

Carrie Daggett

From: Ken Summers
Sent: Thursday, March 5, 2020 1:34 PM
To: Carrie Daggett
Subject: Ethics Complaint Reponse
Attachments: Ethics_Complaint_response.docx

Carrie

I will not be attending the Ethics Committee meeting on March 6, 2020. I am attaching for the committee a written response.

Ken Summers
Councilmember
District 3

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



Ken Summers
Councilmember
District 3

Date: March 5, 2020
To: City Council Ethics Committee
From: Ken Summers
Re: Ethics Complaint

Ethical conduct is of great importance for an elected official. While it is the duty of the City Council acting as an Ethics Committee under our Charter and Code to investigate complaints, it is incumbent upon the individual initiating the complaint to offer solid and verifiable documentation of the validity of the allegation.

Mr. Heath has done none of this. He only makes insinuations that have no basis in fact and border on liable and slander.

It appears that Mr. Heath believes that there is a "conflict of interest" but has not identified the "interest" that is in conflict with my performance as a member of the City Council.

He bases his complaint on an obscure tab on my personal website that relates to my KGS Consulting, LLC that was established in 2014 as I attempted to secure some employment outside of my disability payments as a nonprofit consultant and work in government relations. Unfortunately, I never secured a client in my efforts which were undermined by the lingering ramifications of my West Nile Virus infection.

Mr. Heath has the obligation to identify the interest I have which conflicts with a zoning decision before the City Council. He has in his documentation offered none, outside of a bizarre reference to my past attempts to gain some meaningful, legal and ethical income for my family.

In my years of public office, I have been exposed to several ethical issues involving elected officials. However, I have **never** heard of a complaint made about an action that never happened place, for an activity that never took place!

I would also point out in the issues that are before the committee to remember the scope of the authority of the Council's action called into question is an administrative matter regarding a zoning decision, **NOT** a financial decision.

The sale of this property, if and when it takes place is wholly the decision of the property owner and is outside of the scope of the City Council. It would be improper for the City Council to take an action that would impact negatively the value of the property without just compensation to the property owner. Additionally, remember the zoning decision before the City Council is based on a Council requested recommendation from the City Council Staff and not zoning initiated by any Councilmember.

Carrie Daggett

From: Rory Heath <roryheath1@gmail.com>
Sent: Thursday, March 5, 2020 1:49 PM
To: Carrie Daggett
Cc: Susan Gutowsky; Ross Cunniff; Julie Pignataro; Emily Gorgol; Jacy Marmaduke; City Leaders; marc.sallinger@9news.com
Subject: Re: Exhibits Not Presented to Ethics Review Board

Ms.Daggett,

To be clear, my objection is the lack of information regarding this process. The memo snippet that I included in the previous email, by all indications, made it seem as if those exhibits had still not been properly distributed to the Board. No broadcasting of actions taken, or procedures carried through has been shared with me as the complainant, leaving me to wonder which actions are carried out. I still await dated proof of this transmission of flash drives and the acceptance/discussion of digital instead of a printed format by the Board; A printed format that could be preferred by some Board members.

My objection, in general is the handling of this process and the overall lack of public-facing transparency. In choosing not to include any exhibits in the packet, you made a conscious decision to edit my complaint and omit a portion of it. By the Memo quoted, it is very clear that normally those exhibits are included in the packet, but in my case, they were left out. This is prejudicial handling of my complaint. Whether blatant or "by the way of" this is still a suppression of evidence, even if only digital as you claim. Further, this does not change the fact that the entirety of my complaint is still not available to the public online and through the FCgov website.

Your decision to edit and omit portions of my complaint is a summary on your part, of my voice. This same tactic has been applied at every step of this process, even in the agenda materials provided to the Board. Most shockingly, this tactic has been applied to the feedback from the public regarding the Hughes site. City staff only presented the public with 5 narrow options for them to choose from. All options having very dense zoning to them. A fill in the blank option was provided, but even that was subject to a "joking of the stats" and careful mis-summary on the part of city staff.

I have also not been notified of any pre-meeting packets being uploaded, nor had any shared with me.

This Ethics Review process lacks a defined structure in all facets of it: discovery, litigation, approach and transparency. As the complainant, I have very few rights afforded to me due to the process in place. Interestingly, Its not even imperative/required in code that I be physically present to argue for the merits of the complaint that I myself submitted. **A plaintiff-esque individual not required to be present for a trial to occur and then, only allowed to speak during the very beginning of it? What sort of judicial process is this?**

Throughout this process, I've tried to give the City the benefit of the doubt, but I can no longer do that.

To be explicit, these are my requests/ further objections to the present process:

- **That this Ethics Review Board Meeting be televised, streamed, video-recorded and archived on the city website**
- **That I be furnished proof of reception of my complaint with exhibits, by the Ethics Review Board Members**
- **That I be furnished all materials provided to the Board, city staff, and the individuals named in the complaint, regarding this complaint**
- **That I be furnished proof that the Board was able to view a physical copy of the Complaint PRIOR to the date of the hearing, citing the date**

- That I be provided with a timeline of all instances when this Ethics Hearing was discussed amongst any Board members/ Council. And provided any documentation surrounding those meetings. Also, were there any "work sessions" that the public did not know about that involved discussion of this Complaint? Was there any other covering/meeting of the Ethics Review Board prior to now?
- **Most Importantly: That the hearing have much more relaxed time restrictions and structure changes. The previous ethics complaint allowed only 10 minutes at the beginning of each complaint for the complainant to speak, and then afterwards, the complainant was not able to speak, nor even defend his complaint, when very clearly he was the one best able to. In American litigation, a response period is a rule, be it a response or a redirect.**

I ask that these requests be evaluated by the Board in preparation for the Ethics Review Board Meeting tomorrow.

-Rory Heath

On Wed, Mar 4, 2020 at 9:25 PM Carrie Daggett <CDAGGETT@fcgov.com> wrote:

Mr. Heath,

The entire complaint, with all exhibits, totaling over 2,000 pages as I recall, was provided on a jump drive to each member of the alternate Ethics Review Board (as well as the three subjects of your complaint) by the City Clerk promptly after you filed it.

We reproduced the voluminous exhibits and have two hard copy sets for reference. One is available for public inspection in the City Clerk's Office and we will also bring a set to the Ethics Review Board on Friday.

I'm unclear what your objection to this would be; please feel free to let me know if you have further objection.

-C

Carrie Daggett

On Mar 4, 2020, at 8:59 PM, Rory Heath <roryheath1@gmail.com> wrote:

Ethics Review Board and City Attorney Daggett:

Quoted from the attached memo:

City Attorney Daggett:

- Noted the upcoming Ethics Review Board hearing scheduled for this Friday. There was a question about Mr. Heath's exhibits. These will be available in hard copy at the hearing for anyone interested in reviewing them. They were not included in their entirety as part of the meeting packet due to their volume

In reviewing the FCGov website published Memorandum on March 2nd, RE: Leadership Planning Team Meeting (see attached), it was made apparent that the exhibits that were a part of the Ethics Complaint still have not been made available to the Ethics Review Board and would only be made available, in hard copy, in a presumable single copy on the date of the Hearing, and not before.

My complaint and the exhibits that come with it, were submitted and accepted by the city on January 21, 2020. These exhibits, in tandem with my complaint, are integral to my argument and presentation of the ethics violations that have occurred in Fort Collins. For all intents and purposes, those exhibits are part of my complaint, not separate to it.

These exhibits not being made readily available as part of the packet to the Ethics Review Board is a classic example of suppression of evidence.

Even having these exhibits available only in physical form the day of the Hearing still does not give the Board, City Staff, nor the public apt time to properly review the documents. The City Attorney has a duty to disclose the complaint and associated exhibits in full, in a reasonable time frame that allows Council members sufficient time to familiarize themselves with the complaint and exhibits for consideration prior to testimony at the hearing. The Ethics Review Board meets in less than 2 days, on March 6th, 2020; considering Council's lives outside of their city service, this is not enough time for them to properly review the Complaint with it's exhibits.

Further, the explanation that these materials were not included in the review packet due to space limitations does not make sense, considering that Council and other Boards routinely receive packets numbering 800 pages or more. For example, the packet for the Agenda Item Summary of the Hughes Stadium Rezoning, Item #12 of the Nov 5, 2019 meeting of City Council had 802 pages in it itself.

Additionally, this lack of transparency is a staggering further continuation of a series of actions like these. I have repeatedly and politely asked that the Ethics Review Board meetings be televised, recorded and be made available on the FCGov website, and stored in the records of the same website. I have been told that that action of transparency will not be taken, despite the fact that video cameras are already utilized in that room, and have broadcast and recorded from that room before. This meeting of the Ethics Review Board, per your own notice (see attached), is considered a meeting of The City Council, why isn't it televised, recorded, documented and archived?

Why is it that Ethics Review Board Meetings in general, with the importance that they carry, are not broadcast, nor video recorded, nor stored in video format on the FCGov website? Why is it that even

past audio recordings of Ethics Review Board Meetings are not available on the FCGov website for the public to review?

Each one of actions like these is an erosion of the public trust that we have placed in the City Government throughout the years. What other proceedings and Ethics Complaints were handled in this matter?? Did the review board for previous Ethics Complaints not have the full amount of evidence before them? What else has been put past the public's view that we don't know about?

This is amazing to me that what appears to be a perpetration of a very corrupt practice is actively happening in the city that we love so much.

-Rory Heath

<LPT Memo.pdf>

<2020-3-6 REV Public Notice.doc>