacted from such disclosure. Disclosure by means of an electronic message shall be deemed to constitute written disclosure for purposes of this provision.

(Ord. No. 112, 1989, § 1, 8-1-89; Ord. No. 162, 2000, § 2, 11-21-00; Ord. No. 109, 2002, §§ 1—4, 8-20-02; Ord. No. 145, 2014, 11-4-14; Ord. No. 159, 2014, §§ 1—3, 11-18-14; Ord. No. 037, 2017, §§ 2, 3, 3-7-17; Ord. No. 167, 2017, § 2, 12-19-17)

24-18-101. Legislative declaration

The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

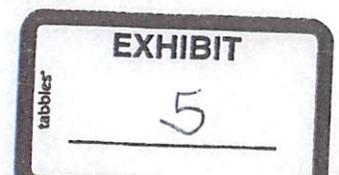
24-18-102. Definitions

As used in this part 1, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.
- (2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
- (4) "Financial interest" means a substantial interest held by an individual which is:
 - (a) An ownership interest in a business;
 - (b) A creditor interest in an insolvent business;
 - (c) An employment or a prospective employment for which negotiations have begun;
 - (d) An ownership interest in real or personal property;
 - (e) A loan or any other debtor interest; or
 - (f) A directorship or officership in a business.
- (5) "Local government" means the government of any county, city and county, city, town, special district, or school district.
- (6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
- (7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
- (9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

24-18-103. Public trust - breach of fiduciary duty

- (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.
- (2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf



of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:

(a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or

(b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

(I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(II) Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift of substantial value includes without limitation:

(a) A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or

(b) The acceptance by a public officer, a member of the general assembly, a local government official, or an employee of goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the state or a local government under a contract or other means by which the person receives payment or other compensation from the state or local government, as applicable, for which the officer, member, official, or employee serves, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the officer, member, official, or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:

(a) Campaign contributions and contributions in kind reported as required by section 1-45-108, C.R.S.;

(b) An unsolicited item of trivial value;

(b.5) A gift with a fair market value of fifty-three dollars or less that is given to the public officer, member of the general assembly, local government official, or employee by a person other than a professional lobbyist.

(c) An unsolicited token or award of appreciation as described in section 3 (3)(c) of article XXIX of the state constitution;

(c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the public officer, member of the general assembly, local government official, or employee;

(d) Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with the provisions of section 3 (3)(f) of article XXIX of the state constitution;

(e) Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in accordance with the provisions of section 3 (3)(e) of article XXIX of the state constitution;

(f) A gift given by an individual who is a relative or personal friend of the public officer, member of the general assembly, local government official, or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by the public officer, member of the general assembly, local government official, or employee in accordance

with the provisions of section 3 of article XXIX of the state constitution that are reported pursuant to section 24-6-203 (3)(d);

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(i) A component of the compensation paid or other incentive given to the public officer, member of the general assembly, local government official, or employee in the normal course of employment; and

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-108, C.R.S., and section 24-6-203, and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

(5) The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3 (6) of article XXIX.

24-18-105. Ethical principles for public officers, local government officials, and employees

(1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer, a local government official, or an employee should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority.

(3) A public officer, a local government official, or an employee should not, within six months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment. These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer, a local government official, or an employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

(5) Public officers, local government officials, and employees are discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom the officer, official, or employee is in a position to reward with official action or has rewarded with official action in the past.

24-18-109. Rules of conduct for local government officials and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

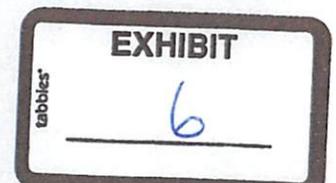
(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

(5) (a) Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.

(b)

(I) Except as provided in subsection (5)(b)(II) of this section, a local government official is not required to provide or file a disclosure or otherwise comply with the requirements of subsection (3) of this section unless the local government official has a financial interest in, or the local government official or an immediate family member receives services from, the nonprofit entity independent of the official's membership on the board of directors of the nonprofit entity.

(II) A local government official who serves on the board of directors of a nonprofit entity shall publicly announce his or her relationship with the nonprofit entity before voting on a matter that provides a direct and substantial economic benefit to the nonprofit entity.



24-18-201. Interests in contracts

(1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment. For purposes of this section, the term:

(a) "Be interested in" does not include holding a minority interest in a corporation.

(b) "Contract" does not include:

(I) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(II) Merchandise sold to the highest bidder at public auctions;

(III) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;

(IV) A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(V) A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109 (3)(b) or 31-4-404 (3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees; in accordance with the rules of the house of representatives and the senate, for members of the general assembly; and to the secretary of state, for all others.

24-18-202. Interest in sales or purchases

Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

24-18-203. Voidable contracts

Every contract made in violation of any of the provisions of section 24-18-201 or 24-18-202 shall be voidable at the instance of any party to the contract except the officer interested therein.

24-18-204. Dealings in warrants and other claims prohibited

State officers, county officers, city and county officers, city officers, and town officers, as well as all other local government officials, and their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, city and county, city, or town warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city and county, city, or town thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such state, county, city and county, city, or town.



24-18-205. Settlements to be withheld on affidavit

(1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part 2 shall suspend such settlement or payment and cause such officer to be prosecuted for such violation by the district attorney of the appropriate jurisdiction.

(2) If there is judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

24-18-206. Penalty

A person who knowingly commits an act proscribed in this part 2 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition to the penalties provided in section 18-1.3-501, C.R.S., the court may impose a fine of no more than twice the amount of the benefit the person obtained or was attempting to obtain in violating a provision of this part 2.

18-8-302. Bribery

(1) A person commits the crime of bribery, if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or

(b) While a public servant, he solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(2) It is no defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class 3 felony.

18-8-303. Compensation for past official behavior

(1) A person commits a class 6 felony, if he:

(a) Solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his favor, whether or not he has in so doing violated his duty; or

(b) Offers, confers, or agrees to confer compensation, acceptance of which is prohibited by this section.

18-8-304. Soliciting unlawful compensation

A public servant commits a class 2 misdemeanor if he requests a pecuniary benefit for the performance of an official action knowing that he was required to perform that action without compensation or at a level of compensation lower than that requested.

18-8-305. Trading in public office

(1) A person commits trading in public office if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant or party officer upon an agreement or understanding that he or a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office; or

(b) While a public servant or party officer, he solicits, accepts, or agrees to accept any pecuniary benefit from another upon an agreement or understanding that a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office.

(2) It shall be an affirmative defense that the pecuniary benefit was a customary contribution to political campaign funds solicited and received by lawfully constituted political parties.

(3) Trading in public office is a class 1 misdemeanor.

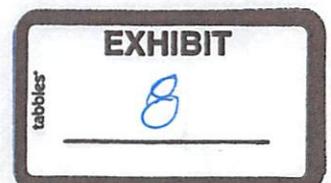
18-8-306. Attempt to influence a public servant

Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony.

18-8-307. Designation of supplier prohibited

(1) No public servant shall require or direct a bidder or contractor to deal with a particular person in procuring any goods or service required in submitting a bid to or fulfilling a contract with any government.

(2) Any provision in invitations to bid or any contract documents prohibited by this section are against public policy and void.



(3) It shall be an affirmative defense that the defendant was a public servant acting within the scope of his authority exercising the right to reject any material, subcontractor, service, bond, or contract tendered by a bidder or contractor because it does not meet bona fide specifications or requirements relating to quality, availability, form, experience, or financial responsibility.

(4) Any public servant who violates the provisions of subsection (1) of this section commits a class 6 felony.

18-8-308. Failing to disclose a conflict of interest

(1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

18-8-402. Misuse of official information

- (1) Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:
- (a) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or
 - (b) Speculates or wagers on the basis of such information or official action; or
 - (c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.
- (2) Misuse of official information is a class 6 felony.

18-8-403. Official oppression

- (1) A public servant, while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, commits official oppression if, with actual knowledge that his conduct is illegal, he:
- (a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, or lien; or
 - (b) Has legal authority and jurisdiction of any person legally restrained of his liberty and denies the person restrained the reasonable opportunity to consult in private with a licensed attorney-at-law, if there is no danger of imminent escape and the person in custody expresses a desire to consult with such attorney.
- (2) Official oppression is a class 2 misdemeanor.

18-8-404. First degree official misconduct

- (1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:
- (a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or
 - (b) Refrains from performing a duty imposed upon him by law; or
 - (c) Violates any statute or lawfully adopted rule or regulation relating to his office.
- (2) First degree official misconduct is a class 2 misdemeanor.

18-8-405. Second degree official misconduct

- (1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously:
- (a) Refrains from performing a duty imposed upon him by law; or
 - (b) Violates any statute or lawfully adopted rule or regulation relating to his office.
- (2) Second degree official misconduct is a class 1 petty offense.

18-8-406. Issuing a false certificate

A person commits a class 6 felony, if, being a public servant authorized by law to make and issue official certificates or other official written instruments, he makes and issues such an instrument containing a statement which he knows to be false.

18-8-407. Embezzlement of public property

- (1) Every public servant who lawfully or unlawfully comes into possession of any public moneys or public property of whatever description, being the property of the state or of any political subdivision of the state, and who knowingly converts any of such public moneys or property to his own use or to any use other than the public use authorized by law is guilty of embezzlement of public property. Every person convicted under the provisions of this section shall be forever thereafter ineligible and



disqualified from being a member of the general assembly of this state or from holding any office of trust or profit in this state.

(2) Embezzlement of public property is a class 5 felony.

18-8-408. Designation of insurer prohibited

(1) No public servant shall, directly or indirectly, require or direct a bidder on any public building or construction contract which is about to be or has been competitively bid to obtain from a particular insurer, agent, or broker any surety bond or contract of insurance required in such bid or contract or required by any law, ordinance, or regulation.

(2) Any such public servant who violates any of the provisions of subsection (1) of this section commits a class 1 petty offense.

(3) Any provisions in invitations to bid or in any contract documents prohibited by this section are declared void as against the public policy of this state.

(4) Nothing in this section shall be construed to prevent any such public servant acting on behalf of the government from exercising the right to approve or reject a surety bond or contract of insurance as to its form or sufficiency or the lack of financial capability of an insurer selected by a bidder.

(5) This section shall apply only to contracts entered into on or after July 1, 1977.

18-8-409. Violation of rules and regulations of judicial nominating commissions not subject to criminal prosecution

A person who violates a rule or regulation promulgated by any judicial nominating commission shall not be subject to criminal prosecution.

State of Colorado



William Leone, *Chair*
Bob Bacon, *Vice-Chair*
April Jones, *Commissioner*
Matt Smith, *Commissioner*
Jo Ann Sorensen, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: (720) 625-5697
www.colorado.gov/iec

Dino Ioannides, *Executive Director*

Advisory Opinion 17-04 (Conflict of Interest, Local Government Official)

Summary: It is not a violation of Article XXIX or the statutory Standards of Conduct for a county commissioner to continue serving as a director on the board of a transportation authority under the facts and circumstances presented in the request.

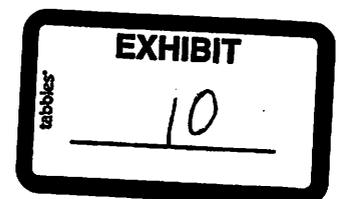
I. Background

Requester is an Eagle County Commissioner. Among other duties as a county commissioner, the Requester sits “in a quasi-judicial capacity” to review, hear, and approve or deny land use applications.

Requester also serves as a member of the Board of Directors for the Roaring Fork Transportation Authority (“RFTA”). RFTA is a regional transportation authority created under § 43-4-603, C.R.S. RFTA’s purpose is to finance, construct, operate, and maintain an efficient, sustainable, and regional multi-modal transportation system at locations within or without the boundaries of RFTA. RFTA directors serve without compensation, except for expense reimbursement. The members of RFTA include Eagle County, Garfield County, Pitkin County, the City of Aspen, the Town of Basalt, the Town of Carbondale, the City of Glenwood Springs, and the Town of Snowmass Village.

Article 4 of Title 43, C.R.S., authorizes the creation of transportation authorities, each of which is a “separate political subdivision and body corporate of the state” having “all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.” § 43-4-603(1), C.R.S. Each transportation authority is mandated to have at least five directors, each of whom must be an elected official from every member of the combination. § 43-4-603(2)(b)(I), C.R.S.

One of the issues pending before the Eagle County Board of County Commissioners (“BOCC”) is a land-use application for Preliminary Plan for Planned Unit Development. The application concerns property that is located within the Roaring Fork Valley portion of Eagle County and seeks a rezoning of the property. The application initially presented a public benefit dedication of 50 parking spaces to RFTA, and was later amended to dedicate 20 parking spaces and \$400,000 to build additional parking on other land. As a result of the application amendment,



RFTA's Director of Planning sent a letter to be considered by Eagle County in connection with the County's consideration of the application. The letter expressed dissatisfaction with the application amendment.

Requester does not recall being involved in discussions concerning the public benefit being offered by the land-use applicant. The Requester did not have any involvement in developing RFTA's position on the application, or in drafting or approving RFTA's responsive letter.

Requester is concerned about the potential for a conflict of interest if the Requester was to take official action on the application, given that RFTA could benefit from a County decision on the application. Requester asks whether her taking of official action would violate the code of ethics for local government officials as set forth in the Colorado Constitution and in § 24-18-109(2)(b), C.R.S. During the pendency of this advisory opinion request, Requester has resigned from the RFTA Board, but asks whether she may be reappointed to the RFTA Board during the pendency of the hearing on the application.

II. Jurisdiction

Colo. Const. Art. XXIX gives the Commission jurisdiction over local government officials. *See generally*, Colo. Const. Art. XXIX §§ 3, 4, and 6. Requester is a local government official under Colo. Const. Art. XXIX § 2(3).

III. Applicable Law

Section 43-4-603, C.R.S., provides, in pertinent part:

- (2) Any contract establishing [a transportation] authority shall specify:
 - (a) The name and purpose of the authority and the regional transportation systems to be provided;
 - (b) The establishment and organization of the board of directors in which all legislative power of the authority is vested, including:
 - (I) The number of directors, which shall be at least five, all of which, except as provided in subsection (5) of this section, shall be elected officials from the members of the combination and which shall include at least one elected official from each member of the combination...

The declarations in Section 1 of Colo. Const. Art. XXIX state, in pertinent part:

- (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;
- (b) They shall carry out their duties for the benefit of the people of the state;
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
- (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust...

Section 5 of Colo. Const. Art. XXIX provides, in pertinent part:

...The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law...

Section 24-18-109, C.R.S., provides, in pertinent part:

(2) A local government official or local government employee shall not:
(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent...

IV. Discussion

At the heart of this request for advisory opinion is the extent to which the dual role of the Requester could inherently create an appearance of impropriety or a conflict of interest that violates Article XXIX of the Colorado Constitution or the Standards of Conduct found in Article 18 of Title 24, C.R.S.

Article XXIX of the Colorado Constitution

The voters who adopted Article XXIX expressed the intention, *inter alia*, to preserve the respect and confidence of the people in their elected officials by requiring elected officials to avoid conduct that is a violation of the public trust. In Position Statement 08-01, the Commission stated that the term “public trust” means that employees and officials must carry out their duties for the benefit of the people. The dual role played by the Requester as both an Eagle County Commissioner and as a Director on the RFTA Board does not, in and of itself, violate public trust or the provisions of Article XXIX.

As a member of RFTA, Eagle County is required by state law to have one of its elected commissioners serve as a Director on the RFTA Board. This dual role created by the statutory scheme appears to contemplate that the interests of Eagle County will be represented on the RFTA Board by an Eagle County elected official in the very same manner that the interests of the other RFTA member governments are represented. But the reverse is not true; namely, it is not true that a Director on the RFTA Board is expected to represent the RFTA’s interests in the official business of the member government.

This is not to say that RFTA’s interests will always be aligned with those of the member governments. This is clearly not the case, inasmuch as the RFTA is composed of various member governments with different interests. Rather, it is to say that the statutory scheme contemplates that *Requester* should represent her member government’s interests in both fora. As such, there is no inherent conflict of interest nor is there an appearance of impropriety that would erode the public trust.

Standards of Conduct in Article 18 of Title 24, C.R.S.

Section 24-18-109(2)(b), C.R.S., prohibits a local government official from performing an official act that directly and substantially affects to its economic benefit a business *or other undertaking* in which he either has a substantial financial interest or is engaged as counsel, consultant, *representative*, or agent (emphasis added).

Requester receives no personal economic benefit from her service on the RFTA. Under the statutory scheme, the Requester serves as a representative of Eagle County in the RFTA. The reverse is not true; namely, it is not true that the Requester serves as a representative of the RFTA in Eagle County. Moreover, the reference to “other undertaking” should not be interpreted to refer to the RFTA, which is a “public body politic and corporate” that, under the statutory scheme, mandates representation from the various member governments. As such, § 24-18-109(2)(b), C.R.S., is inapplicable to the facts as presented in this case.

Best Practices

Due to the unique nature of Requester’s dual role, the Commission recommends that Requester disclose her dual role whenever taking official action for the County that would also implicate Requester’s role in the RFTA.

V. Conclusion

It is not a violation of Article XXIX or the statutory Standards of Conduct for Requester to continue serving as both a county commissioner and as a director on the board of a transportation authority under the facts and circumstances presented in the request.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

- William J. Leone, *Chair*
- Bob Bacon, *Vice-Chair*
- April Jones, *Commissioner*
- Matt Smith, *Commissioner*
- Jo Ann Sorensen, *Commissioner*

Dated: April 3, 2017

State of Colorado



William Leone, *Chair*
Bob Bacon, *Vice-Chair*
April Jones, *Commissioner*
Matt Smith, *Commissioner*
Jo Ann Sorensen, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: (720) 625-5697
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Dino Ioannides, *Executive Director*

Advisory Opinion 17-04 (Conflict of Interest, Local Government Official)

Summary: It is not a violation of Article XXIX or the statutory Standards of Conduct for a county commissioner to continue serving as a director on the board of a transportation authority under the facts and circumstances presented in the request.

I. Background

Requester is an Eagle County Commissioner. Among other duties as a county commissioner, the Requester sits “in a quasi-judicial capacity” to review, hear, and approve or deny land use applications.

Requester also serves as a member of the Board of Directors for the Roaring Fork Transportation Authority (“RFTA”). RFTA is a regional transportation authority created under § 43-4-603, C.R.S. RFTA’s purpose is to finance, construct, operate, and maintain an efficient, sustainable, and regional multi-modal transportation system at locations within or without the boundaries of RFTA. RFTA directors serve without compensation, except for expense reimbursement. The members of RFTA include Eagle County, Garfield County, Pitkin County, the City of Aspen, the Town of Basalt, the Town of Carbondale, the City of Glenwood Springs, and the Town of Snowmass Village.

Article 4 of Title 43, C.R.S., authorizes the creation of transportation authorities, each of which is a “separate political subdivision and body corporate of the state” having “all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.” § 43-4-603(1), C.R.S. Each transportation authority is mandated to have at least five directors, each of whom must be an elected official from every member of the combination. § 43-4-603(2)(b)(I), C.R.S.

One of the issues pending before the Eagle County Board of County Commissioners (“BOCC”) is a land-use application for Preliminary Plan for Planned Unit Development. The application concerns property that is located within the Roaring Fork Valley portion of Eagle County and seeks a rezoning of the property. The application initially presented a public benefit dedication of 50 parking spaces to RFTA, and was later amended to dedicate 20 parking spaces and \$400,000 to build additional parking on other land. As a result of the application amendment,

RFTA's Director of Planning sent a letter to be considered by Eagle County in connection with the County's consideration of the application. The letter expressed dissatisfaction with the application amendment.

Requester does not recall being involved in discussions concerning the public benefit being offered by the land-use applicant. The Requester did not have any involvement in developing RFTA's position on the application, or in drafting or approving RFTA's responsive letter.

Requester is concerned about the potential for a conflict of interest if the Requester was to take official action on the application, given that RFTA could benefit from a County decision on the application. Requester asks whether her taking of official action would violate the code of ethics for local government officials as set forth in the Colorado Constitution and in § 24-18-109(2)(b), C.R.S. During the pendency of this advisory opinion request, Requester has resigned from the RFTA Board, but asks whether she may be reappointed to the RFTA Board during the pendency of the hearing on the application.

II. Jurisdiction

Colo. Const. Art. XXIX gives the Commission jurisdiction over local government officials. *See generally*, Colo. Const. Art. XXIX §§ 3, 4, and 6. Requester is a local government official under Colo. Const. Art. XXIX § 2(3).

III. Applicable Law

Section 43-4-603, C.R.S., provides, in pertinent part:

- (2) Any contract establishing [a transportation] authority shall specify:
 - (a) The name and purpose of the authority and the regional transportation systems to be provided;
 - (b) The establishment and organization of the board of directors in which all legislative power of the authority is vested, including:
 - (1) The number of directors, which shall be at least five, all of which, except as provided in subsection (5) of this section, shall be elected officials from the members of the combination and which shall include at least one elected official from each member of the combination...

The declarations in Section 1 of Colo. Const. Art. XXIX state, in pertinent part:

- (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;
- (b) They shall carry out their duties for the benefit of the people of the state;
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
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Section 5 of Colo. Const. Art. XXIX provides, in pertinent part:

...The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law...

Section 24-18-109, C.R.S., provides, in pertinent part:

(2) A local government official or local government employee shall not:
(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent...

IV. Discussion

At the heart of this request for advisory opinion is the extent to which the dual role of the Requester could inherently create an appearance of impropriety or a conflict of interest that violates Article XXIX of the Colorado Constitution or the Standards of Conduct found in Article 18 of Title 24, C.R.S.

Article XXIX of the Colorado Constitution

The voters who adopted Article XXIX expressed the intention, *inter alia*, to preserve the respect and confidence of the people in their elected officials by requiring elected officials to avoid conduct that is a violation of the public trust. In Position Statement 08-01, the Commission stated that the term “public trust” means that employees and officials must carry out their duties for the benefit of the people. The dual role played by the Requester as both an Eagle County Commissioner and as a Director on the RFTA Board does not, in and of itself, violate public trust or the provisions of Article XXIX.

As a member of RFTA, Eagle County is required by state law to have one of its elected commissioners serve as a Director on the RFTA Board. This dual role created by the statutory scheme appears to contemplate that the interests of Eagle County will be represented on the RFTA Board by an Eagle County elected official in the very same manner that the interests of the other RFTA member governments are represented. But the reverse is not true; namely, it is not true that a Director on the RFTA Board is expected to represent the RFTA’s interests in the official business of the member government.

This is not to say that RFTA’s interests will always be aligned with those of the member governments. This is clearly not the case, inasmuch as the RFTA is composed of various member governments with different interests. Rather, it is to say that the statutory scheme contemplates that *Requester* should represent her member government’s interests in both fora. As such, there is no inherent conflict of interest nor is there an appearance of impropriety that would erode the public trust.

Standards of Conduct in Article 18 of Title 24, C.R.S.

Section 24-18-109(2)(b), C.R.S., prohibits a local government official from performing an official act that directly and substantially affects to its economic benefit a business *or other undertaking* in which he either has a substantial financial interest or is engaged as counsel, consultant, *representative*, or agent (emphasis added).

Requester receives no personal economic benefit from her service on the RFTA. Under the statutory scheme, the Requester serves as a representative of Eagle County in the RFTA. The reverse is not true; namely, it is not true that the Requester serves as a representative of the RFTA in Eagle County. Moreover, the reference to “other undertaking” should not be interpreted to refer to the RFTA, which is a “public body politic and corporate” that, under the statutory scheme, mandates representation from the various member governments. As such, § 24-18-109(2)(b), C.R.S., is inapplicable to the facts as presented in this case.

Best Practices

Due to the unique nature of Requester’s dual role, the Commission recommends that Requester disclose her dual role whenever taking official action for the County that would also implicate Requester’s role in the RFTA.

V. Conclusion

It is not a violation of Article XXIX or the statutory Standards of Conduct for Requester to continue serving as both a county commissioner and as a director on the board of a transportation authority under the facts and circumstances presented in the request.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

- William J. Leone, *Chair*
- Bob Bacon, *Vice-Chair*
- April Jones, *Commissioner*
- Matt Smith, *Commissioner*
- Jo Ann Sorensen, *Commissioner*

Dated: April 3, 2017

RESOLUTION 2014-107
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING ADVISORY OPINION AND RECOMMENDATION NO. 2014-01
OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board (the "Board") consisting of designated 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 November 18, 2014, to consider whether Councilmember Troxell's position as a tenured faculty member in the mechanical engineering department at Colorado State University ("CSU") limits his participation as a City Council member representing District 4 in any discussion and any vote related to a CSU stadium; and

WHEREAS, the Board has issued an advisory opinion with regard to this matter concluding that Councilmember Troxell does not have a conflict of interest with respect to the CSU stadium issue; 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 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. 2014-01 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 contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 25th day of November A.D. 2014.

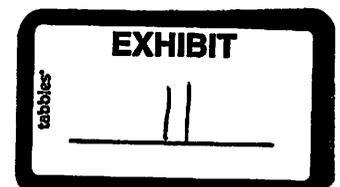
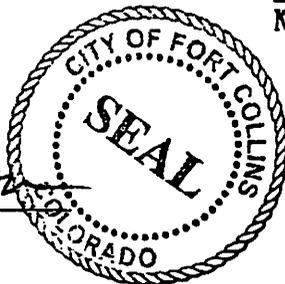


Mayor

ATTEST:



City Clerk



interest and refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as a Councilmember. Under the Charter, the following definitions apply:

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 is likely that the Council's deliberations and actions with regard to the CSU football stadium will "affect" the University, since, at a minimum, the University will have difficulty moving forward with any stadium project without some degree of cooperation and coordination with the City. There is no indication, however, that Troxell, as an individual, will receive any "foreseeable, measurable financial benefit" as a result of the Council decision(s), as no evidence has been presented to the effect that Troxell's salary or other compensation will be changed or discontinued as a result of the Council's decision related to the CSU football stadium. Therefore, the Board believes that Troxell does not have a financial interest in the Council's actions related to the CSU football stadium.

b. "Personal Interest"

The next inquiry is whether Troxell has a "personal interest" under the Charter. 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." This benefit or detriment need not be financial in nature, but it must be "direct and substantial." As recently established by the City Council in Ordinance No. 145, 2014, "direct" means "resulting immediately and proximately from the circumstances and not from an intervening cause," and "substantial" means "more than nominal in value, degree, amount or extent."

Clearly, Troxell is differently situated with regard to this matter than are the members of the general public because of his employment with the University. The question is whether, because of his status as an employee, he might realize any "*direct and substantial benefit or detriment*" by reason of Council's decision related to the CSU football stadium. Again, there is no indication that Troxell's position of employment or the amount of his compensation would be affected by his vote or Council's decision or actions with regard to the proposed football stadium. In fact, Troxell's status as a tenured member of the academic faculty indicates to the contrary, that is, that there could be no job related ramifications based upon the manner in which Troxell votes with regard to these upcoming Council decisions. Moreover, the Charter standard requires that the potential benefit or detriment to Troxell be "direct and substantial" and not merely indirect or

State of Colorado



William Leone, Chair
Bob Bacon, Vice-Chair
April Jones, Commissioner
Matt Smith, Commissioner

Independent Ethics Commission
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Dino Ioannides, Executive Director

Advisory Opinion 16-05 (Conflict of Interest)

Summary: A local government official should avoid real and perceived conflicts of interest when voting on or debating questions that affect the personal, private, or financial interests of the official.

I. Background

Board of Trustees member Rachel New (“New”), of the Town of Pitkin, Colorado, filed a request for an advisory opinion requesting guidance about a possible conflict of interest between New’s personal business and her role as a member of the Town’s Board of Trustees (the “Board”).

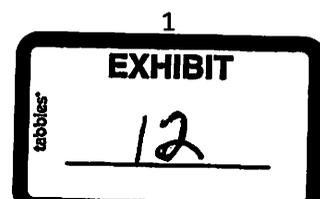
New indicates that she is a newly elected member of the Board as a result of elections held in April, 2016. Prior to her election, in the spring of 2014, New established a property management business, which she owns. Among other services, her business provides house winterizing, de-winterizing, cleaning, lawn maintenance, window washing, laundry services, errand services, pest control, and general maintenance. Included in the business portfolio is the management of short-term rental properties. New assists in the short-term leasing of these properties by taking reservations, receiving rental payments, and remitting taxes on behalf of the homeowner. Twenty percent of the business income is generated by managing the two short-term rentals.

The Town of Pitkin is a statutory town. Recent issues being addressed by the Board include updating the zoning code to regulate short term rentals. In this regard, New may be faced with policy debate and/or voting on short term rental issues in the context of her duties as a member of the Board. Specifically, Sections 3, 7, and 8 of the Amended Town of Pitkin Zoning Code of 2012 provide:

Section 3. Definitions. For the purpose of this code, certain words and phrases used herein shall be defined as follows:

* * *

37. Short-term Transient Rental (Lodging): Rental of a residential structure or part thereof, for any twenty-nine (29) day period or less, is considered a



commercial/business use.

* * *

Section 7. Principal Permitted Uses. This section enumerates the principal uses which are permitted in each zoning district:

A. Resident, Low Density Residential:

1. Dwellings, single family
2. Community centers and public buildings
3. Parks and playgrounds
4. Accessory uses as listed in Section 10 of this Code
5. Long-term permanent rental: Rental of a residential use of structure, or part thereof, where the occupants are primarily permanent in nature for any thirty (30) day period or more. (Nontransient)

B. Business, Business:

1. Any use permitted in the Resident district
2. Accessory buildings and uses
3. Amusement or recreation
4. Automobile gas stations or garages
5. Automobile parking lots
6. Club or lodge
7. Dining or drinking places
8. Hotel or motel
9. Laundromat
10. Office or clinic
11. Retail store or shop
12. Schools and churches, including seasonal church schools.

Section 8. Conditional Uses. The following uses shall be permitted only after written request to the Board of Trustees, and acceptance of written approval made by the Board of Trustees:

* * *

D. Short Term Rental (Lodging) in the Business District: After review of the Zoning Board of Adjustment, a recommendation for conditional use appropriate to the available water, sewage, and off-street parking will be referred to the Board of Trustees for final decision. [Emphasis added.]

The Town Clerk confirms that the Town of Pitkin does not currently have any conflicts of interest or other ethical policies in place.

II. Jurisdiction

Ms. New is a member of a statutory town's Board of Trustees and is therefore a "local

government official” under Colo. Const. Article XXIX, sec. 2(3), and C.R.S. § 24-18-102(6).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. *See* Colo. Const. Article XXIX, sec. 5(5).

III. Applicable Law

Conflicts of interest are addressed in C.R.S. § 24-18-109 as follows:

(2) A local government official or local government employee shall not:

* * *

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent[.]

* * *

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

IV. Discussion

A. Conflicts of Interest.

The conflicts of interest statute cited herein restricts a local government official such as New from: (1) performing an official act directly and substantially affecting to its economic benefit a business in which the local government official has a substantial financial interest; and (2) voting on or attempting to influence the decisions of other members of the governing body in voting on a matter in which the local government official has a personal or private interest.

The Commission finds that New’s ownership interest in a property management business that manages short-term rentals in the Town of Pitkin is substantial. As such, New must refrain from performing any official act that directly and substantially benefits the business economically. For example, because the Town’s zoning code requires the Board to give final approval for conditional short-term rental uses, New should refrain from voting to grant or withhold such approval when doing so would economically benefit her business. Moreover, New must not vote or attempt to influence the decisions of other members of the Board when she has a personal or private interest in the outcome.

B. Appearance of Impropriety.

In addition to the statutory provisions cited above, Colo. Const. Article XXIX, sec. 1(c), requires covered individuals “to avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”

Appearances of impropriety are generally referred to as “perception issues” or “violating the smell test.” They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.

In order to avoid the appearance of impropriety, local government officials should avoid voting on or debating questions in a manner that may lead the public to perceive that the local government official is either placing his or her own private business interests in a position of competitive advantage or keeping his or her own private business interests from being adversely affected by the decisions of the governing body.

The Commission also recommends that when feasible, counties and municipalities should consider enacting an ethics code to provide further guidance to elected officials with similar potential conflicts.

V. Conclusion

A member of a town’s board of trustees should follow Colorado statutes pertaining to conflicts of interest and constitutional requirements pertaining to the appearance of impropriety.

The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

William J. Leone, *Chair*

Bob Bacon, *Vice-Chair*

April Jones, *Commissioner*

Matt Smith, *Commissioner*

Dated: June 30, 2016

AGENDA ITEM SUMMARY

Ethics Review Board

March 6, 2020

STAFF

Carrie Daggett, City Attorney

SUBJECT

Consideration in accordance with City Code Section 2-569(d)(1) of whether a complaint filed on January 21, 2020, by Rory Heath, alleging that **Mayor Wade Troxell** has a financial and personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.

EXECUTIVE SUMMARY

The purpose of this item is to complete the initial screening by the Ethics Review Board of a complaint filed with the Board under City Code Section 2-569(d), as described below. The Complaint and other materials referenced are provided as attachments to the Agenda Item Summary for Item 3 (overall), and that information is incorporated into this subpart by reference.

STAFF RECOMMENDATION

Staff recommends that the Board consider the Complaint and determine whether to proceed with an investigation of the Complaint.

BACKGROUND / DISCUSSION

Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board then considers the complaint and whether it should be further investigated.

The Complaint:

The Board will consider a complaint lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Mayor Wade Troxell (as well as against Mayor Pro Tem Kristin Stephens and Councilmember Ken Summers). The Complaint alleges Mayor Wade Troxell has a conflict of interest in the form of a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision in light of his employment at Colorado State University (CSU), which owns the property. Mr. Heath further alleges that Mayor Troxell is a representative and employee of CSU and that as a result his participation in the Hughes Rezoning "results in a very clear violation of nearly each applicable [law]."

The following is an excerpt from the Complaint summarizing Mr. Heath's concern (from page 11 of the Complaint):

I. *Fort Collins Mayor Wade Troxell and Fort Collins City Councilmember Kristin Stephens are both employees of Colorado State University, the very same entity seeking favorable re-zoning so that the sale of a large 165-acre parcel of land may be successfully sold to Lennar Homes, a developer.*

...

III. *The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.*

IV. *A consistent effort to minimize the representation of the public's wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected Officials.*

The Complaint goes on to request that the Ethics Review Board do the following:

- investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers;
- carry this out using all tools and options at its disposal and “do so by taking to heart the public’s explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins’ Identity;” and
- remove Wade Troxell, Kristin Stephens and Ken Summers from all interactions with the decision-making process, and take “severe remediation actions” to address “the harm to the process already caused.”

(The Complaint provides argument and additional description of the concerns of the Complainant not repeated in this Summary.)

City Ethics Provisions:

Generally, the ethics provisions established by the City include City Charter Article IV, Section 9, and City Code Section 2-568.

State Ethics Provisions:

In addition, various state laws are commonly considered ethics laws. These include:

- Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.);
- Section 24-18-109, C.R.S.;
- Sections 24-18-201 through -206, C.R.S.;
- Sections 18-8-302 through -308, C.R.S.; and
- Sections 18-8-402 through -409, C.R.S.

(The language of Article XXIX of the Colorado constitution – also referred to as “Amendment 41,” provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application.)

The Board Determination:

The Board is required under the Code to evaluate the Complaint and determine by majority vote whether to formally investigate the Complaint. In doing so, the Board should consider:

1. Whether the allegations in the Complaint, if true, would constitute a violation of state or local ethical rules;
2. The reliability and sufficiency of any facts asserted in support of the allegations; and
3. Any other facts or circumstances the Board may consider relevant.

If the Board determines that the Complaint does not warrant investigation, the Board then directs staff to send written notice to the complainant of that determination and the reasoning behind it. A copy of that notice is also sent to the subject of the Complaint and the City Council.

Factual Allegations in the Complaint:

The interests of CSU in the Hughes Rezoning is likely undisputed, so the detailed assertions in that regard in the Complaint are not recited here.

The Complaint asserts the following basic facts regarding Mayor Troxell’s relationship to CSU, as more fully explained in the Complaint itself:

1. He is employed by CSU as an associate professor of Mechanical Engineering, is the Director of the Center for Networked Distributed Energy and is a Director for Ramlab.
2. He has taken an Oath to CSU as a condition of his employment. [*The oath requires academic faculty members and administrative professionals to swear to uphold the Constitution of the United States and the Constitution of the State of Colorado, and to faithfully perform the duties of their position at CSU.*]
3. He has collected a paycheck from CSU as consideration for past and future services.
4. He has gained “national notoriety” from his continued employment and involvement at programs housed within the CSU System and within the academic buildings of CSU
5. He is “a director and by extension, a fiduciary, for the Center and the Ramlab.”
6. “Though currently an associate professor,” he “could conceivably be promoted to full professor or even further promoted to a Dean or the like, as had been the case in the past,” presumably carrying additional benefits.
7. He in 2017 “received campaign contributions from the National Association of Realtors Funds in the amount of \$39,722,” in addition to an amount of \$5,000 rolled over from a previous campaign and \$15,000 “collected during this campaign.”
8. He previously recused himself in a matter related to CSU in 2017 regarding Ordinance No. 051, 2017.

In addition, the Complaint asserts (quoting directly from page 4):

- *By definition, local realtors are dependent on housing as their 'inventory' by which to make their commission, an overwhelming part of their personal compensation.*
- *A court decision within Larimer County entered in August of 2019, has directly and specifically addressed the question as to whether a campaign contribution would warrant recusal by a government official in any capacity.*

The Complaint contains a number of assertions and statements related generally to the input the City Council has received from members of the public regarding the Hughes Rezoning, asserting that voting in a manner contrary to members of the public's opposition to the Hughes Rezoning suggests a vote intended to benefit CSU.

It further asserts a number of psychological studies and makes assertions related to inherent bias from employment ties.

****Screening Review Steps****

I. Whether the Complaint Alleges a Violation of City or State Ethics Provisions:

1. City Ethics Provisions: The City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a financial interest or a personal interest in the decision.

1. A **financial interest** is an interest in the Hughes Rezoning that is equated with money or its equivalent.
 - i. If the councilmember is an employee of an affected business, but the Council decision entails NO FORESEEABLE, MEASUREABLE FINANCIAL BENEFIT to the Councilmember, the employee relationship does not create a financial interest.
2. A **personal interest** is any interest (other than a financial interest) by reason of which an officer or employee would, in the judgment of a reasonably prudent person, realize or experience:
 - i. some direct and substantial benefit or detriment,
 - [**direct** = resulting immediately and proximately from the circumstances and not from an intervening cause.]
 - [**substantial** = more than nominal in value, degree, amount or extent.]
 - [**benefit** = an advantage or gain.]
 - [**detriment** = disadvantage, injury, damage or loss.]
 - ii. different in kind from that experienced by the general public.
 - [**different in kind from that experienced by the general public** = of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.]

3. The Ethics Review Board must evaluate whether the facts as asserted in the Complaint (assuming they are true) support the allegation that Mayor Troxell has either a financial interest or a personal interest in the Hughes Rezoning.

2. State Ethics Provisions:

1. For the purpose of the **statutory ethics provisions:**

- i. Councilmembers are “**local government officials**” (as defined in Section 24-18-102(6), C.R.S.).
- ii. ***Financial interest*** means a substantial interest held by an individual which is (in relevant part):
 1. An employment or prospective employment for which negotiations have begun; or
 2. A directorship or officership in a business.
(Section 24-18-102(4), C.R.S.).
- iii. ***Business*** means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit. (Section 24-18-102(1), C.R.S.).
- iv. Terms not defined in the statutes are considered to have their commonly understood meaning, and they are generally interpreted with the aid of reference to common resources such as a standard dictionary.

2. **Section 24-18-103**, C.R.S., when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.
3. **Section 24-18-104**, C.R.S., prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
4. **Section 24-18-105**, C.R.S., sets out ethical principles that are “intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.”
 - i. Section 24-18-105(2) provides that:

(2) A ... local government official ... should not acquire or hold an interest in any **business or undertaking** which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantial authority. (Emphasis added.)
 - ii. Section 24-18-105(4) provides that:

(4) A ... local government official ... should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a **competing firm or undertaking**. (Emphasis added.)

As noted above, “**business**” is defined as “any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.” As commonly understood, “business” is means a “commercial or industrial enterprise.”

An “**undertaking**” is not defined in the statutes; the term is commonly understood to mean “something undertaken” like a “business, work or a project.”

In at least one formal advisory opinion issued by the Colorado Independent Ethics Commission (IEC), which is authorized to issue opinions concerning the state’s ethics statutes, **the IEC observed that public entities and bodies are not a “business or other undertaking” under Section 24-18-109(2)(b) (IEC Advisory Opinion 17-04, which is attached to the Item 3 Agenda Item Summary for reference).**

CSU is established under Article VIII, Section 5 of the Colorado Constitution as a “state institution of higher education” and, as such, is not a “business or other undertaking” under Section 24-18-105(2).

Thus, while employment is defined as a “financial interest” under Section 24-18-102(4)(c), employment with a public entity like CSU is not employment with a “business or other undertaking” to which Section 24-18-105(2) applies.

5. **Section 24-18-109**, C.R.S., provides that

- i. a local government official shall not (in relevant part) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking **in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent** (§ 24-18-109(2)(b));

As discussed above in relation to the limitation in Section 24-18-105(2), CSU is established under Article VIII, Section 5 of the Colorado Constitution as a “state institution of higher education” and, as such, is not a “business or other undertaking” under Section 24-18-109(2)(b).

Thus, while employment is defined as a “financial interest” under Section 24-18-102(4)(c), employment with a public entity like CSU is not employment with a “business or other undertaking” to which Section 24-18-109(2)(b) applies.

- ii. A member of a governing body of a local government who has a **personal or private interest** in any matter proposed or pending before the governing body shall disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum (§ 24-18-109(3));

1. The statutes don’t define the term “personal or private interest” and there is no directly relevant guidance interpreting this provision.

- a. The Colorado Independent Ethics Commission (“IEC”), which is authorized to issue opinions concerning the state’s ethics statutes) has applied this provision in considering a complaint against a local official related to that official’s interest in a regulatory decision of the body she was a member of. **The IEC did not specifically interpret the term “private interest”**

while focusing on the direct and substantial benefit to the official. (IEC Advisory Opinion 16-05, which is attached to the Item 3 Agenda Item Summary for reference).

- b. A common explanation found consistently in the review of provisions of this sort suggests that a “personal or private interest” is one that tends to impair a person’s independence of judgment in the performance of the person’s duties, and this is typically interpreted to relate to a financial interest of the person or their relative in a private enterprise.
 - c. A local government official would likely be considered as having a personal or private interest in any decision that would result in the official receiving a direct and immediate pecuniary benefit or result in the official receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.
 - d. The City’s local provisions related to financial and personal interests are essentially parallel to this formulation.
2. Applying this standard here, the Board must determine whether the City Council’s Hughes Stadium rezoning decision would likely result in Mayor Troxell receiving a direct and immediate pecuniary benefit or result in him receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.

3. Constitutional Due Process:

The Complaint cites to an August 2019 court decision in Larimer County District Court in which the District Court found that County Commissioner Tom Donnelly’s participation in a land use decision in favor of a business owner that he had a years’ long business relationship, who had made a substantial campaign contribution to Donnelly’s campaign, **violated the constitutional due process right** that interested parties had to an impartial decision-making body. The Complaint asserts that the case *directly and specifically addressed the question as to whether a campaign contribution would warrant recusal by a government official in any capacity.*

A copy of Thompson Area Against Stroh Quarry, Inc., et al. v. Board of County Commissioners of Larimer County, et al., the case cited in the Complaint, is attached for your reference.

Setting aside any difference of opinion regarding this case and whether it decides the question asserted by the Complainant, to the extent the Complaint alleges a violation of the Colorado or U.S. constitutions, the Complaint is outside the scope of the Board’s authority and charge under City Code Section 2-569.

II. Reliability and Sufficiency of Facts Asserted:

If the Board determines that there may have been a violation, then the Board will need to evaluate the facts asserted in the Complaint.

The Board may know information that contradicts the facts that were asserted in the Complaint, or there may not be enough information in the Complaint for you to form a reasonable suspicion that the violation alleged in the Complaint occurred.

On this basis, the Board may determine that the facts asserted in the Complaint are not reliable or sufficient and find the Complaint does not warrant further investigation.

III. Other Relevant Facts or Circumstances:

If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board may identify that information and find the Complaint does not warrant further investigation on that basis.

ATTACHMENTS (in addition to the Attachments to the Agenda Item Summary for Item 3 overall)

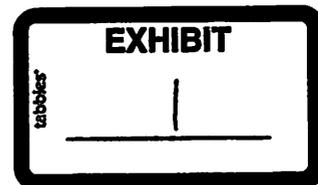
1. *Thompson Area Against Stroh Quarry, Inc., et al. v. Board of County Commissioners of Larimer County, et al.*
2. Review Checklist – Heath Complaint re Wade Troxell

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: August 12, 2019 CASE NUMBER: 2018CV30371 ▲ COURT USE ONLY ▲
Thompson Area Against Stroh Quarry, Inc., a Colorado nonprofit corporation, Dani Korkegi, an individual, Gregory Martino, an individual, Monique Griffin, an individual, Cristi Baldino, an individual, Victoria Good, an individual, and Arlene Libby, an individual, Plaintiffs, v. The Board of County Commissioners of Larimer County, Colorado (including Commissioner Lew Gaiter and Commissioner Tom Donnelly, in their official capacities), the governing body of a political subdivision of the state of Colorado and Coulson Excavating Company, Inc., a Colorado corporation, Defendants.	
ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING IN-PART AND DENYING IN-PART DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGEMENT AND DENYING DEFENDANT COULSON'S MOTION FOR SUMMARY JUDGMENT	

Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when—without the consent of the other parties—a man chooses the judge in his own cause.

Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 886 (2009).

Plaintiffs Thompson Area Against Stroh Quarry, Inc., Dani Korkegi, Gregory Martino, Monique Griffin, Cristi Baldino, Victoria Good, and Arlene Libby (collectively, “Thompson”), and Defendants Coulson Excavating Company, Inc. (“Coulson”), and Board of County Commissioners of Larimer County, Colorado (“Board”) each filed cross-motions for summary judgment regarding Thompson’s claims under Colo. R. Civ. P. 57.



In its motion for summary judgment, Thompson argues that it is entitled to judgment as a matter of law on its as-applied due process challenge to the Larimer County Land Use Code's ("Code") recusal rule under Colo. R. Civ. P. 57.¹ The Board and Coulson filed cross-motions for summary judgment arguing that they are entitled to summary judgment on the same as-applied claim raised by Thompson, and the Board further contends that it is entitled to summary judgment on Thompson's claims that the USB criteria are unconstitutionally vague, and that the Code's conflict of interest regulation is unconstitutionally vague.

This action involves a dispute about the Board's decision to approve Coulson's use by special review application to operate a gravel-pit mine in Johnstown, Colorado, on a parcel that is zoned for agricultural use and which is surrounded by residential neighborhoods comprised of approximately 1,000 single-family homes. While the application was pending, Commissioner Donnelly accepted \$10,000 in campaign contributions from Ken and Dick Coulson, owners of Coulson, representing a significant and disproportionate amount of the contributions Commissioner Donnelly received during the 2016 election cycle. Commissioner Donnelly went on to win that election, and in March 2018, he participated in the Board's decision, casting the deciding vote on Coulson's application.

The Court concludes that, under those circumstances, Commissioner Donnelly's participation and vote on Coulson's application violated Thompson's due-process rights under the Colorado Constitution, and deprived Thompson's right to a fair and impartial decision-maker. The

¹ Following briefing on the merits and oral argument by both parties, the Court construed the substance of Thompson's claim to involve both a facial due-process challenge to the recusal rule *and* an as-applied due-process challenge under Colo. R. Civ. P. 57 to the same rule. The Court addressed this construction in its Order Vacating In-Part June 19, 2018, Order issued December 14, 2018 and its Order Denying Motion to Reconsider, issued February 28, 2019. Given the disposition of Thompson's Rule 57 due-process claim, the Court doesn't reach the merits of the Rule 106 claims.

Court also concludes that neither Larimer County's USB process nor the Code's conflict of interest rules are facially unconstitutional.

Accordingly, the Board's motion for summary judgment is granted as to Thompson's facial challenges to the Code, and the motion is denied as to Thompson's as-applied due process claim. Coulson's motion for summary judgment is also denied. Thompson's motion for summary judgment is granted as to the Rule 57 as-applied challenge to Commissioner Donnelly's conflict of interest. The Board's decision is hereby vacated, and the matter is remanded to the Board with instructions to hold another hearing on Coulson's application with Commissioner Donnelly recused, consistent with the Code.

I. Factual Background

The following facts, unless otherwise indicated, are not in dispute.

A. The Property.

In 1993, Coulson purchased property located at 260 SE Frontage Road in unincorporated Larimer County (the "Property"). Compl., ¶ 14, ¶ 28; Coulson Ans., ¶ 14, ¶ 28; Board Ans., ¶ 1. The Property is zoned for agricultural uses within the "FA-Farming" zone. Compl., ¶ 43; Coulson Ans., ¶ 43; Board Ans., ¶ 1. Section 4.1.2 of the Code provides that lands designated as "FA-Farming" are to be principally used for "agricultural" uses. Vol. V at 104–05. Under the Code, mining is expressly described as an "industrial" use. Code § 4.1.1. To engage in mining with the FA-Farming zone, a landowner must receive approval from Larimer County for a use-by-special-review ("USB"). Code § 4.5.1.

B. The USB Process.

To obtain a USB permit, the applicant must submit an application to the Larimer County Planning Department ("Planning Department"). Vol. I, at 281. After receiving a USB application, the Planning Department sends it to referral agencies and other county departments for review and

comment. *Id.* If a referral agency or department identifies any issues with a USR application, the applicant must resolve those issues with the agency before the application can proceed. *Id.*

Once a USR applicant resolves all referral agency and Planning Department comments and issues, the Planning Commission provides notice to the general public of the USR application and holds a hearing in which the public will have the opportunity to submit written comments in advance and be heard at the hearing. *Id.* at 119–22. After the public hearing, the Planning Commission recommends approval or denial of the application to the Board, and forwards the matter to the Board for its consideration. *Id.* at 281, 864. In turn, the Board holds a hearing on the USR application, providing public notice of the hearing and allowing the public to submit written comments or to testify at the hearing. *Id.* at 114–17.

C. Coulson’s USR Applications.

In 2002, Coulson first applied for a USR permit to operate an industrial sand and gravel pit mine at the Property (“Proposed Mine”). Compl., ¶ 30; Coulson Ans., ¶ 30; Board Ans., ¶ 30. The parties disagree what happened between 2002 and 2008, but it’s undisputed that the application was not approved during that time. In 2008, Larimer County required Coulson to submit a new USR application, which Coulson did in 2009. Compl., ¶ 31; ¶ 32; Board Ans. ¶ 1.

Coulson apparently began resolving referral agency concerns immediately upon submitting its new application. In October 2009, for example, Coulson completed an air displacement modeling study. Vol. I 1302–1673. By August 31, 2010, Coulson also completed a noise study indicating that the proposed mine could be operated in compliance with applicable ordinances and statutes, so long as certain mitigation methods were used. Vol. I at 961, 1675–1701.

After that noise study, however, Coulson’s application virtually lay dormant from 2010 to 2015. Coulson apparently didn’t think it economically feasible to move forward with the application during that period. As Ken Coulson, one of Coulson’s owners, explained at the Planning

Commission hearing, because of the “recession in 2008, [Coulson] decided they had adequate reserves and had other pits that they were mining at the time” and that “[t]he permitting process started back up in 2015 with new analyses and reports.” Vol. I at 434. Peter Wayland of Weiland, Inc., an engineering consulting firm representing Coulson, noted that a noise study was conducted in 2015. *Id.* at 434–35.

In September 2016, nearly one year after Coulson completed the 2015 noise study and two months after completing a floodplain review, Coulson submitted a status update with the Planning Department. Vol. I. at 393. The status update from Coulson’s land use consultant explained that “there have only been changes made to the project to reduce impacts and insure [sic] public safety with regard to potential flood issues.” Vol I. at 390–92. Specifically, the letter noted that “the only significant change to the site plan is to specify a conveyor system instead of overland haul roads ... in response to Larimer County Health’s suggestion ... to reduce dust emissions and noise.” *Id.* at 393. In addition, “the PM10 and Crystalline Silica Air Dispersion Modeling Report has been updated” based on the use of the conveyor system. *Id.* at 387, 394. Coulson also noted that a condition of the floodplain review board’s approval included “placement of soil cement on the west slope of the east pit for the purpose of protecting the pipeline which runs between the two pits. *Id.*

About the same time as the status update, Coulson “request[ed] that the Community Development Team schedule[] the application for a hearing” before the Planning Commission. Vol. I at 433. As will be explained more fully below, at about the same time, Richard and Ken Coulson made their sizeable contributions to Commissioner Donnelly’s reelection campaign. Coulson’s Resp to Rog. 1.

More than one year elapsed between Coulson’s request and the hearing before the Planning Commission. In November 2017, the Planning Commission held a public hearing on Coulson’s USR application. Vol. I, at 431–63, 864–68; Vol. II, at 29:16–24. (By this time, Commissioner

Donnelly had won re-election). The Planning Commission recommended approval of Coulson's USR application to the Board. Vol. I, at 431–63; Vol. IV, at 1.

At approximately the same time (November 2017), Thompson initially raised the issue of conflicts of interest. On November 10, 2017, Thompson wrote to Robert Helmick of the Larimer County Community Development Commission, specifically requesting that Larimer County “ensure that all potential conflicts of interest of the various decisionmakers [be] disclosed as part of the administrative record and that *any decisionmakers with conflicts of interest recuse themselves from any further action on [Coulson's] Application.*” Vol. I at 326 (emphasis added). At that time, Thompson identified one such conflict, requesting that “Planning Commissioner Gary Gerrard be formally recused from participating in the Planning Commission's consideration of the Application.” *Id.* But Planning Commissioner Gerrard didn't recuse himself.² *See id.* at 432 (Planning Commission meeting minutes noting that Commissioner Gerrard was “present”).

In the same correspondence, Thompson also requested that the Board adhere to all regulations regarding “conflicts of interest,” specifically citing Code §§ 2-71 and 2-67(10). Vol. I., at 326-30; *see also* Vol. V, at 26, 28. Those provisions require a commissioner to (a) act with “unconflicted loyalty” regarding the interests of the citizens in Larimer County, a loyalty that supersedes the commissioner's personal interests or those of any advocacy and interest groups; and (b) recuse himself if the commissioner believes that he has a conflict of interest or that the commissioner cannot make a fair and impartial decision.

On February 26, 2018, the Board held a public hearing on Coulson's USR application. Vol. II at 2. As part of its consideration of the application, the Board invited and received written evidence and took testimony at the hearing. Vol. IV at 1. At the conclusion of the hearing, the Board

² The nature of Commissioner Gerrard's conflict is unclear, but Thompson didn't press a due-process violation from the commissioner's participation at the hearing.

voted 2-1 in favor of the application, with Commissioner Donnelly voting in favor of it. *Id.* at 213–14.

Almost a month after the Board’s hearing, but before the Board issued its findings and decision, Thompson sent a letter on March 19, 2018, to the County Attorney, Jeannine Haag, indicating that Ken and Dick Coulson had contributed to Commissioner Donnelly’s campaign committee and requesting that he recuse himself from further involvement in the proceedings. Vol. I at 298–99. One day later, on March 20, 2018, the Board issued its Findings and Resolution Approving The Petition of Coulson Excavating Company, Inc. Vol. IV at 1–13.

D. Commissioner Donnelly.

By trade, Commissioner Donnelly is a private land surveyor, a profession he engaged in between 1994 to January 2008, in Loveland, Colorado. He worked for a company called CDS. Coulson’s Supp. Resp. to Rog. 1; Board’s Resp. to Rog. 1.

In that capacity, Commissioner Donnelly had a professional relationship with Coulson, performing surveyor work for the company for several years. The relationship began in 1999, when Loveland Commercial Builders hired both Coulson and CDS to perform work on a subdivision called Frank Farms. *Id.* Commissioner Donnelly estimated that Coulson hired him to conduct land surveys on approximately “10 projects during [his] 14 years as a surveyor” Rog. 1. While Commissioner Donnelly didn’t recall the exact number of projects, *id.*, Coulson states that between 1999 and 2005, it and CDS worked on five projects together.³ Coulson Resp. to Rog. 1.

³ Thompson’s attempt to dispute the extent of Commissioner Donnelly’s work history with Coulson is nothing more than argument, which can’t create a material factual dispute at summary judgment. See § II, *infra* (discussing cases that a party can’t use pretense, or apparent formal controversy to avoid summary judgment); *Ginter v. Palmer & Co.*, 585 P.2d 583, 585 (Colo. 1978) (Colo. R. Civ. P. 56(e) requires that the opposing party adequately demonstrate by relevant and specific facts that a real controversy exists). As set forth in the body, Coulson provided concrete projects and facts figures, which Thompson failed to dispute.

Commissioner Donnelly wasn't Coulson's employee and Coulson didn't hire him Donnelly directly.⁴ *Id.* During the time frame that Donnelly was a surveyor, Coulson and its owners, Dick and Ken Coulson, never had any conversations with Donnelly other than about the surveying work he performed. *Id.*

The Coulson-CDS surveying projects, which ended in 2005, represent the extent of Commissioner Donnelly's professional relationship with Coulson or its principals, Ken and Dick Coulson (the "Coulsons"). *Id.* Commissioner Donnelly and the Coulsons have never been friends or had a social relationship. *Id.*; *see also* Ex. 3. As far as the Coulsons recollect, their last personal interaction between them and Commissioner Donnelly occurred in 2008 during Commissioner Donnelly's 2008 election campaign, in which he sought a campaign contribution from them. Coulson's Resp. and Board's Resp. to Rog. 1.

Commissioner Donnelly won the 2008 election and became a Larimer County Commissioner in January 2008; he was re-elected in 2012 and 2016. Official Larimer County Election Results, www.larimer.org/clerk/elections/records-data/past-info/results, follow the "General Election Summary" hyperlinks for 2008, 2012 and 2016 elections.

The breakdown of Commissioner Donnelly's campaign contributions during the 2012 and 2016 election cycles is as follows. During the 2012 candidate four-year election cycle (designated as 12/5/2008 – 12/6/2012 by the Colorado Secretary of State) ("2012 election"), Commissioner Donnelly's campaign committee received \$31,726.19 in campaign contributions. Board MSJ at Ex. B. Of that amount, Dick and Ken Coulson each contributed \$500, for a combined total of \$1,000. *Id.* Commissioner Donnelly's opponent was Karen Stockley, whose campaign committee received

⁴ For the same reasons cited above, Thompson cannot create a dispute merely by argument, but must present evidence to demonstrate that a dispute exists. *See S.N.*, 329 P.3d at 282. The Court concludes no such dispute exists here.

campaign contributions totaling \$21,237.20. *Id.* at Ex. C. Commissioner Donnelly won that re-election.

For Commissioner Donnelly's 2016 campaign, his candidate committee reported total contributions of \$53,580, which it raised between March and October 2016. Ex. 3 Board's Am. Ans. and Ans. to Req. to Admit No. 6. The committee also spent a total of \$56,342.16 during the 2016 election. Coulson MSJ at Ex. 2.

For the 2016 election, Commissioner Donnelly didn't personally seek campaign contributions from the Coulsons. Instead, a representative from Commissioner Donnelly's political party stopped by Coulson's offices to solicit a donation. Coulson's Resp to Rog. 1. Shortly after, in August and September 2016, Dick Coulson and Ken Coulson each contributed \$5,000 to Commissioner Donnelly's campaign committee, respectively, for a combined total of \$10,000. *Id.* The Coulsons' campaign contributions amounted to 18.6% of Commissioner Donnelly's total new contributions for the 2016 election and 17.7% of the total money his committee spent on that election. *Id.*

Notably, the Coulsons' contributions for the 2016 election represented a *10-fold increase* from their contributions in the 2012 election. At the time of the Coulsons' 2016 election contributions, it's undisputed that Coulson's application was pending before Larimer County and that Coulson was still working on agency and planning department issues related to the application. Vol. I at 331–33, 348–89, 431–63, 864–68.

But the Coulsons weren't the only high-dollar contributors to Commissioner Donnelly's campaign committee. During the 2016 election, the campaign committee received the following campaign contributions of \$5,000 or more:

- a. \$10,000 from Ken Coulson and Dick Coulson (\$5,000 each);
- b. \$7,500 combined from the Lind family (Martin and Viki) and Vima Partners, LLC;

- c. \$5,000 combined from the Gerrard family (Gary, Mary, Nathan);
- d. \$5,000 combined from the McWhinney family (Chad and Troy); and
- e. \$5,000 from Lori Graves.

The 2016 election featured a rematch between Commissioner Donnelly and Karen Stockley. For her part, she received campaign contributions totaling \$19,027.10. Board MSJ at Ex. F. As the above campaign-contribution figures show, Commissioner Donnelly outraised Ms. Stockley by a ratio of almost 3-to-1. Commissioner Donnelly won the 2016 election for County Commissioner by a margin of 55.16% (99,191 votes) to 44.84% (80,647 votes). Board MSJ Ex. G.

When Coulson's application came before the Board on February 26, 2018, Commissioner Donnelly subjectively believed that he could make a fair and impartial decision based on the review standards and evidence. Ex. 3, Board's Ans. Req. to Admit No. 9.

II. Applicable Legal Standards.

Under Colo. R. Civ. P. 56(c), summary judgment shall enter when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." "The paramount purpose of summary judgment is to expedite litigation by avoiding needless trials where no genuine issue exists as to any material fact and the movant is entitled to judgment as a matter of law." *Dubois v. Myers*, 684 P.2d 940, 943 (Colo. App. 1984).

A party seeking summary judgment bears the initial burden of establishing that there is no dispute regarding material facts. *Pueblo W. Metro. Dist. v. Se. Colo. Water Conservancy Dist.*, 689 P.2d 594, 600 (Colo. 1984). A factual dispute is "material" if it'd affect the outcome of the case. *W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008). To meet that burden, the moving party may rely on "pleadings, depositions, answers to interrogatories, ... admissions on file, [and] affidavits." Colo. R. Civ. P. 56(c). While "the form of the evidence, such as an affidavit, need

not be admissible at trial, the content or substance of the evidence must be admissible.” *People ex rel S.N. v. S.N.*, 329 P.3d 276, 282 (Colo. 2014).

The moving party may satisfy its burden by showing the absence of evidence in the record to support the nonmoving party’s case. *Id.* If the moving party demonstrates no disputed material facts exist, the burden shifts to the nonmoving party to demonstrate the existence of a disputed material fact. *Id.*

The Court must give the nonmoving party all favorable inferences that reasonably may be drawn from the evidence. *Id.* But the nonmoving party can’t use “pretense, or apparent formal controversy,” to avoid summary judgment. *Id.* Similarly, the nonmoving party cannot “merely assert[] a legal conclusion without evidence to support it. *Id.* When faced with an affidavit affirmatively showing the absence of a triable issue of material fact, the nonmoving party cannot rely on allegations or denials in the pleadings to avoid summary judgment. *Id.* Nor may the nonmoving party raise a genuine issue of material fact “simply by means of argument.” *Id.* An affirmative showing of specific facts, uncontradicted by any counter affidavits, leaves a trial court with no alternative but to conclude that no genuine issue of material fact exists. *Civil Service Com’n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991).

Further, evidence introduced to defeat or support a motion for summary judgment must be sworn, competent and based on personal knowledge, and set forth facts that would be admissible at trial. Colo. R. Civ. P. 56(e). A “court must disregard documents referred to in a motion for summary judgment that are not sworn or certified.” *Cody Park v. Harder*, 251 P. 3d 1, 4 (Colo. App. 2009); *see also Struble v. Am. Family Ins. Co.*, 172 P.3d 950, 955 (Colo. App. 2007).

III. Conclusions of Law.

Under Colo. R. Civ. P. 57 the Court “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Colo. R. Civ. P. 57(a). Such declaration has the force and effect of a final judgment. *Id.*

When “mere review of the record under [Colo. R. Civ. P.] 106(a)(4) would not afford adequate relief to the aggrieved party, a declaratory judgment action under [Colo. R. Civ. P.] 57 is available and may be joined with a proceeding for [Colo. R. Civ. P.] 106(a)(4) review.” *Two G’s, Inc. v. Kalin*, 666 P.2d 129, 133–34 (Colo. 1983). Thus, where review of the record is an insufficient remedy, “the plaintiff is not limited to the record, but may introduce other evidence relevant to the issues presented. *Tepley v. Pub. Employees Ret. Ass’n*, 955 P.2d 573, 582 (Colo. App. 1997) (citing Colo. R. Civ. P. 57(i) and (m)).

The parties seek summary judgment on Thompson’s Rule 57 claims that: (1) the Code’s USR criteria are unconstitutionally vague; (2) the Code’s conflict of interest rule is unconstitutionally vague and permits unlawful spot zoning; and (3) the Code’s conflict of interest rule violate due process as-applied to the circumstances of this case. Naturally, the Board and Coulson disagree with Thompson. The Court addresses each claim in turn.

A. Larimer County’s Special Review Criteria are Facially Constitutional.

Thompson mounts a facial constitutional challenge on the Code’s USR criteria on the ground that they’re unconstitutionally vague because critical terms are undefined in the Code. Thompson also contends that the Board’s approval of Coulson’s USR application is akin to upzoning a parcel for the narrow interests of a single land owner, at the detriment of all surrounding

neighbors.⁵ The Board argues that because there is no factual dispute regarding the meaning and understanding of the USR criteria, Thompson’s argument fails. The Court agrees with the Board.

1. Vagueness Challenge.

The two provisions in the USR criteria that Thompson believes are unconstitutionally vague are set forth in § 4.5.3. The provisions at issue state:

A. The proposed use will be compatible with existing and allowed uses in the surrounding area and be in harmony with the neighborhood;

* * *

D. The proposed use will not result in a substantial adverse impact on property in the vicinity of the subject property.

Code § 4.5.3(A), (D).

Facial challenges to statutes are extremely difficult to prevail on. As the United States Supreme Court has put it, “[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987).

“Municipal ordinances, like statutes, are presumed constitutional.” *Kruse v. Town of Castle Rock*, 192 P.3d 591, 597 (Colo. App. 2008) (citing *E-470 Public Highway Authority v. Revenig*, 91 P.3d 1038, 1041 (Colo. 2004)). A party challenging the ordinance must prove beyond a reasonable doubt that the Code is unconstitutionally vague in all possible applications. *Id.* at 597–98.

⁵ Thompson objects to the Board’s motion for summary judgment on the ground that it impermissibly seeks to reopen argument regarding Thompson’s Colo. R. Civ. P. 57 facial challenge to Larimer County’s conflict of interest rules. Coulson similarly states that it understands the Court’s December 14, 2018 and March 11, 2019 orders as requiring briefing only on the as-applied due-process challenge. Thompson and Coulson are incorrect, as the Court stated that it “expects the *Rule 57 claims* to be resolved via cross-motions for summary judgment” and that “a discovery schedule to adjudicate plaintiffs’ Colo. R. Civ. P. 57 *claims* is appropriate.” March 11, 2019 Case Mgmt. Ord., at 1, 6 (emphasis added). Thus, the Court will consider such claims by relying on the parties’ existing briefing on those claims.

“A statute or ordinance is unconstitutionally vague ... if persons of common intelligence must necessarily guess as to its meaning and differ as to its application.” *Id.* (internal citations omitted) (citing *Watso v. Colo. Dep't of Social Servs.*, 841 P.2d 299, 309 (Colo. 1992)). The ordinance must therefore provide “fair notice and set forth sufficiently definite standards to ensure uniform, nondiscriminatory enforcement.” *Id.*

“A law is void for vagueness where its prohibitions are not clearly defined.” *People v. Baer*, 973 P.2d 1225, 1233 (Colo. 1999) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Rickstrew v. People*, 822 P.2d 505, 506–07 (Colo. 1991)). “Vague laws offend due process because they (1) fail to give fair notice of the conduct prohibited, and (2) do not supply adequate standards for those who apply them in order to prevent arbitrary and discriminatory enforcement.” *Id.* (citing *People v. Holmes*, 959 P.2d 406, 414 (Colo. 1998)).

Broad terms and generalities are not equivalent to vagueness and need not be defined with “mathematical precision” to withstand a vagueness challenge, so long as the ordinance lends itself to alternative—constitutional—constructions. *Kruse*, 192 P.3d at 597 (citing *Stamm v. City & County of Denver*, 856 P.2d 54, 56 (Colo. App. 1993)). Moreover, there’s no mandate that each word in an ordinance be specifically defined, and the Court may look to dictionaries and case law to determine the probable legislative intent. *Id.*

The Court has a duty to give language used in regulations its generally accepted meaning and to interpret language “in a reasonable and practical manner so as to impart a rational and cogent meaning to it.” *Id.* Thus, the Court may not adopt hyper-technical readings of statutes where a fair outcome can be achieved through “[a] common sense reading of the statute.” *Americans United for Separation of Church & State Fund, Inc. v. State*, 648 P.2d 1072, 1086 (Colo. 1982) (quoting *People v. Garcia*, 595 P.2d 228, 231 (Colo. 1979)).

Thompson contends that the Code is unconstitutionally vague in permitting and encouraging *de facto* spot zoning through an unreasonably subjective and ill-defined USR process. Specifically, Thompson argues that the terms “be in harmony with the neighborhood,” “will not result,” “substantial adverse impact,” and “in the vicinity” aren’t defined in the Code and are so ambiguous and subjective to the extent that they give the Board unchecked discretion. In considering all of the applications of the language in question, the Court is left with the firm conclusion that the language passes constitutional muster.

Here, the § 4.5.3 standards aren’t constitutionally vague for several reasons. First, while the terms aren’t specifically defined in the Code, substantially similar language frequently appears in regulations, which have been found constitutionally definite. *See C & M Sand & Gravel, Div. of C & M Ready Mix Concrete Co. of Boulder v. Bd. of Cty. Comm’rs of Boulder Cty.*, 673 P.2d 1013, 1018 (Colo. App. 1983). In *C&M*, the Court of Appeals held that a zoning regulation setting out general standards for special use requirements were sufficient, including: “(1) [the use] will be *in harmony* and compatible with the character of the surrounding areas and neighborhood; ... (4) will not have a *material adverse effect* on community capital improvement programs; ... (6) *will not result* in undue traffic congestion or traffic hazards; (7) will not cause significant air, water, or noise pollution; ... and (9) will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of the county.” *Id.* (emphasis added).

Second, the challenged terms aren’t unconstitutionally vague because any party may look to a term’s generally accepted meaning if it is not specifically defined in a code to glean definiteness. *Kruse*, 192 P.3d at 599. Doing so here renders the terms at issue sufficiently definite. “Harmony,” for instance, means “in agreement or accord; or conformity.” *Harmony*, BLACK’S LAW DICTIONARY (10th ed. 2014). Read in context with the accompanying language of § 4.5.3, being in harmony with the neighborhood means that the use is in conformity or in agreement with the neighborhood. For

“will not result” the Court need look no further than the plain meaning of the words to understand them. *See St. Vrain Valley Sch. Dist. RE-1J v. A.R.L. by & through Loveland*, 325 P.3d 1014, 1019 (Colo. 2014) (the Court gives “effect to the statute’s plain and ordinary meaning when the language is unambiguous.”).

While such terms are undoubtedly “somewhat uncertain in the abstract, [they] may be upheld when shown to be sufficiently definite in the context of actual application.” *Wilkinson v. Bd. of Cty. Comm’rs of Pitkin Cty.*, 872 P.2d 1269, 1278 (Colo. App. 1993). In *Wilkinson*, the Court of Appeals found a zoning ordinance wasn’t impermissibly vague because “the contested county policies [were] sufficiently definite to be upheld in view of evidence presented to support their application. *Id.* Those policies, which dealt with, among others, compatibility with existing adjacent neighborhoods, were sufficiently definite when the trial court determined the record contained data on the potential impact of the proposed development to wildlife, recreation, and neighboring land. *Id.*

Here, as in *Wilkinson*, the general terms “in the vicinity” and “substantial adverse impact” are also sufficiently definite upon review of the Board’s Findings and Resolution. 872 P.2d at 1278. The Board effectively demonstrates that “in the vicinity” involves the property which is or may be impacted by the proposed use. *See* Vol. IV at 6–7. For instance, the Board considered the professional noise study’s conclusion that the noise generated from the Proposed Mine “will be less than 55dba at any surrounding residential property line.” *Id.* at 7. The Board also considered that “[f]urther review of the application indicted the technical standards required for the approval of this application and demonstrated that it will not result in a substantial adverse impact.” *Id.* Thus, sufficient evidence exists in the record to further clarify the meaning of “in the vicinity” and “substantial adverse impact” and to render it constitutionally definite.

Accordingly, the Court concludes that the challenged terms aren't unconstitutionally vague and judgment will enter in the Board's favor on this claim.

2. Spot Zoning.

Thompson argues that the Board's decision amounted to unlawful spot zoning. Thompson's argument doesn't hold water. Colorado law prohibits unlawful spot zoning which "creates a small island of property with restrictions on its use different from those imposed on the surrounding property." *Whitelaw v. Denver City Council*, 405 P.3d 433, 445 (Colo. App. 2017) (citing *Little v. Winborn*, 518 N.W.2d 384, 387 (Iowa 1994)). "Property owners have the right to rely on existing zoning regulations when there has been no material change in the character of the neighborhood which may require re-zoning in the public interest." *Clark v. City of Boulder*, 362 P.2d 160, 163 (Colo. 1961).

As applied here, *Clark* does no more than state that the property owners could rely on the existing zoning regulations to understand what uses were permissible on the property. As noted above, the existing use is FA – Farming, which has multiple uses by right, but it also permits other uses by special review. Code § 4.1.1; Compl., ¶ 43; Coulson Ans., ¶ 43; Board Ans., ¶ 1. Thus, the Code makes clear that no rezoning is occurring, the land is still FA – Farming. While the changed circumstances of land surrounding the site *might* warrant a rezoning, no such proceeding was undertaken. Indeed, the record is clear that over the course of the application's life, there were repeated notices that the land was likely to be mined.

Accordingly, given the undisputed material facts, the Court concludes that the USR provisions in question are not unconstitutionally vague, and that the decision doesn't amount to unlawful spot zoning, therefore the Board is entitled to judgment as a matter of law on this issue.

B. Larimer County’s Voluntary Conflict of Interest Rule is Facially Constitutional.

Thompson next contends that the County’s conflict of interest regulation set forth in the Code is unconstitutionally vague and violated Thompson’s due-process rights by permitting Commissioners to subjectively determine whether they have a conflict of interest.⁶ The Board and Coulson disagree, arguing principally that the Code section is constitutionally valid.

The legal principles from the preceding subsection apply here, too. As with § 4.5.3, the conflict-of-interest provision (Code § 2-67(10)) is unconstitutional only if it provides no standard of conduct at all. *See Rocky Mountain Retail Mgmt., LLC v. City of Northglenn*, 393 P.3d 533, 539 (Colo. 2017). The Court gives language used in regulations its generally accepted meaning, *id.*, and begins with the presumption that the Code is constitutional. *Dolan v. Fire and Police Pension Ass’n*, 413 P.3d 279, 286 (Colo. App. 2017). Thus, for Thompson to succeed on its facial challenge that the provision is void for vagueness, they must show, beyond a reasonable doubt, that there is no application in which it’s constitutional—something they can’t do. *See Kruse*, 192 P.3d at 598.

Because the constitutional vagueness challenge also depends on the interpretation and meaning of § 2-67(10), the Court will apply canons of statutory interpretation. When statutory interpretation is at issue, the Court’s “primary objective is to ascertain and effectuate the intent of the General Assembly.” *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010). To do so, the Court’s initial task is “to determine whether the statutory language has a plain and unambiguous meaning.” *Fischbach v. Holzberlein*, 215 P.3d 407, 409 (Colo. App. 2009). The Court gives “effect to the statute’s plain and ordinary meaning when the language is unambiguous.” *St. Vrain Valley*, 325

⁶ As with the previous claim, Thompson objects to the Board’s motion for summary judgment arguing that the motion impermissibly seeks to reopen argument regarding Thompson’s Colo. R. Civ. P. 57 facial challenge to Larimer County’s conflict of interest rules. The Court overrules that objection for the same reasons cited above.

P.3d at 1019. So, “if the statutory language is clear,” the Court applies it as written. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1089 (Colo. 2011).

The Court determines a provision’s plain meaning by considering “the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Sheep Mountain All. v. Bd. of Cty. Comm’rs, Montrose Cty.*, 271 P.3d 597, 601 (Colo. App. 2011). The Court may look to the dictionary for assistance in understanding the plain meaning of the terms used. *People v. Voth*, 312 P.3d 144, 149 (Colo. 2013). Moreover, the Court gives effect to legislative intent by construing all parts of a statute as consistent, harmonious, and sensible. *St. Vrain Valley*, 325 P.3d at 1019.

The Code prohibits a commissioner’s participation—thus requiring recusal—in any quasi-judicial determination in which he determines that he cannot be fair and impartial or in which he has a conflict of interest:

A member of the board of county commissioners who, in their sole opinion, believe they have a conflict of interest or for any other reason believes that they cannot make a fair and impartial decision in a legislative or quasi-judicial decision, will recuse themselves from the discussion and decision. Any recusal will be made prior to any board discussion of the issue and the board member will leave the room for the remainder of the discussion of the issue.

Code § 2-67(10).

The Court is troubled that the Code has failed to define the key terms “conflict of interest,” “fair,” or “impartial” and, as if that weren’t enough, it has failed to provide any further guidance to a commissioner on how to interpret those seemingly crucial terms.⁷ Such a deficiency appears to leave

⁷ Contrast the Code’s minimally sufficient approach with the Colorado Code of Judicial Conduct’s provisions on recusal or disqualification. While the Court understands that Code of Judicial Conduct doesn’t apply to commissioners, a comparison is useful for present purposes. For instance, the Code of Judicial Conduct is exceedingly thorough in prescribing the instances in which a judge must disqualify himself from a case. *See* C.J.C.R. 2.11(A) (“A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality* might reasonably be questioned, including but not limited to the following circumstances...”). That provision lists at least five areas in which

a commissioner to his or her own devices when considering recusal. Indeed, the Code doesn't even direct the commissioner to seek legal advice on the issue. But the Supreme Court directs that this Court supply the common meaning of those terms to determine whether the provisions are unconstitutionally vague. *Voth*, 312 P.3d at 149.

The terms' plain and ordinary meanings demonstrate the provisions are not unconstitutionally vague. A "conflict of interest" is a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." *Conflict of Interest*, BLACK'S LAW DICTIONARY (11th ed. 2019). "Fair" means "[c]haracterized by honesty, impartiality, and candor; just; equitable; disinterested" or "[f]ree of bias or prejudice". *Fair*, BLACK'S LAW DICTIONARY (11th ed. 2019). "Impartial" means "[n]ot favoring one side more than another; unbiased and disinterested; unswayed by personal interest." *Impartial*, BLACK'S LAW DICTIONARY (11th ed. 2019). Thus, a commissioner has a "conflict of interest" when she has a real or seeming incompatibility of personal interests and public duty. The commissioner cannot remain "fair and impartial" when he or she cannot act honestly, impartially, justly or in an equitable and disinterested manner and cannot avoid favoring one side more than another or being swayed by personal interest.

Another nearby provision of the Code related to the same subject provides insightful language and direction to a commissioner who may be considering recusal. Subsection 2-71(1) provides that commissioners must represent with "unconflicted loyalty" the interests of all the citizens of the county and that such loyalty supersedes any conflicting loyalty to anyone else, including the commissioner's own personal interest:

Members of the board of county commissioners must represent unconflicted loyalty to the interests of the citizens of the entire county. This accountability supersedes any conflicting loyalty such as that to any advocacy or interest groups, or

disqualification must occur, defines each of the terms with an asterisk, and then provides additional comments on each specific ground for disqualification. By contrast, the Code offers no such guidance to a commissioner who's considering recusal.

membership on other boards or staffs. This accountability also supersedes the personal interest of any board member acting as an individual consumer of the county government's services. Members of the board of county commissioners must avoid any fiduciary conflict of interest, ex-parte communication or nepotism conflicts.

Vol. V, p. 28 (citing Code § 2-71(1), (2)).

Both provisions are related to the same subject matter and the Court construes them in *pari materia*. While § 2-67(10) deals with a commissioner's recusal due to a conflict of interest or her inability to be fair and impartial, § 2-71(1) prescribes a general mantra with which a commissioner must approach all of her official duties: with "unconflicted loyalty" to her constituents. Statutes "pertaining to the same subject matter are to be construed *in pari materia* to ascertain legislative intent and to avoid inconsistencies and absurdities." *Walgreen Co. v. Charnes*, 819 P.2d 1039, 1043 (Colo. 1991) (citing *Darnall v. City of Englewood*, 740 P.2d 536, 537 (Colo. App. 1987)). "The legislature is also presumed to intend that the various parts of a comprehensive scheme are consistent with and apply to each other, without being required to incorporate each by express reference in the other." *BP America Prod. Co. v. Patterson*, 185 P.3d 811, 813 (Colo. 2008).

Read together, §§ 2-67(10) and 2-71(1) provide definite—albeit minimal—guidance to a commissioner who's considering recusal and render the conflict of interest provision not unconstitutionally vague. Notwithstanding Thompson's contentions that the conflicts ordinance is vague, § 2-67(10) lends itself to constitutional constructions, which the Court must adopt. *See Kruse*, 192 P.3d at 597 (citing *People ex rel. City of Arvada v. Nissen*, 650 P.2d 547, 550 (Colo. 1982)).

When the provisions are construed in *pari materia*, several constitutional applications present themselves. Let's say, for example, that a commissioner's spouse filed an application for USR for certain land under county jurisdiction. Every reasonable commissioner who considered §§ 2-67(10) and 2-71(10) would easily conclude that he'd have a conflict of interest given his close relationship to the applicant. Undoubtedly, in this hypothetical, the commissioner couldn't reasonably "make a

fair and impartial decision in a ... quasi-judicial capacity,” Code § 2-67(10), because doing so would improperly place his *personal interest* in the matter above his “unconflicted loyalty” to the county’s citizens. *Id.* § 2-71(10).

Let’s take another example closer to the present circumstances. Assume that another applicant—unrelated to our conflicted commissioner—with a different application pending before the county, donated 100% of the total campaign contributions for the commissioner’s re-election campaign. Let’s also assume that the commissioner won the election. Again, every reasonable commissioner who considered both provisions of the Code would conclude that she couldn’t make a fair and impartial decision on the application and would recuse herself. Because the commissioner would seemingly owe, in large part, her victory to the applicant’s campaign contributions, the commissioner would violate her duty of “unconflicted loyalty” to the county’s citizens by participating in, or voting on, the application from her generous campaign donor.

In both hypothetical scenarios, the commissioner determined based on his or her “sole opinion” that she has a conflict of interest and thus recuses herself from participating in the proceeding. That commissioner, in the Court’s view, acted reasonably. While generally that’s a poor approach to follow because the Code provides virtually no guidance, it nonetheless passes, by a hair, constitutional muster because of the key terms’ plain meaning. Of course, that leaves all the unreasonable hypothetical commissioners out there, who may not recuse themselves when presented with such stark scenarios. But solely because § 2-67(10) “might be insufficient in some particular circumstances,” *Salerno*, 481 U.S. at 751, it doesn’t follow that the provision is facially unconstitutional.⁸

⁸ The Court urges the Board to adopt a more precise recusal provision that includes both specific definitions for each of the key terms in § 2-67(10) and an objective—rather than a subjective—standard that relies solely on the “sole opinion” of the commissioner who faces a potential conflict of interest.

Moreover, that the decision rests in the commissioner's "sole opinion" doesn't render the provision unconstitutionally vague. That's not unlike a disqualification decision for a judge, who must herself decide whether recusal is necessary. Indeed, if the Commissioner *does* have a conflict, the Commissioner *must* recuse him or herself. The Code language itself provides that the Commissioner "*will* recuse themselves from the discussion and decision." Code § 2-67(10) (emphasis added). The Court construes "will" as "must" in this context. And, at a minimum, "will" is the equivalent of "shall" here, meaning that the commissioner *is required* or *is obligated* to recuse himself. *Plains Metro. Dist. v. Ken-Caryl Ranch Metro. Dist.*, 250 P.3d 697, 699 (Colo. App. 2010).

Further, it's wrong, as Thompson contends, that no recourse exists to a commissioner's refusal to recuse even in the most blatant of circumstances. Indeed, the Constitution itself provides the necessary "floor" by which to determine whether a commissioner violated a party's due-process rights in making a quasi-judicial decision. *See City of Manassa v. Ruff*, 235 P.3d 1051, 1057 (Colo. 2010). When a commissioner acts as a quasi-judicial decision-maker, as is the case here, "the fundamental protections of neutrality and fairness [] apply." *Id.* It is also conceivable that Colo. R. Civ. P. 106(a)(4) might provide a similar backstop in instances where a record sufficiently addresses a conflict of interest issue.

In sum, the language of Code § 2-67(10) and case law are specific enough to provide a person of common intelligence with notice of when that particular code provision may be violated. *See People v. Shell*, 148 P.3d 162, 173 (Colo. 2006) (citing *People v. Hickman*, 988 P.2d 628, 644 (Colo. 1999)). Accordingly, the conflict of interest provision is not facially void for vagueness and judgment will enter in the Board's favor on this claim.

C. Larimer County's Voluntary Conflict of Interest Rule As-Applied to the circumstances of this case violated Thompson's Due Process Right.

While § 2-67(10) is facially constitutional, Thompson also challenges on due-process grounds Commissioner Donnelly's failure to recuse himself from participating in Coulson's

application. Because the undisputed material evidence establishes beyond a reasonable doubt that Commissioner Donnelly's failure to recuse posed a risk of actual bias or prejudgment on Coulson's application, Thompson has shown a due-process violation and is entitled to judgment as a matter of law. Accordingly, judgment shall enter in Thompson's favor on this claim. The Board's decision is, therefore, vacated and the matter is remanded to the Board to hold another hearing on Coulson's application with Commissioner Donnelly recused.

The Court's analysis of Thompson's as-applied challenge begins with two threshold issues raised by Coulson and the Board. They jointly argue that the campaign contributions didn't violate Thompson's due process rights because (1) Thompson waived its objection on the issue of bias related to the campaign contribution, removing the Court's authority to review the claim; and (2) that the campaign contributions are not a direct, personal, substantial, or pecuniary interest in the pending matter. The Court rejects these contentions, each of which is addressed in turn.

1. Thompson did not waive its objection on the issue of bias related to the campaign contribution.

The Board treads old ground, arguing that Thompson waived its objection on the issue of bias related to campaign contributions, thus depriving the Court of jurisdiction to review the claim. Thompson responds that the Court has already ruled on this issue, concluding that Thompson properly preserved the issue. The Court sees no reason to amend its prior ruling.

The Court construes the Board's argument as seeking reconsideration of a prior Order. While the request is untimely, the Court will nevertheless consider it. Motions for reconsideration are "disfavored." Colo. R. Civ. P. 121, § 1-15(11). "A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice." *Id.*

The Board failed to make the required showing under Rule 121 § 1-15(11). Reconsideration isn't appropriate because there's no error of law that mandates a different result nor will manifest

injustice result. As the Court discussed in its prior Order Denying Defendants' Motion For Summary Judgment, Thompson timely raised the issue of Commissioner Donnelly's potential conflict of interest three months before the Board's hearing and final decision on Coulson's application:

It's undisputed that Thompson Area raised the conflicts issue well in advance of the Board's hearing and requested that any decisionmaker with a conflict recuse himself. And Thompson Area did so again, two days before the formal decision, by pointing to Commissioner Donnelly's potential conflict.

Order at 13–15; *see also* Vol. I at 298–99; 326.

That ruling is supported by the record evidence and is correct. Accordingly, the Board's request is denied.

2. Thompson's Complaint Includes an As-Applied Due Process Challenge to Code § 2-67(10).

Coulson levies another attack against Thompson's as applied due-process challenge to § 2-67(10), stating that the challenge must fail as a matter of law because the Code "mirrors due process" and the recusal requirement is not voluntary. Coulson contends that the claim at issue here is not an as-applied constitutional challenge because it is a "factual determination [which] *resulted* in a constitutional violation, which is not an as-applied challenge to the statute itself." Coulson Mtn. at 10. As the argument goes, merely asserting that someone misapplied the statute is not an as-applied challenge to the statute itself. Coulson's arguments are without merit.

Generally, to succeed in a facial challenge, the plaintiff must show that there are no circumstances under which the statute can be applied in a constitutional manner. *People v. Trujillo*, 369 P.3d 693, 696 (Colo. App. 2015). By contrast, as-applied challenges allege "the statute is unconstitutional as to the *specific circumstances under which a defendant acted.*" *Id.* (citing *People v. Gardner*, 250 P.3d 1262, 1268 (Colo. App. 2010)).

Here, while the Court concluded that § 2-67(10) wasn't facially unconstitutional, that conclusion doesn't preclude the Court from determining the statute might be unconstitutional as-applied to a particular set of facts. *See Trujillo*, 369 P.3d at 697. Nevertheless, Coulson contends that because the recusal rule—Code § 2-67(10)—is consistent with due process, it can't be unconstitutional as-applied. That argument is plainly illogical.

For one, solely because a statute is facially valid, meaning that it's constitutional in at least one application, it doesn't follow that the same statute will be valid as applied against a different factual scenario. While a statutory provision "might be insufficient in some particular circumstances," *Salerno*, 481 U.S. at 751, a court shouldn't strike down the provision in toto when at least some constitutional applications exist—that is, don't throw out the baby with the bath water.

Besides, if Coulson were correct, it would render all as-applied challenges meaningless, at the expense of the general policy that favors hearing as-applied challenges over facial ones. *See e.g., Indep. Inst. v. Coffman*, 209 P.3d 1130, 1136 (Colo. App. 2008) (citing *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449–52 (2008)) (a provision may be unconstitutional on its face or as-applied, but "[f]acial challenges are disfavored because (1) courts may be forced to rely on speculation, (2) there is a risk of premature statutory interpretation, (3) courts may have to anticipate questions of constitutional law when unnecessary, (4) courts may have to formulate constitutional rules broader than those required by the precise facts to which they would be applied, and (5) they may prevent the implementation of laws that embody the will of the people"). Indeed, Coulson admits as much, citing caselaw for the premise that the as-applied constitutional challenge requires the party to establish that "*the statute is unconstitutional* under the circumstances in which the plaintiff has acted or proposes to act." Coulson Mtn. at 9 (citing *Maxwell*, 401 P.3d at 520). Thus, a challenge may be brought to the constitutionality of a statute as it was applied under the circumstances of this case.

Here, Thompson contends that even if the statute is generally constitutional, it operated unconstitutionally as to Thompson because of the circumstances in which Commissioner Donnelly failed to recuse himself. This is consistent with an as-applied constitutional challenge. *See Trujillo*, 369 P.3d at 696. It's plausible to assert an as-applied due-process violation under circumstances when, as here, a decisionmaker has an objective conflict of interest—notwithstanding that decision-maker's *subjective* belief to the contrary—and the rule does nothing to stop that a commissioner from continuing to participate in the decision. Such an outcome falls below the constitutional floor required by the Due Process Clause. *See City of Manassa*, 235 P.3d at 1057.

Coulson's contentions to the contrary are unpersuasive for two reasons. First, the case Coulson cites to *General Outdoor Advertising Co. v. Goodman* doesn't directly address as-applied challenges, and instead only deals with a facial attack. 262 P.2d 261, 263 (Colo. 1953). Second, Coulson's arguments that governments need not enact legislation which is duplicative of protections afforded by the constitution are correct, but inapposite. As the Court concludes below, the Code as-applied in this circumstance fell *below* the constitutional floor. Thus, the Court rejects Coulson's argument that Thompson's as-applied due-process challenge fails as a matter of law.

3. Coulson's campaign contributions to Commissioner Donnelly created a significant risk of bias under the circumstances.

"To prevail on an as-applied constitutional challenge, the challenging party must establish that the statute is unconstitutional under the circumstances in which the plaintiff has acted or proposes to act." *People v. Maxwell*, 401 P.3d 518, 520 (Colo. App. 2017) (citing *Qwest Servs. Corp. v. Blood*, 252 P.3d 1071, 1085 (Colo. 2011)). In holding a statute unconstitutional as applied, its future application in a similar context is prohibited, but it does not render the statute inoperative." *Id.*

A statute is presumed constitutional, and the party challenging the statute has the burden of proving unconstitutionality beyond a reasonable doubt. *People v. Baer*, 973 P.2d 1225, 1230 (Colo.

1999). The principle applies regardless of whether the challenge is facial or as-applied to a specific set of circumstances. *Trujillo*, 369 P.3d at 696.⁹

Under Colorado law, a local government's land-use determinations are considered quasi-judicial for the purposes of judicial review. *Margolis v. Dist. Court, In & For Arapahoe Cty.*, 638 P.2d 297, 305 (Colo. 1981). Those serving in quasi-judicial capacities are presumed to act with integrity, honesty, and impartiality. *Scott v. City of Englewood*, 672 P.2d 225, 227 (Colo. App. 1983).

A quasi-judicial proceeding violates due process only if the presumption of honesty and integrity is overcome by a showing of a conflict of interest on the part of the decision-maker. *Id.* What constitutes a conflict of interest reflects different policy considerations based on the context. *City of Manassa*, 235 P.3d at 1055. Such conflicts arise where the decision-maker has a personal, financial, or official stake in the outcome of the matter, *Scott*, 672 P.2d at 227–28, or when the decision-maker's interest “poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.” *Caperton*, 556 U.S. at 884.

The burden of rebutting this presumption rests on the party challenging the quasi-judicial decision. *Scott*, 672 P.2d at 227. A party challenging a quasi-judicial decision must show substantial prejudice which invalidates the agency action to rebut the presumption. *Whitelaw*, 405 P.3d at 438. Nevertheless, quasi-judicial decision-makers are not held to the same disqualification standards as judges, *City of Manassa*, 235 P.3d at 1057, and most matters regarding judicial disqualification do not

⁹ Colorado appellate decisions are divided on the burden of proof necessary as-applied constitutional challenges. *Cf. Sanger v. Dennis*, 148 P.3d 404, 410–11 (Colo. App. 2006) (as applied challenges must show only a reasonable probability that the statute is unconstitutional); *with People v. Slaughter*, 439 P.3d 80, 83 (Colo. App. 2019); *Trujillo*, 369 P.3d at 696 (the burden of proof for as-applied challenges is beyond a reasonable doubt). The Court concludes that the burden of proof is beyond a reasonable doubt.

rise to a constitutional level. *Caperton*, 556 U.S. at 876 (citing *FTC v. Cement Institute*, 333 U.S. 683, 702 (1948)).

The Due Process Clause of the Colorado Constitution protects people from a deprivation of “life, liberty or property, without due process of law.” COLO. CONST. art. II, § 25. The fundamental protections of neutrality and fairness provided by the Due Process Clause apply to decision-makers acting in quasi-judicial capacities. *City of Manassa*, 235 P.3d at 1057; *Scott*, 672 P.2d at 227. It’s a longstanding principle that a fundamentally fair trial in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955). That requirement of fairness and neutrality “in adjudicative proceedings entitles a person to an impartial and disinterested decision-maker.” *City of Manassa*, 235 P.3d at 1056.

In *City of Manassa*, the Colorado Supreme Court adopted the test under *Caperton*. Under that test, the decision-maker must recuse him or herself when “a direct, personal, substantial, pecuniary interest” exists in a case before that decision-maker. *Caperton*, 556 U.S. at 876. Thus, the decision-maker cannot have an interest in the outcome based on the circumstances and relationships involved. See *In re Murchison*, 349 U.S. at 136.

Yet, it’s not necessary for the Court to determine whether the decision-maker is *in fact* influenced by those circumstances or relationships; instead, due process requires an objective inquiry into whether under all the circumstances “would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true.” *Caperton*, 556 U.S. at 879, 885 (citing *Turney v. State of Ohio*, 273 U.S. 510, 532 (1927)). Thus, the Court “asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional ‘potential for bias.’” *Id.* at 881.

“The ultimate due process question is whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the

practice must be forbidden if the guarantee of due process is to be adequately implemented.” *City of Manassa*, 235 P.3d at 1057 (internal quotations omitted) (citing *Caperton*, 556 U.S. at 129).

A serious risk of actual bias occurs, based on objective and reasonable perceptions, when a person with a personal stake in the case has a significant and disproportionate influence in placing the judge on the case by raising funds when the case is pending or imminent. *Caperton*, 556 U.S. at 884. Several factors go into this inquiry in the election context. “The inquiry centers on the contribution’s relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.” *Id.* But the temporal relationship between the campaign contributions, the justice’s election, and the pendency of the case are also critical. *Id.* at 886 (“It was reasonably foreseeable, when the campaign contributions were made, that the pending case would be before the newly elected justice”).

The Court concludes that the undisputed material evidence establishes beyond a reasonable doubt that Commissioner Donnelly’s failure to recuse himself in Coulson’s application posed a serious risk of actual bias or prejudgment and that Thompson has shown a due-process violation, entitling it to judgment as a matter of law.¹⁰ Several reasons support that conclusion.

First, the undisputed material evidence shows that Coulson’s campaign contributions objectively had a significant and disproportionate influence on Commissioner Donnelly’s re-election,

¹⁰ The Court declines to wade into the actual-bias waters. *See Caperton*, 556 U.S. at 882. It’s undisputed that Commissioner Donnelly conducted his own determination of whether he had an impermissible conflict and, subjectively, he found none. (It’s unclear whether, in reaching that determination, Commissioner Donnelly considered his “uncontested loyalty” to the county citizens.) Moreover, the parties agree that no evidence presented demonstrates actual bias on the part of Commissioner Donnelly. Thompson Resp. at 13; Board Mtn at 20–21; Coulson Reply at 6. Instead, the question before the Court is an *objective* one: would an average commissioner in Commissioner Donnelly’s position likely have been neutral or did the commissioner’s participation in and vote on Coulson’s application presented *an unconstitutional risk of actual bias*? *Caperton*, 556 U.S. at 881.

placing him in a position to vote on the USR application of his largest donors' company. *See id.* at 884. In August and September of 2016, the Coulsons, who own Coulson, contributed a total of \$10,000.00 to Commissioner Donnelly's re-election campaign. Those contributions amounted to 18.6% of Commissioner Donnelly's \$53,580.00 total new election contributions in the 2016 election cycle, and 17.7% of the total amount his committee spent on his bid for re-election. The Coulsons' contributions, *by themselves*, allowed Commissioner Donnelly to raise more than half of the total funds raised by his opponent in the 2016 election.¹¹ While it's undisputed that Commissioner Donnelly had other large contributions, including a combined donation of \$7,500 and several others of \$5,000 per family, none of those individuals (or entities) had a matter "pending or imminent" before the Board. *See Caperton*, 556 U.S. at 884. Coulson was the only entity that did have such a matter.

Second, the temporal relationship between the Coulsons' campaign contributions in 2012 and 2016, Commissioner Donnelly's 2016 election, and the status of the application all support a conclusion of a serious risk of actual bias or prejudgment. *Id.* at 886 ("It was reasonably foreseeable, when the campaign contributions were made, that the pending case would be before the newly elected justice"). It's undisputed that Coulson didn't actively pursue its refiled USR application between 2010 and 2015.¹² Coulson's first communication in almost six years with the Larimer

¹¹ Commissioner Donnelly's opponent was Karen Stockley, who received campaign contributions totaling \$19,027.10.

¹² During that time period, Coulson completed a noise study in 2015 and a flood plain analysis in the fall of 2016. Vol. I at 433. Ken Coulson admitted that because of the "recession in 2008, [Coulson] decided they had adequate reserves and had other pits that they were mining at the time" and that "[t]he permitting process started back up in 2015 with new analyses and reports." Vol. I at 434 (Peter Wayland noted that a noise study was conducted in 2015, consistent with Ken Coulson's statement). Considering the evidence in favor of Coulson, *People ex rel S.N.*, 329 P.3d at 282, the only evidence is that the application was dormant from 2010 and 2015, and that the application was pursued in earnest following the status update which coincided with their campaign contributions to Commissioner Donnelly.

County Planning Department was in September 2016, when it submitted a status update to the county. Vol. I at 390–92. At about the same time—in August and September of 2016—the Coulsons jointly contributed \$10,000.00 to Commissioner Donnelly’s re-election bid. Vol. I at 300, 303. Commissioner Donnelly ultimately won reelection in November 2016. Thus, it was reasonably foreseeable, at the time the Coulsons made their respective contributions, that the renewed application would come before the Board, and Commissioner Donnelly in particular, should he win reelection. Indeed, within 18 months from date of the Coulsons’ contributions, Commissioner Donnelly provided the deciding vote to approve the application.¹³

Third, the Coulsons’ campaign contributions and their timing in making them, created an objective and reasonable perception of bias by seeking to ensure that Commissioner Donnelly remain as a decision maker the USR application. *See Caperton*, 556 U.S. at 884. Several undisputed facts show that objective and reasonable perception. For one, Commissioner Donnelly knew Coulson well, having performed surveying work for the company for nearly six years. And, between the Coulsons’ 2012 election contributions and the 2016 election contributions to Commissioner Donnelly, there was a *10-fold increase* in those contributions (\$1,000 in 2012 and \$10,000 in 2016). Temporally, the one material difference is that at a time that Coulson didn’t actively pursue its application with the county, the Coulsons contributed \$1,000 (\$500 each) to Commissioner Donnelly’s campaign. But for the 2016 election, when Coulson sought a hearing before the Planning Commission (a pre-requisite before the application going to the Board), the Coulsons together donated \$10,000 to Commissioner Donnelly.

¹³ The Board contends that this characterization is inaccurate because the order of voting is mere happenstance. The Court rejects the Board’s facetious attempt to hide the obvious. Commissioner Donnelly’s vote was the “deciding” vote not because of the order in which he voted, but because the USR permit wouldn’t have been granted but for Commissioner Donnelly’s vote. Code § 2-67(7) (suggesting that Board decisions require majority vote).

Fourth, the Coulsons' influence on the election, given all circumstances, would offer a temptation to the average commissioner not to "hold the balance nice, clear, and true." *See Caperton*, 556 U.S. at 885. While the Court need not divine whether the Coulsons' contributions were a necessary and sufficient cause of Commissioner Donnelly's victory, it's undisputed that Commissioner Donnelly won, receiving 99,191 votes compared with 80,647 votes for his opponent Karen Stockley.

Commissioner Donnelly was the incumbent entering the 2016 election cycle. But as he acknowledged, "my [2012] reelection race was very close and I need[ed] to run a strong campaign to win again." Ans. Rog No. 1. Thus, re-election was not assured, and it was essential for Commissioner Donnelly to obtain more support. Indeed, Commissioner Donnelly raised well over twice the amount of Karen Stockley, and he won the 2016 election for County Commissioner by 10 percentage points—55.16% (99,191 votes for Donnelly) to 44.84% (80,647 votes for Karen Stockley). Considering Coulson's proportionally large contribution, the timing of that contribution in relation to the election, and the relatively close margin of victory the Court finds that the totality of the circumstances demonstrates a significant and disproportionate effect on re-electing Commissioner Donnelly.

Fifth, important policy considerations support campaign-contribution limits in local elections, and those considerations align with the Court's conclusion here. *See City of Manassa*, 235 P.3d at 1055 ("conflict of interest" is a term of art "reflecting a host of different policy determinations, depending on the context in which it operates"). In particular, the Colorado General Assembly recently passed, and the Governor signed, HB19-1007 which creates campaign-contribution limits of \$1,250 for certain county-wide elections. Previously, no campaign-contribution limits existed for county elections. HB19-1007 (revising Colo. Rev. Stat. § 1-45-103.7; and adding Colo. Rev. Stat. § 30-10-113). One of the chief concerns the bill sought to address was

contributions in county commissioner elections. Representative Emily Sirota, the sponsor of the bill, stated that it's "probably unwise that we don't have any limits ... in our county races," and that "we regularly see contributions of \$5,000 dollars, and many examples of extremely large contributions, in particular, in our county commissioner races in the amounts of \$10,000, \$30,000, even \$40,000."¹⁴ House Chambers Discussion of HB 19-1007 (Feb. 14, 2019) at 1:26:57. Thus, the purpose of the bill was to preserve integrity of electoral process, keep candidates accountable, and avoid the appearance of quid pro quo or impropriety. *Id.* Those are salutary goals.

In sum, given the Coulson's significant and disproportionate influence in Commissioner Donnelly's re-election and the temporal relationship between those contributions, the election, and the pending application, the average commissioner would have been tempted "not to hold the balance nice, clear and true." *Caperton*, 556 U.S. at 885.

Coulson presses several points in opposition to Thompson's motion, but none of them has merit. Initially, it contends that the standard in *Caperton* was only met there because (1) the \$3 million donations exceeded the judge's total other campaign contributions by 300%; (2) the \$3 million exceeded by \$1 million both candidates' campaigns combined; and (3) the donations helped unseat an incumbent in a close election and place a new judge on the court just before it heard the donor's appeal." Coulson Mtn. at 18. But that argument misstates the holding in *Caperton*, which isn't limited to its facts. Indeed, *Caperton* didn't set a specific dollar figure or percentage to reach, or require that the campaign contributions result in the ousting of an incumbent, in order to establish a due-process violation. Instead, each of the facts that Coulson presents were *relevant* in establishing that an

¹⁴ Moreover, an earlier version of the bill was introduced in 2017, HB17-1260 passed the house, but was suspended indefinitely in the Senate's State, Veterans, & Military Affairs Committee. At the Committee hearing, the concern of very large contributions to county commissioners was cited as a primary concern, which could create "an appearance of quid pro quo corruption."

objective conflict of interest existed and weren't meant to be *sine qua non* requirements in other cases. *Caperton*, 556 U.S. at 886.

Coulson also points the Court to several cases that distinguish the circumstances in *Caperton* and attempt to establish a baseline in Colorado. The Court finds these cases distinguishable from the circumstances here for several reasons. For one, in *City of Manassa* the Colorado Supreme Court found that a decision-maker receiving 25% of his income from the insurer of one of the parties didn't amount to an exceptional circumstance creating an unconstitutional risk of bias. *City of Manassa*, 235 P.3d at 1052–53. But while *City of Manassa* effectively ties *Caperton* to Colorado law, the specific circumstances in that case are distinguishable.

In *City of Manassa*, a non-elected licensed physician bound by separate regulatory and professional requirements, was hired by Pinnacol to render independent medical examination opinions in workers' compensation cases. *Id.* at 1053. The Supreme Court concluded that the physician didn't have an objective conflict of interest in large part because highly restrictive safeguards existed with which the physician had to comply. *See id.* at 1053–54. Those safeguards included a rule of procedure in workers' compensation cases that “prohibits a physician from evaluating a claimant if there is even the appearance of a conflict of interest.” *Id.* at 1054. And that rule contained multiple guidelines to determine whether a conflict or the appearance of a conflict of interest existed. *Id.* at 1054 n.3. Those guidelines are analogous to the Code of Judicial Conduct's disqualification provisions. Compare C.J.C.R. 2.11(A) and comments, *with* Div. of Workers' Compensation R. of P. 11–2(H).

By contrast, here no such safeguards exist to protect against an objective conflict of interest by a commissioner. As the Court noted above, Code § 2-67(10) has constitutionally bare minimum requirements and offers little, if any, guidance to determine whether a commissioner has a conflict of interest.

The Court also rejects Coulson’s contention that its application wasn’t “pending or imminent” because it didn’t resolve the referral agency and planning department issues until November 2017 and it wasn’t before the Board at the time of the Coulsons’ campaign contributions. *Caperton* itself rejects Coulson’s overly narrow construction. All that’s required is a *reasonable foreseeability* that the case will end up before the decision maker. In *Caperton*, the state supreme court didn’t hear the case until November 2007, *almost three years* after Blankenship made his contributions that resulted in the unconstitutional risk of bias. *See Caperton*, 556 U.S. at 872 (Blankenship made his contributions in the 2004 judicial elections, after the initial jury verdict but before filing the appeal). Thus, merely because the case is not set for a hearing before the Board, it doesn’t mean the case was not pending or imminent. Moreover, even when necessary pre-requisites haven’t been met—such as the filing of an appeal—the case may still be pending or imminent when it is reasonably foreseeable that it will be heard by the decision-maker. *Id.* at 886.

Here, Coulson’s application was pending or imminent because it was reasonably foreseeable that the Board, and Commissioner Donnelly in particular, would eventually hear it at the time the Coulsons made their 2016 election contribution. Based on Coulson’s own status update in September 2016, it requested that a hearing be scheduled with the Planning Commission because most of the preliminary work or studies to get the matter before that commission had been completed. Vol. I. at 390–92; Vol. I at 433. The parties agree that once the USR applicant resolves referral agency and Planning Department comments, the case proceeds to a hearing before the Planning Commission which, regardless of whether it recommends approval or denial of the application, forwards the application to the Board. Thus, at the time of the Coulsons’ campaign contributions, Coulson actively pursued its application, which was in the middle of a process whose natural and reasonably foreseeable conclusion would be a vote by a commissioner whose re-election the Coulsons helped secure. *Caperton*, 556 U.S. at 886 (“Although there is no allegation of a quid pro

quo agreement, the fact remains that [the donor's] extraordinary contributions were made at a time when he had a vested stake in the outcome [of the election].”).

Indeed, as noted above, between the 2012 to the 2016 election cycle, the Coulsons' contributions dramatically increased. In the 2012 election, it was 3.15% of Commissioner Donnelly's total new contributions, while in the 2016 election it was 18.66%. That represents an almost 500% increase in the percentage the Coulsons gave in proportion to Commissioner Donnelly's total campaign contributions. It's undisputed that Commissioner Donnelly knew of the contributions by the time he voted in favor of the application at the February 26, 2018, hearing. Board Rog. at 5 (“On February 26, 2018, I ... voted to approve Coulson's USR application. I did not believe that I had a conflict of interest ... *simply because Coulsons had supported my campaign.*” (emphasis added)). Thus, given the timing of the contributions in the lifetime of the application, it was reasonably foreseeable that Commissioner Donnelly would vote on Coulson's application.

Coulson also contends that its First Amendment rights would be infringed if Commissioner Donnelly were disqualified merely because he received campaign contributions. That argument misses the mark, the applicable legal standard, and the Court's holding above. The Supreme Court has stated that, “[s]pending large sums of money in connection with elections, *but not in connection with an effort to control the exercise of an officeholder's official duties*, does not give rise to *quid pro quo* corruption. Nor does the possibility that an individual who spends large sums may garner ‘influence over or access to’ elected officials or political parties.” *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 208 (2014) (emphasis added) (citing *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 359 (2010)). While it's generally impermissible to restrict campaign contributions, the government has a legitimate interest in restricting such contributions when they're made “in connection with an effort to control the exercise of an officeholder's official duties.” *Id.*

But, “ay, there’s the rub,” to quote the Dane. William Shakespeare, *Hamlet* act 3, sc. 1. Because the Court determined that the Coulsons’ contributions had a significant and disproportionate impact on placing Commissioner Donnelly in a position where he’d vote on Coulson’s application, it thus created a significant risk of bias in violation of Thompson’s due-process rights. *Caperton*, 556 U.S. at 884. That is, in the parlance of *McCutcheon*, the Coulsons spent “large sums of money in connection with an effort to control the exercise of an officeholder’s official duties.” 572 U.S. at 208. And the First Amendment doesn’t protect such conduct.

Coulson also points to California and Hawaii Supreme Court decisions for the principle that the mere receipt of funds for a political campaign doesn’t create a conflict of interest, and that to hold otherwise infringes upon the First Amendment. *See Woodland Hills Residents Assn., Inc. v. City Council*, 609 P.2d 1029, 1032–33 (Cal. 1980); *see also Life of the Land, Inc. v. City Council of City & Cty. of Honolulu*, 606 P.2d 866, 902 (Haw. 1980). The Court finds those decisions generally inapposite, but notes that much like *McCutcheon*, the California Supreme Court acknowledged campaign contributions can serve as grounds for disqualification when the evidence shows bribery or a *conflict of interest*. *Woodland Hills Residents Assn., Inc.*, 609 P.2d at 1032 (“*Absent a showing of bribery or conflict of interest*, the law does not render it improper for members of (the council) to vote on projects of developers who have given campaign contributions to committees controlled by those members” (emphasis added)). As our Supreme Court noted, the term “conflict of interest” is a term of art “reflecting a host of different policy determinations, depending on the context in which it operates.” *City of Manassa*, 235 P.3d at 1055. Thus, the Court perceives no First Amendment concerns in its ruling.

Accordingly, the Court concludes that Thompson’s due-process rights were violated when Code § 2-67(10) as-applied under the circumstances failed to protect Thompson from Commissioner Donnelly’s objective serious risk of bias.

The Court's decision in no way prevents Coulson or the Coulsons from making campaign contributions to their preferred political candidate. They may continue to do so, consistent with the applicable campaign-contribution limits. But when their chosen candidate—who is generally a legislator (making laws)—acts as a quasi-judge (making adjudicative decisions), the Due Process Clause requires that candidate to be “an impartial and disinterested decision-maker,” free of bias and a conflict of interest. *City of Manassa*, 235 P.3d at 1056. Indeed, no party may “choose[] the judge in his own cause.” *Caperton*, 556 U.S. at 886.

IV. Conclusion.

For the reasons set forth above, the Board's motion for summary judgment is granted as to Thompson's facial attacks on §§ 2-67(10) and 4.5.3 of the Code. Judgment shall enter in the Board's favor and against Thompson on these claims.

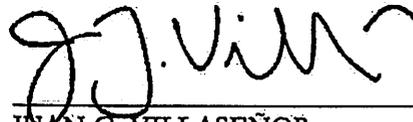
The Board and Coulson's motion for summary judgment, however, is denied as to Thompson's Rule 57 as-applied due-process challenge. Thompson's motion seeking judgment as to that claim is granted and judgment shall enter in Thompson's favor. The Court concludes that because Commissioner Donnelly participated in both the hearing and discussions related to Coulson's application, that participation violated Thompson's due-process rights to an impartial decision-making body.

Accordingly, the Board's decision approving Coulson's application is vacated and this matter is remanded to the Board to hold the hearing on Coulson's application again. Commissioner Donnelly will be recused from participating in any part of that hearing or decision-making process under Code § 2-67(10).¹⁵

¹⁵ The Court's decision to remand is a final judgment. *Scott*, 672 P.2d at 226 (citing *Cline v. City of Boulder*, 532 P.2d 770 (Colo. App. 1975)).

SO ORDERED on August 12, 2019.

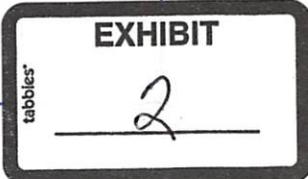
BY THE COURT:

A handwritten signature in black ink, appearing to read "J.G. Villaseñor". The signature is written in a cursive style with a large initial "J" and "G".

JUAN G. VILLASEÑOR
District Court Judge

ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR WADE TROXELL
March 6, 2020

<u>Claim Stated?</u>	<u>Provision Allegedly Violated</u>
<input type="checkbox"/> Yes <input type="checkbox"/> No	City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a FINANCIAL INTEREST
<input type="checkbox"/> Yes <input type="checkbox"/> No	City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a PERSONAL INTEREST
<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-103, C.R.S. generally states ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office (no specific standard or rule stated), and permits enforcement by the district attorney.
<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-104, C.R.S. prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-105(2), C.R.S. prohibits acquiring or holding an interest in any business or undertaking which official has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which official has substantial authority.
<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-105(4), C.R.S. prohibits an official act directly and substantially affecting a business or other undertaking to its economic detriment when official has a substantial financial interest in a competing firm or undertaking .
<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-109(2)(b), C.R.S. - prohibits an official act directly and substantially affecting to its economic benefit a business or other undertaking in which official either has a substantial financial interest or is engaged as counsel, consultant, representative or agent
<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-109(3), C.R.S. – requires official with a personal or private interest in any matter proposed or pending before the governing body to disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum.



ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR WADE TROXELL
March 6, 2020

**** If any of the "YES" boxes are checked, the Ethics Review Board must then consider the facts alleged related to that item and whether those facts are reliable and sufficient to warrant further investigation.**

AGENDA ITEM SUMMARY

Ethics Review Board

March 6, 2020

STAFF

Carrie Daggett, City Attorney

SUBJECT

Consideration in accordance with City Code Section 2-569(d)(1) of whether a complaint filed on January 21, 2020, by Rory Heath, alleging that **Mayor Pro Tem Kristin Stephens** has a financial and personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.

EXECUTIVE SUMMARY

The purpose of this item is to complete the initial screening by the Ethics Review Board of a complaint filed with the Board under City Code Section 2-569(d), as described below. The Complaint and other materials referenced are provided as attachments to the Agenda Item Summary for Item 3 (overall), and that information is incorporated into this subpart by reference.

STAFF RECOMMENDATION

Staff recommends that the Board consider the Complaint and determine whether to proceed with an investigation of the Complaint.

BACKGROUND / DISCUSSION

Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board then considers the complaint and whether it should be further investigated.

The Complaint:

The Board will consider a complaint lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Mayor Pro Tem Kristin Stephens (as well as against Mayor Wade Troxell and Councilmember Ken Summers). The Complaint alleges Mayor Pro Tem Stephens has a conflict of interest in the form of a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision in light of her employment at Colorado State University (CSU), which owns the property. Mr. Heath further alleges that Mayor Pro Tem Stephens is a representative and employee of CSU and that as a result her participation in the Hughes Rezoning "results in a very clear violation of nearly each applicable [law]."

The following is an excerpt from the Complaint summarizing Mr. Heath's concern (from page 11 of the Complaint):

- I. *Fort Collins Mayor Wade Troxell and Fort Collins City Councilmember Kristin Stephens are both employees of Colorado State University, the very same entity seeking favorable re-zoning so that the sale of a large 165-acre parcel of land may be successfully sold to Lennar Homes, a developer.*

...

- III. *The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.*
- IV. *A consistent effort to minimize the representation of the public's wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected Officials.*

The Complaint goes on to request that the Ethics Review Board do the following:

- investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers;
- carry this out using all tools and options at its disposal and “do so by taking to heart the public’s explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins’ Identity;” and
- remove Wade Troxell, Kristin Stephens and Ken Summers from all interactions with the decision-making process, and take “severe remediation actions” to address “the harm to the process already caused.”

(The Complaint provides argument and additional description of the concerns of the Complainant not repeated in this Summary.)

City Ethics Provisions:

Generally, the ethics provisions established by the City include City Charter Article IV, Section 9, and City Code Section 2-568.

State Ethics Provisions:

In addition, various state laws are commonly considered ethics laws. These include:

- Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.);
- Section 24-18-109, C.R.S.;
- Sections 24-18-201 through -206, C.R.S.;
- Sections 18-8-302 through -308, C.R.S.; and
- Sections 18-8-402 through -409, C.R.S.

(The language of Article XXIX of the Colorado constitution – also referred to as “Amendment 41,” provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application.)

The Board Determination:

The Board is required under the Code to evaluate the Complaint and determine by majority vote whether to formally investigate the Complaint. In doing so, the Board should consider:

1. Whether the allegations in the Complaint, if true, would constitute a violation of state or local ethical rules;
2. The reliability and sufficiency of any facts asserted in support of the allegations; and
3. Any other facts or circumstances the Board may consider relevant.

If the Board determines that the Complaint does not warrant investigation, the Board then directs staff to send written notice to the complainant of that determination and the reasoning behind it. A copy of that notice is also sent to the subject of the Complaint and the City Council.

Factual Allegations in the Complaint:

The interests of CSU in the Hughes Rezoning is likely undisputed, so the detailed assertions in that regard in the Complaint are not recited here.

The Complaint asserts the following basic facts regarding Mayor Pro Tem Stephens’s relationship to CSU, as more fully explained in the Complaint itself:

1. She is employed by CSU as the Graduate Coordinator of the Department of Statistics and Program II Assistant in the Department of Statistics.
2. She has taken an Oath to CSU as a condition of her employment. [*The oath requires academic faculty members and administrative professionals to swear to uphold the Constitution of the United States and the Constitution of the State of Colorado, and to faithfully perform the duties of their position at CSU.*]
3. She has collected a paycheck from CSU as consideration for past and future services.
4. “Though currently listed as a Graduate Coordinator and a Program Assistant,” she “could conceivably be promoted to a position with better career opportunities, research authorizing possibilities or a myriad of other benefits.”

The Complaint contains a number of assertions and statements related generally to the input the City Council has received from members of the public regarding the Hughes Rezoning asserting that voting contrary to members of the public’s opposition to the Hughes Rezoning suggests a vote intended to benefit CSU.

It further asserts a number of psychological studies and makes assertions related to inherent bias from employment ties.

****Screening Review Steps****

I. Whether the Complaint Alleges a Violation of City or State Ethics Provisions:

1. City Ethics Provisions: The City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a financial interest or a personal interest in the decision.

1. A ***financial interest*** is an interest in the Hughes Rezoning that is equated with money or its equivalent.

i. If the councilmember is an employee of an affected business, but the Council decision entails NO FORESEEABLE, MEASUREABLE FINANCIAL BENEFIT to the Councilmember, the employee relationship does not create a financial interest.

2. A ***personal interest*** is any interest (other than a financial interest) by reason of which an officer or employee would, in the judgment of a reasonably prudent person, realize or experience:

i. some direct and substantial benefit or detriment,

[**direct** = resulting immediately and proximately from the circumstances and not from an intervening cause.]

[**substantial** = more than nominal in value, degree, amount or extent.]

[**benefit** = an advantage or gain.]

[**detriment** = disadvantage, injury, damage or loss.]

ii. different in kind from that experienced by the general public.

[**different in kind from that experienced by the general public** = of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.]

3. The Ethics Review Board must evaluate whether the facts as asserted in the Complaint (assuming they are true) support the allegation that Mayor Pro Tem Stephens has either a financial interest or a personal interest in the Hughes Rezoning.

2. State Ethics Provisions:

1. For the purpose of the **statutory ethics provisions:**

i. Councilmembers are "**local government officials**" (as defined in Section 24-18-102(6), C.R.S.).

ii. ***Financial interest*** means a substantial interest held by an individual which is (in relevant part):

1. An employment or prospective employment for which negotiations have begun; or

2. A directorship or officership in a business.

(Section 24-18-102(4), C.R.S.).

- iii. **Business** means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit. (Section 24-18-102(1), C.R.S.).
 - iv. Terms not defined in the statutes are considered to have their commonly understood meaning, and they are generally interpreted with the aid of reference to common resources such as a standard dictionary.
2. **Section 24-18-103**, C.R.S., when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.
 3. **Section 24-18-104**, C.R.S., prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
 4. **Section 24-18-105**, C.R.S., sets out ethical principles that are “intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.”
 - i. Section 24-18-105(2) provides that:
 - (2) A ... local government official ... should not acquire or hold an interest in any **business or undertaking** which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantial authority. (Emphasis added.)
 - ii. Section 24-18-105(4) provides that:
 - (4) A ...local government official ...should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a **competing firm or undertaking**. (Emphasis added.)

As noted above, “**business**” is defined as “any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.” As commonly understood, “business” is means a “commercial or industrial enterprise.”

An “**undertaking**” is not defined in the statutes; the term is commonly understood to mean “something undertaken” like a “business, work or a project.”

In at least one formal advisory opinion issued by the Colorado Independent Ethics Commission (IEC), which is authorized to issue opinions concerning the state’s ethics statutes, **the IEC observed that public entities and bodies are not a “business or other undertaking” under Section 24-18-109(2)(b) (IEC Advisory Opinion 17-04, which is attached to the Item 3 Agenda Item Summary for reference).**

CSU is established under Article VIII, Section 5 of the Colorado Constitution as a “state institution of higher education” and, as such, is not a “business or other undertaking” under Section 24-18-105(2):

Thus, while employment is defined as a “financial interest” under Section 24-18-102(4)(c), employment with a public entity like CSU is not employment with a “business or other undertaking” to which Section 24-18-105(2) applies.

5. **Section 24-18-109**, C.R.S., provides that

- i. a local government official shall not (in relevant part) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking **in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent** (§ 24-18-109(2)(b));

As discussed above in relation to the limitation in Section 24-18-105(2), CSU is established under Article VIII, Section 5 of the Colorado Constitution as a “state institution of higher education” and, as such, is not a “business or other undertaking” under Section 24-18-109(2)(b).

Thus, while employment is defined as a “financial interest” under Section 24-18-102(4)(c), employment with a public entity like CSU is not employment with a “business or other undertaking” to which Section 24-18-109(2)(b) applies.

- ii. A member of a governing body of a local government who has a **personal or private interest** in any matter proposed or pending before the governing body shall disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum (§ 24-18-109(3));

1. The statutes don’t define the term “personal or private interest” and there is no directly relevant guidance interpreting this provision.

- a. The Colorado Independent Ethics Commission (“IEC”), which is authorized to issue opinions concerning the state’s ethics statutes) has applied this provision in considering a complaint against a local official related to that official’s interest in a regulatory decision of the body she was a member of. **The IEC did not specifically interpret the term “private interest” while focusing on the direct and substantial benefit to the official. (IEC Advisory Opinion 16-05, which is attached to the Item 3 Agenda Item Summary for reference).**
- b. A common explanation found consistently in the review of provisions of this sort suggests that a “personal or private interest” is one that tends to impair a person’s independence of judgment in the performance of the person’s duties, and this is typically interpreted to relate to a financial interest of the person or their relative in a private enterprise.
- c. A local government official would likely be considered as having a personal or private interest in any decision that would result in the official receiving a direct and immediate pecuniary benefit or result in the official receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.
- d. The City’s local provisions related to financial and personal interests are essentially parallel to this formulation.

2. Applying this standard here, the Board must determine whether the City Council's Hughes Stadium rezoning decision would likely result in Mayor Pro Tem Stephens receiving a direct and immediate pecuniary benefit or result in her receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.

II. Reliability and Sufficiency of Facts Asserted:

If the Board determines that there may have been a violation, then the Board will need to evaluate the facts asserted in the Complaint.

The Board may know information that contradicts the facts that were asserted in the Complaint, or there may not be enough information in the Complaint for you to form a reasonable suspicion that the violation alleged in the Complaint occurred.

On this basis, the Board may determine that the facts asserted in the Complaint are not reliable or sufficient and find the Complaint does not warrant further investigation.

III. Other Relevant Facts or Circumstances:

If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board may identify that information and find the Complaint does not warrant further investigation on that basis.

ATTACHMENTS (in addition to the Attachments to the Agenda Item Summary for Item 3 overall)

1. Review Checklist – Heath Complaint re Kristin Stephens

ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR KRISTIN STEPHENS
March 6, 2020

Claim Stated?

Provision Allegedly Violated

Yes No

City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a **FINANCIAL INTEREST**

Yes No

City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a **PERSONAL INTEREST**

Yes No

Section 24-18-103, C.R.S. generally states ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office (no specific standard or rule stated), and permits enforcement by the district attorney.

Yes No

Section 24-18-104, C.R.S. prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.

Yes No

Section 24-18-105(2), C.R.S. prohibits acquiring or holding an interest in any **business or undertaking** which official has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which official has substantial authority.

Yes No

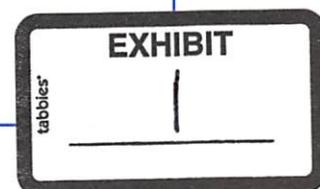
Section 24-18-105(4), C.R.S. prohibits an official act directly and substantially affecting a business or other undertaking to its economic detriment when official has a substantial financial interest in a **competing firm or undertaking**.

Yes No

Section 24-18-109(2)(b), C.R.S. - prohibits an official act directly and substantially affecting to its economic benefit a business or other undertaking in which official either has a **substantial financial interest** or is engaged as **counsel, consultant, representative or agent**

Yes No

Section 24-18-109(3), C.R.S. – requires official with a **personal or private interest** in any matter proposed or pending before the governing body to disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum.



ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR KRISTIN STEPHENS
March 6, 2020

**** If any of the "YES" boxes are checked, the Ethics Review Board must then consider the facts alleged related to that item and whether those facts are reliable and sufficient to warrant further investigation.**

AGENDA ITEM SUMMARY

Ethics Review Board

March 6, 2020

STAFF

Carrie Daggett, City Attorney

SUBJECT

Consideration in accordance with City Code Section 2-569(d)(1) of whether a complaint filed on January 21, 2020, by Rory Heath, alleging that **Councilmember Ken Summers** has a financial and personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.

EXECUTIVE SUMMARY

The purpose of this item is to complete the initial screening by the Ethics Review Board of a complaint filed with the Board under City Code Section 2-569(d), as described below. The Complaint and other materials referenced are provided as attachments to the Agenda Item Summary for Item 3 (overall), and that information is incorporated into this subpart by reference.

STAFF RECOMMENDATION

Staff recommends that the Board consider the Complaint and determine whether to proceed with an investigation of the Complaint.

BACKGROUND / DISCUSSION

Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law or the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. After notice to the complaining party and the subject of the complaint, the Ethics Review Board then considers the complaint and whether it should be further investigated.

The Complaint:

The Board will consider a complaint lodged with the Board through the City Attorney on January 21, 2020, by Rory Heath (the "Complainant"), a Fort Collins resident, against Councilmember Ken Summers (as well as against Mayor Wade Troxell and Mayor Pro Tem Kristin Stephens). The Complaint alleges Councilmember Summers has a conflict of interest in connection with the Hughes Rezoning and related Ethics Review Board hearings in light of a webpage offering his services as a political consultant and lobbyist.

The following is an excerpt from the Complaint summarizing Mr. Heath's concern (from page 11 of the Complaint):

...

- II. *Fort Collins City Councilmember Ken Summers is currently hosting on his website kensummers.org, a page dedicated to his political consulting business/lobbyist business. This page promises direct influence of legislative matters that can be interpreted to mean either the influence of a third party, or of himself, in exchange for compensation of some sort.*
- III. *The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.*
- IV. *A consistent effort to minimize the representation of the public's wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected Officials.*

The Complaint goes on to request that the Ethics Review Board do the following:

- investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers;
- carry this out using all tools and options at its disposal and “do so by taking to heart the public’s explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins’ Identity;” and
- remove Wade Troxell, Kristin Stephens and Ken Summers from all interactions with the decision-making process, and take “severe remediation actions” to address “the harm to the process already caused.”

(The Complaint provides argument and additional description of the concerns of the Complainant not repeated in this Summary.)

City Ethics Provisions:

Generally, the ethics provisions established by the City include City Charter Article IV, Section 9, and City Code Section 2-568.

State Ethics Provisions:

In addition, various state laws are commonly considered ethics laws. These include:

- Sections 24-18-101 through -105, Colorado Revised Statutes (C.R.S.);
- Section 24-18-109, C.R.S.;
- Sections 24-18-201 through -206, C.R.S.;
- Sections 18-8-302 through -308, C.R.S.; and
- Sections 18-8-402 through -409, C.R.S.

(The language of Article XXIX of the Colorado constitution – also referred to as “Amendment 41,” provides that home rule municipalities that have adopted local ethics provisions addressing the topics in that provision are exempt from its application.)

The Board Determination:

The Board is required under the Code to evaluate the Complaint and determine by majority vote whether to formally investigate the Complaint. In doing so, the Board should consider:

1. Whether the allegations in the Complaint, if true, would constitute a violation of state or local ethical rules;
2. The reliability and sufficiency of any facts asserted in support of the allegations; and
3. Any other facts or circumstances the Board may consider relevant.

If the Board determines that the Complaint does not warrant investigation, the Board then directs staff to send written notice to the complainant of that determination and the reasoning behind it. A copy of that notice is also sent to the subject of the Complaint and the City Council.

Factual Allegations in the Complaint:

The Complaint asserts the following basic facts regarding the allegations against Councilmember Summers:

Ken Summers, through his KGS Consulting, offers the following services via his website (see Ex.4):

- *“Opening Doors”*
- *“Providing Access”*
- *“Empowering Influence”*
- *“PERSONAL CONTACT WITH LEGISLATORS to inform them of your position on a bill and why you support or oppose the legislation.”*
- *“COMMUNICATION WITH DEPARTMENTS that interface with your business on the writing and implementation of rules”*
- *“TOURS AND RECEPTIONS that provide legislators an opportunity to learn firsthand about the work that you do”*
- *“Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.”*

The Complaint contains a number of assertions and statements related generally to the input the City Council has received from members of the public regarding the Hughes Rezoning. The Complaint asserts that when looked at in the context of a vote contrary to the public opposition to the Hughes Rezoning outcome that had been expressed, “a vote against the public will, and instead in line with a possible private commercial interest seems to have possibly occurred.” (page 9).

****Screening Review Steps****

I. Whether the Complaint Alleges a Violation of City or State Ethics Provisions:

1. **City Ethics Provisions: The City Charter and City Code prohibit members of the City Council from participating in a decision if the Councilmember has a financial interest or a personal interest in the decision.**

1. A **financial interest** is an interest in the Hughes Rezoning that is equated with money or its equivalent.

i. If the councilmember is an holder of an ownership interest in or an employee of an affected business, but the Council decision entails NO FORESEEABLE, MEASUREABLE FINANCIAL BENEFIT to the Councilmember, the business relationship does not create a financial interest.

2. A **personal interest** is any interest (other than a financial interest) by reason of which an officer or employee would, in the judgment of a reasonably prudent person, realize or experience:

i. some direct and substantial benefit or detriment.

[**direct** = resulting immediately and proximately from the circumstances and not from an intervening cause.]

[**substantial** = more than nominal in value, degree, amount or extent.]

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ii. different in kind from that experienced by the general public.

[**different in kind from that experienced by the general public** = of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.]

3. The Ethics Review Board must evaluate whether the facts as asserted in the Complaint (assuming they are true) support the allegation that Councilmember Summers has either a financial interest or a personal interest in the Hughes Rezoning.

2. **State Ethics Provisions:**

1. For the purpose of the **statutory ethics provisions:**

i. Councilmembers are "**local government officials**" (as defined in Section 24-18-102(6)).

ii. A **financial interest** means a substantial interest held by an individual which is (in relevant part):

1. An ownership interest in a business; or

2. A directorship or officership in a business.

- iii. Terms not defined in the statutes are considered to have their commonly understood meaning, and they are generally interpreted with the aid of reference to common resources such as a standard dictionary.
2. **Section 24-18-103**, C.R.S., when read in conjunction with the rest of the statutory standards of conduct, is interpreted to establish an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office. However, it is general in nature and does not specify a standard or rule to determine what is permissible.
3. **Section 24-18-104**, C.R.S., prohibits disclosure or use of confidential information acquired in the course of official duties and acceptance of certain gifts.
4. **Section 24-18-105**, C.R.S., sets out ethical principles that are “intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.”
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 - i. a local government official shall not (in relevant part) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking **in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent** (§ 24-18-109(2)(b));
 - ii. A member of a governing body of a local government who has a **personal or private interest** in any matter proposed or pending before the governing body shall disclose such interest and refrain from participating in the decision unless necessary to obtain a quorum (§ 24-18-109(3));
 1. The statutes don't define the term “personal or private interest” and there is no directly relevant guidance interpreting this provision.
 - a. The Colorado Independent Ethics Commission (“IEC”), which is authorized to issue opinions concerning the state’s ethics statutes) has applied this provision in considering a complaint against a local official related to that official’s interest in a regulatory decision of the body she was a member of. **The IEC did not specifically interpret the term “private interest” while focusing on the direct and substantial benefit to the official. (IEC Advisory Opinion 16-05, which is attached to the Item 3 Agenda Item Summary for reference).**

- b. A common explanation found consistently in the review of provisions of this sort suggests that a “personal or private interest” is one that tends to impair a person’s independence of judgment in the performance of the person’s duties, and this is typically interpreted to relate to a financial interest of the person or their relative in a private enterprise.
 - c. A local government official would likely be considered as having a personal or private interest in any decision that would result in the official receiving a direct and immediate pecuniary benefit or result in the official receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.
 - d. The City’s local provisions related to financial and personal interests are essentially parallel to this formulation.
2. Applying this standard here, the Board must determine whether the City Council’s Hughes Stadium rezoning decision would likely result in Councilmember Summers receiving a direct and immediate pecuniary benefit or result in him receiving a non-pecuniary benefit or suffering a non-pecuniary detriment that is direct, immediate and different in kind from that shared by the general public.

III. Reliability and Sufficiency of Facts Asserted:

If the Board determines that there may have been a violation, then the Board will need to evaluate the facts asserted in the Complaint.

The Board may know information that contradicts the facts that were asserted in the Complaint, or there may not be enough information in the Complaint for you to form a reasonable suspicion that the violation alleged in the Complaint occurred.

On this basis, the Board may determine that the facts asserted in the Complaint are not reliable or sufficient and find the Complaint does not warrant further investigation.

III. Other Relevant Facts or Circumstances:

If there is additional information available or presented to the Board that leads the Board to conclude that the Complaint does not merit further investigation, the Board may identify that information and find the Complaint does not warrant further investigation on that basis.

ATTACHMENTS (in addition to the Attachments to the Agenda Item Summary for Item 3 overall)

1. Exhibit 4 to Heath Complaint (*kensummers.org* website screenshot)
2. Review Checklist – Heath Complaint re Ken Summers

Search



RSS

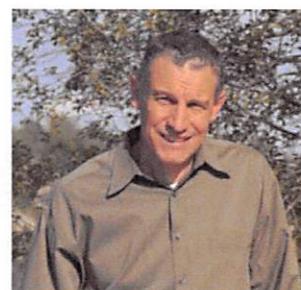
KGS CONSULTING



Opening Doors • Providing Access • Empowering Influence



Ken Summers



The laws that are passed and the regulations that are established have a significant impact on citizens and of all types in Colorado. Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.

KGS Consulting provides you with a value-added partnership so you can be proactive on the issues that impact your business. Here is how that is accomplished:

- **PROVIDING INSIGHT** into the legislative process and political environment
- **TRACKING LEGISLATION** that impacts your business and helping you to take a formal position on those pieces of legislation
- **PERSONAL CONTACT WITH LEGISLATORS** to inform them of your position on a bill and why you support or oppose the legislation.
- **PROPOSING NEW LEGISLATION OR CHANGES IN CURRENT LAW**
- **ARRANGING FOR TESTIMONY ON BILLS** before committees in collaboration with others who share your position
- **COMMUNICATION WITH DEPARTMENTS** that interface with your business on the writing and implementation of rules
- **TOURS AND RECEPTIONS** that provide legislators an opportunity to learn firsthand about the work that you do
- **SERVING AS A SPOKESPERSON** for your business at the capitol, with other industry groups and in the community
- **PROVIDING FEEDBACK AND UPDATES** as needed to stay on the forefront of how bills are progressing through the process

These are some of the ways that having a contact inside the capitol can work for you. Some services may be more appropriate than others depending on your needs and area of interest.



I look forward to developing a partnership where I can serve you at the capitol by providing access, opening doors and empowering influence in the legislative process. You can make a difference and be a part of shaping public policy in Colorado.

Ken

**KGS Consulting * ken@kensummers.org
303-725-4765**

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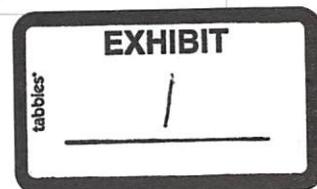
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Julie Braswell

FEB 23, 2017 @ 15:04:32

REPLY

Hi Ken,

I guess it is really a small world after all. You met my teenaged son who is an intern for Senator Lundburg a couple of weeks ago. You must have made an impression on him because he came home and told me all about the visit. I knew your name sounded familiar and when I googled you I realized that we had met several years ago. You officiated my uncle's funeral – his name was Bruce Jones.

Anyway Nathaniel told me you were running for city council here in Fort Collins (which is where I live). That is very exciting news as Fort Collins is in desperate need of conservative Christian leadership. I signed up for your newsletter and look forward to keeping up with your campaign.

Blessings,
Julie

Leave a Reply

 Your Name * Your Email * Your Website

June 2018
May 2018
April 2018
March 2018
February 2018
January 2018
December 2017
November 2017
October 2017
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July 2017
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Looking for more on Ken's Story?

To look at previous post and pictures from Ken's hospitalization go to <http://www.caringbridge.org/visit/kensummers>



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Contact // Email: ken@kensummers.org

ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR KEN SUMMERS
March 6, 2020

<u>Claim Stated?</u>	<u>Provision Allegedly Violated</u>
<input type="checkbox"/> Yes <input type="checkbox"/> No	City Charter Article IV, Section 9(b)(3) – prohibits participation when official has a FINANCIAL INTEREST
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<input type="checkbox"/> Yes <input type="checkbox"/> No	Section 24-18-103, C.R.S. generally states ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public office (no specific standard or rule stated), and permits enforcement by the district attorney.
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ETHICS REVIEW BOARD -- REVIEW CHECKLIST FOR KEN SUMMERS

March 6, 2020

**** If any of the "YES" boxes are checked, the Ethics Review Board must then consider the facts alleged related to that item and whether those facts are reliable and sufficient to warrant further investigation.**