

AGENDA ITEM SUMMARY

Ethics Review Board

August 19, 2020

STAFF

Carrie Daggett, City Attorney

SUBJECT

Consideration in accordance with City Code Section 2-569(d)(1) of whether a complaint filed on July 17, 2020, by Jake Knebgil, alleging that **Mayor Wade Troxell** has a conflict of interest in the Hughes Stadium annexation property rezoning decision (or related land use matters), 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.

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), “[a]ny person who believes 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 . . .” (*emphasis added*). 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 Manager on July 17, 2020, by Jake Knebgil (the “Complainant”), a Fort Collins resident, against Mayor Wade Troxell. The Complaint alleges Mayor Wade Troxell has a conflict of interest in the Hughes Stadium annexation property rezoning decision or related land use matters in light of his employment at Colorado State University (CSU), which owns the property and specifically because of Mr. Knebgil’s expectation that CSU Chancellor Tony Frank will appear personally before Council. Mr. Knebgil further alleges that Mayor Troxell must recuse himself before the rezoning of the Hughes Stadium and, presumably, other related land use matters.

The following is Mr. Knebgil’s Complaint as stated (unedited) in his July 17 email to City Clerk Delynn Coldiron:

By not recsueing himself from this matter now that troy frank his employer is personally involued in the matter (by appering personally as the chancler of CSU in front of the city council to advocate in favor of the project) MR troxell knowing puts himself in

a conflict position by having to choose between representing the citizens of Ft Collins and his oath to the office of mayor or siding with the gentleman who controls his paycheck and employment as a professor at CSU who is there in person in the council chambers..The very presence of Tony Frank in the council chambers advocating for the rezoning in itself puts pressure and stress on both of his employees who sit on the council who are both well aware of the financial impact the rezoning will have on CSU their employer ..this is not a position where any reasonable amount of impartiality can be expected from any elected official on a matter that so greatly involves their employer

...

this is the limit of the info and cause I can show on why Mayor Troxell must recuse himself from the huge rezoning matter now that Mr Frank is personally involved thank you for your time

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.

I. Whether Allegations Would If True Constitute a Violation:

The screening step is intended to determine whether the Complaint alleges actions that would if true constitute a violation of City or state ethics provisions. In this case the Complainant generally asserts that Mayor Troxell has a conflict of interest.

City Ethics Provisions:

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

Article IV, Section 9(b)(3) of the City Charter requires a Councilmember to disclose upon discovery any *financial interest* or *personal interest* in a Council decision and to refrain from voting on, attempting to influence or otherwise participating in such decision in any manner as a City officer.

Article IV, Section 9(a) of the City Charter defines the key terms ***financial interest*** and ***personal interest***, as follows:

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;

...

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. . . .

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.

Analysis:

The Board has previously considered on two different occasions complaints asserting that Mayor Troxell has a conflict of interest in the Hughes Stadium rezoning. In each instance, the Board determined that no further investigation of the complaint was needed, on the basis that the mere fact that Mayor Troxell is employed on the faculty of CSU does not constitute grounds for finding that he has a conflict of interest (financial interest or personal interest) in the Hughes Stadium annexation property rezoning decision. The minutes of the Board's discussion in the prior reviews are attached for reference.

In this complaint, the focus of Mr. Knebgl's complaint is on the *expectation* that CSU Chancellor Tony Frank would be appearing personally before the City Council in connection with Hughes Stadium rezoning. The complaint may fairly be read to cover other related land use matters as well. Mr. Kenbgl alleges that the fact of such a personal appearance would result in a conflict of interest in the rezoning decision (or related land use matters).

The complaint *anticipates* that a violation will occur and does not allege an event has *actually* occurred. The ethics complaint process allows for the filing of complaints alleging that a Council member has violated any provision of state law or the Charter or Code pertaining to ethical conduct; in light of this it does not appear to allow for complaints about events that have not yet occurred.

Based on this, the Board may wish to find that the complaint does not make allegations that, if true, would constitute a violation, because there is no allegation of events that have actually occurred.

In addition, if the Board does not believe that a personal appearance by CSU Chancellor Frank would alter the analysis of whether Mayor Troxell has a conflict of interest in the rezoning decision (or related land use matters), the Board may also choose to find that

facts asserted in the Complaint, even if they had come to pass, would not state a violation of state or local ethics provisions.

II. Reliability and Sufficiency of Facts Asserted:

The Board may also determine that no further investigation is needed based on an evaluation of 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.

Here, because CSU Chancellor Frank has not appeared before the Council, the Board may on that basis find the complaint to be without merit and to warrant no 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.

REVIEW CHECKLIST

The attached Review Checklist provides a more detailed list of each of the ethics provisions within the scope of the Board's review.

ATTACHMENT

1. July 17, 2020, KnebgI Complaint
2. December 16, 2019, Ethics Review Board minutes (relevant portions highlighted).
3. March 6, 2020, Ethics Review Board minutes (relevant portions highlighted).
4. Review Checklist – KenbgI Complaint against Mayor Troxell

From: Jake Knebgf
To: [Delynn Coldiron](#)
Subject: [EXTERNAL] Re: mayor wade troxell tony frank
Date: Friday, July 17, 2020 8:24:12 PM
Attachments: [image001.png](#)

yes mamm
my complaint against mayor troxell is this.

By not recsueing himself from this matter now that troy frank his employer is personally invouled in the matter (by appering personally as the chandler of CSU in front of the city council to advocate in favor of the project) MR troxell knowing puts himself in a conflict postion by having to chose between repersenting the citizens of ft collins and his oath the the office of mayor or siding with the gentleman who controls his paycheck and employment as a professor at CSU who is there in person in the council chambers..The very persence of tony frank in the council chambers advocateing for the rezoning in itself puts pressure and stress on both of his employees who sit on the council who are both well aware of the finncail impact the rezoning will have on CSU their employer ..this is not a postion where any resonable amount of impartiality can be expected from any elected official on a matter that so greatly invoules their employer

As far as Mr frank i would like to know if the city attorney could look into what can be done as far the city level about infulanceing a pubic servent at the city level ..this would seem to be a city matter ..it invoules the mayor a city councilwoman a city rezoning and a city ethics review board .not sure why the state would have to step in ..Im sure we have laws on the books about bribing or infulanceing memebrs of the city goverment by private persons ..

this the limit of the info and cause i can show on why mayor troxell must recuse himself from the huges rezoning matter now that mr frank is personally invouled

thank you for you time

On Friday, July 17, 2020, 01:59:33 PM MDT, Delynn Coldiron <decoldiron@fcgov.com> wrote:

Hi Mr. Knebgf –

Thank you for writing to us regarding filing an ethics complaint against Mayor Troxell and Tony Frank.

The City's ethics review process covers Councilmembers or board and commission members who citizens feel may have violated any provision of state law or the City's Charter or Code. Your complaint seems to address actions of CSU Chancellor Tony Frank which is not within the scope of our process. I would encourage you to reach out to the State of Colorado regarding your complaints against Mr. Frank.

We can certainly pass along your request to Mr. Troxell that he recuse himself from participating in the upcoming preapplication hearing related to Hughes Stadium. To proceed with an ethics review, we would need more information about what particular state

law, or City Charter or Code requirement you believe the Mayor may have violated at this point.

Please let me know if you have questions.

Thanks,

Delynn Coldiron
City Clerk

["Tell us about our service, we want to know!"](#)

From: Melanie Clark <MCLARK@fcgov.com>
Sent: Friday, July 17, 2020 11:30 AM
To: Delynn Coldiron <DECOLDIRON@fcgov.com>; Darin Atteberry <DATTEBERRY@fcgov.com>; Carrie Daggett <CDAGGETT@fcgov.com>
Subject: FW: [EXTERNAL] mayor wade troxell tony frank

Good morning Delynn and Carrie,

Please see the updated ethics complaint below.

Thank you,

Melanie

.....
Melanie Clark
Executive Administrative Assistant
City Manager's Office
970-416-4312



COVID19 Resources

For all residents: <https://www.fcgov.com/eps/coronavirus>

For businesses: <https://www.fcgov.com/business/>

Want to help: <https://www.fcgov.com/volunteer/>

From: Jake Knebgj <crazyjay2012@yahoo.com>
Sent: Friday, July 17, 2020 11:05 AM
To: Darin Atteberry <DATTEBERRY@fcgov.com>
Subject: [EXTERNAL] mayor wade troxell tony frank

Mr atteberry

i would like to update my ethics complaint against mayor wade troxell and CSU chancellor tony frank .. Again mr toxell is an employee of Mr frank and needs to recuse himself from the huges rezoning matter

i would also like to file a complaint against mr tony frank for influenceing a public servant i point to colorado law

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. Source: L. 71: R&RE, p. 459, § 1. C.R.S. 1963: § 40-8-302. 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.

Mr frank controls mr toxells employment and salary as a professor at CSU and has a vested personal and financial interest in seeing the huges rezoning approved ..

Ethics Review Board Meeting Minutes
December 16, 2019
3:00 p.m.

Members in Attendance: Board members Ken Summers, Julie Pignataro and Councilmembers Susan Gutowsky, Emily Gorgol. Carrie Daggett, City Attorney; John Duval, Deputy City Attorney; Jeanne Sanford, Paralegal.

Public in Attendance: Mayor Wade Troxell, Dick Kaufmann, Mayor Pro Tem Kristin Stephens, Complainant Nicholas Frey, Kevin Jones of Fort Collins Chamber of Commerce and fifteen (15) members of the public.

A meeting of the City Council Ethics Review Board (“Board”) was held on Monday, December 16, 2019, at 3:00 p.m. in the CIC Room, City Hall West.

The meeting began at 3:00 p.m. The Board reviewed the Agenda which contained the following items:

1. Selection of Presiding Officer for Alternate Ethics Review Board as it considers the pending complaints.
2. Review and Approval of the July 29, 2019, Minutes of the Ethics Review Board.
3. Consider in accordance with City Code Section 2-569(d)(1) whether a complaint filed on November 14, 2019, by Nicolas Murphy Frey and Mary Satterfield Grant, alleging that Mayor Wade Troxell has a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.
4. Consider in accordance with City Code Section 2-569(d)(1) whether a complaint filed on November 14, 2019, by Nicolas Murphy Frey and Mary Satterfield Grant, alleging that Mayor Pro Tem Kristin Stephens has a financial interest and a personal interest in the Hughes Stadium annexation property rezoning decision, warrants investigation.
5. Consider in accordance with City Code Section 2-569(d)(1) whether the additional complaint filed by Gordon Hadfield, Esq., on behalf of Mary Satterfield Grant, alleging that Mayor Wade Troxell has a conflict of interest in the Hughes Stadium annexation property rezoning decision in light of National Association of Realtors Fund campaign activities in 2017 warrants investigation.

The first item on the agenda, selection of a Chair, was discussed. A Motion was made to approve Councilmember Pignataro as Chair. Councilmember Gorgol seconded the Motion. Ayes: Councilmembers Gorgol, Cunniff, Gutowsky; Nays: Councilmember Summers. The Motion to appoint Councilmember Pignataro as Chair passed by a vote of 4-1.

The approval of the July 29, 2019, Minutes of the Ethics Review Board was next. The Minutes were approved by unanimous vote.

City Attorney Daggett discussed the three main items of business and gave a quick overview of the process. Items 3, 4 and 5 of the Agenda were screening decisions to be made under the City Code.

The third agenda item, the Frey Complaint against Mayor Troxell, was discussed. The Board started with the complaining party's comments which were limited to 5 minutes. Nicholas Frey stated that Mary Satterfield Grant was not present. Mr. Frey's main discussion was regarding the key determination on whether Mayor Wade Troxell had a personal and financial conflict of interest in voting for the Hughes Stadium rezoning due to his employment and close connection with CSU. Mr. Frey discussed the question if Mayor Troxell and Mayor Pro Tem Stephens would receive any benefit since they are CSU employees.

Mayor Troxell next spoke and stated as he declared at the first reading on the Hughes Stadium rezoning, he does not believe he has a conflict of interest as this is a zoning issue. Mayor Troxell called the Board's attention to Resolution 14-107 and the advisory opinion that went through the Ethics Review Board as it basically stands true today. Dick Kaufmann next spoke that no CSU money comes from the general fund; it comes from outside sources.

City Attorney Carrie Daggett then gave a brief overview of the applicable Code and read the definition a personal financial interest as well as the eight exceptions to financial interest. Ms. Daggett stated the focus is on if there is a foreseeable financial benefit resulting from the Hughes Stadium rezoning.

The Board then discussed the workbook and the questions pertaining to personal or financial interest. Nicholas Frey discussed his opinion that a personal interest exists as CSU stands to benefit from the rezoning, which will then give Mayor Troxell a direct financial interest from CSU selling the land to the highest bidder.

Councilmember Cunniff asked the Mayor if they were told they'd be compensated for this voting. Mayor Troxell replied, absolutely not; he has separation as an elected official.

The Chair of the Board, Julie Pignataro, stated the next question, 3, is there a personal interest in rezoning? Board members Summers, Cunniff and Gorgol stated no as there was no correlation within the terms of the Code.

Board member Pignataro stated she is not firm on this yet because of the scale of risk involved. Due to the type of employer CSU is, if your company succeeds, you succeed as well.

The Board discussed this and stated the way the Code is written, this rezoning will not impact anyone's salaries.

Councilmember Summers made a motion that Mayor Troxell's personal or financial issue in voting on the rezoning of the Hughes Stadium property allegations are without merit. It was found not to be in violation of state or local code and no further investigation is warranted. Councilmember Cunniff seconded the motion and explained the way the Code was written leads us to a no. The motion was approved by the unanimous vote of the Board.

The Board moved on to Item 4 on the Agenda.

Nicholas Frey spoke for 5 minutes. Mr. Frey stated Mayor Pro Tem Stephens is an employee of CSU, the same as Mayor Troxell, and it is important that this Board understands there is potential direct and substantial benefit from being an employee of CSU. Mr. Frey stated that a reasonably prudent person would not understand, and a judgment call should have been made. Nicholas Frey stated Ms. Stephens should not have voted on this as she would be perceived to be biased. Mr. Frey stated public perception is what it is and there is a conflict.

Mayor Pro Tem Kristin Stephens then read her statement. Ms. Stephens does not believe she has a personal or financial interest in the Hughes Stadium rezoning. Ms. Stephens stated she is very conscious about ethical conduct. Nevertheless, she is a state classified employee and her raises are determined by state legislators, not her employer. Since her salary is decided by state budget, she has no financial interest. Ms. Stephens stated she has no personal interest as the City Charter defines direct and substantial benefit and she would have recused herself had she thought she had personal interest.

Chair Pignataro stated she has cautioned all parties regarding perception by the general public and the need to be very careful in this regard. Ms. Pignataro stated when the Board finds Code is lacking, we will take steps to remedy. Chair Pignataro stated Mr. Frey's statements were heard by the Board.

The Board discussed Mayor Pro Tem Stephens' financial and personal interest in this decision. Councilmember Cunniff made a motion that there is no need for further investigation on this item. Councilmember Summers seconded the motion. The motion was approved by unanimous vote of the Board.

Agenda Item No. 5, relating to campaign contributions was discussed.

Councilmember Cunniff stated this complaint seems to rest on the case regarding Tom Donnelly in which specific campaign contributions made to Commissioner Donnelly's campaign by project owners triggered a conflict of interest related to their project. This complaint alleges campaign expenditures made by the National Association of Realtors Fund in support of the Mayor's reelection created a conflict of interest for him in connection with the Hughes Stadium item.

City Attorney Daggett stated this looks like a challenge to Council's approval on rezoning as violating constitutional due process, which is outside the Board's purview. The Board asked

Mayor Troxell if there was a coordinated campaign effort in this situation. Mayor Troxell replied a candidate has no control over independent campaign expenditures, which by definition are not coordinated with the candidate.

Councilmember Cunniff made a motion that this allegation does not fall under the purview of the Ethics Review Board process and does not merit further investigation. Councilmember Gutowsky seconded the motion. The motion was approved by the unanimous consent of the Board.

Under Other Business, Councilmember Cunniff discussed that the City's ethics code is not easy to interpret, and it gets problematic having Council define what it is. Mr. Cunniff stated he believes he made the decision any reasonable and prudent person would sitting in his chair. Mr. Cunniff stated however, since the general public is not as educated on these issues, he would like to propose the City Attorney's Office bring options for Code language creating a personal standing Ethics Review Board with random members rotated on an annual basis.

Chair Pignataro stated she thinks this is a great idea as it pertains to perception because many issues are coming up and it would be helpful to remove that perception so a reasonably prudent person could reach their own conclusions under the ethics rules. Chair Pignataro stated it will be an additional burden on staff, but it's worth taking a look at.

City Attorney Daggett discussed the various issues on this matter and stated she would bring some options for Council discussion. The Board discussed the timing on this and stated no hurry on this.

Meeting adjourned 4:41 pm.

Ethics Review Board Meeting Minutes
March 6, 2020
5:00 p.m.

Members in Attendance: Board members Julie Pignataro and Ross Cunniff; Councilmembers Susan Gutowsky, Emily Gorgol; Carrie Daggett, City Attorney; Jeanne Sanford, Paralegal, Delynn Coldiron, City Clerk.

Public in Attendance: Mayor Wade Troxell; Mayor Pro Tem Kristin Stephens; Complainant Rory Heath and his attorney, Andrew Bertrand and approximately 30 members of the public.

A meeting of the City Council Ethics Review Board (“Board”) was held on Friday, March 6, 2020, at 5:00 p.m. in the CIC Room, City Hall West.

The meeting began at 5:00 p.m. The Board reviewed the Agenda which contained the following items:

1. Selection of Presiding Officer for Alternate Ethics Review Board as it considers the pending complaints.
2. Review and Approval of the December 16, 2019 Minutes of the Ethics Review Board.
3. Consider in accordance with City Code Section 2-569(d)(1) whether a complaint filed on January 21, 2020, by Rory Heath, making various allegations regarding the conduct of the Councilmembers below, warrants investigation:
 - a. Mayor Wade Troxell
 - b. Mayor Pro Tem Kristen Stephens; and
 - c. Councilmember Ken Summers
4. Other Business.
5. Adjournment.

The first item on the agenda, selection of a Chair, was discussed. Councilmember Ross Cunniff made a motion to approve Councilmember Pignataro as Chair. Councilmember Emily Gorgol seconded the motion. The motion to appoint Councilmember Pignataro as Chair was adopted by unanimous consent.

The approval of the December 16, 2019 Minutes of the Ethics Review Board was next on the Agenda. Councilmember Cunniff made a motion to approve the December 16, 2019 Minutes and Councilmember Emily Gorgol seconded the motion. The Minutes of the December 16, 2019 Ethics Review Board were approved by unanimous consent.

City Attorney Daggett explained the background materials, including of Rory Heath's Complaint, were provided with an introductory Agenda Item Summary ("AIS"), accompanied by three sections pertaining to each part of the Complaint. The allegations against Mayor Troxell were contained in AIS 3a, Mayor Pro Tem Kristen Stephens's portion in AIS 3b and Councilmember Ken Summers's portion in AIS 3c.

The Board decided to give the Complainant and respondent 5 mins to speak in turn and allowed 5 minutes of rebuttal for each.

City Attorney Daggett discussed the overview of the complaint and the structure of the materials presented. City Attorney Daggett explained supplemental materials received on March 5, 2020, were given to all members of Council and included Ken Summers's statement and an email exchange with Complainant regarding his procedural concerns. These documents were also posted on the public website.

Complainant Rory Heath introduced his attorney, Andrew Bertrand, and then spoke for 5 minutes, in which he asked the Board for consideration for a more judicious process. Mr. Heath stated he felt his complaint, along with all exhibits referenced and highlighted were not given to the Board.

Councilmember Pignataro assured Mr. Heath they all received the complaint with highlighted exhibits the day he filed the complaint contained on a jump drive which was given to all Councilmembers.

Mr. Heath stated he felt Council was not given the full scope and key ethics laws were not furnished by the City Attorney. Mr. Heath stated that Professor Wade Troxell is an employee of CSU which fits within all applicable Colorado Revised Statutes definitions highlighted in his materials. He asked the Board to consider outsourcing this Ethics Review Board as he felt the process was biased as was the checklist supplied by City Attorney Daggett.

Mayor Troxell next spoke and pointed out previous documents related to conflict of interest with his employment at CSU. Mayor Troxell talked about City Council Resolution 2014-107 wherein he asked for a review regarding the CSU stadium issue. Mayor Troxell read one of the Whereas clauses in that Resolution which stated the attached advisory opinion concluded Mayor Troxell did not have a conflict of interest with the CSU stadium issue considering his employment by CSU.

Mayor Troxell stated as it relates to the previous Ethics Review Board (in December, 2019), two determinations were made. The Board voted unanimously that further investigation of a complaint was not warranted and there was no financial or personal conflict of interest and no violation of any state or city violation of ethics. Mayor Troxell further stated that in this complaint, there is no financial benefit or detriment in this matter; this is a rezoning issue which is more administrative in nature. It does not fit within the definition of financial benefit. Regarding a personal benefit, Mayor Troxell stated he has no direct or substantial personal benefit. The state ethics provisions exclude institutions of higher education, so directorship means fiduciary member; Mayor Troxell stated he is only a faculty member.

In Mr. Heath's rebuttal time, he stated he was glad Mayor Troxell brought up the previous ethical situation with the stadium as this speaks to a larger problem. Mr. Heath stated it would be of interest how a court of law would interpret this; it is unfair for Councilmembers to judge their peers. This is not fair as Mayor Troxell collects a paycheck which says CSU no matter how one wants to look at it. Mr. Heath explained this is a first piece of a larger piece if the zoning goes through.

Andrew Bertrand spoke to the financial benefit per dwelling payment to CSU in the current development contract for this land being rezoned which is very different than the CSU stadium situation and should be considered as such.

Mayor Troxell then gave his rebuttal, stating that Rory Heath had made no case and these broad allegations did not relate to him. Mayor Troxell asked if Mr. Heath was talking about the CSU system, CSU Fort Collins, or CSU Research Foundation. Mayor Troxell stated he is a faculty member of the College of Engineering and is not involved with the Board of Governors and these conversations. Mayor Troxell also spoke to Mr. Heath's allegations regarding donations to his campaign, and noted there is nothing to substantiate that allegation. Mayor Troxell stated Mr. Heath is factually wrong and his broad-based innuendos do not relate to him.

Councilmember Pignataro brought the issue back to the Board. Ms. Pignataro stated the City Attorney's Office will be coming to Council with ideas for a different Ethics Review Board structure to hear a complaint against a Councilmember sometime this summer.

Ms. Pignataro asked City Attorney Daggett if the Board was missing the full ethics laws as Mr. Heath alleged.

City Attorney Daggett stated she had a hard time picking out what statutes Mr. Heath was suggesting were not provided. She noted Colorado Revised Statutes Section 24-18-108 only applies to state officers and excludes City officials. City Attorney Daggett stated she did not provide that statute to Councilmembers as it did not apply and that she believed all others had been provided.

Councilmember Ross Cunniff discussed Article XXIX to the State Constitution (also referred to as "Amendment 41") regarding prohibiting an *appearance* of a conflict of interest. Mr. Cunniff stated the City needs to update its code to reflect this as he feels the City has not adequately addressed the issue of the appearance of conflict.

City Attorney Daggett stated Amendment 41 adopting Article XXIX of the Colorado constitution was passed in 2006 and the City has not made amendments to its local provisions intended to match that provision. She noted the exception language allowing home-rule cities to adopt their own local ethics provisions, and further noted that the extent of this exception is currently being litigated.

The Board discussed the best way to bring this issue to Council and asked the City Attorney to provide further information to Council on this for further consideration.

Councilmember Gutowsky stated she felt Councilmember Cunniff brought up a good point, expressing that optics and how things look are very important. She has listened to constituents' comments and while this may not be against the Code of Ethics, people feel the way they feel, and it should be a natural decision to recuse yourself if your employer is involved in an issue. She hears the public's voice; it is all about impression.

The Board discussed the listed City and statutory ethics provisions, and in particular whether CSU was defined as a "business or other undertaking." City Attorney Daggett stated the Colorado Independent Ethics Commission has specifically looked at the question of whether a public body is a "business or undertaking" and has found that a public body is not a "business or other undertaking."

Chair Pignataro then went through the checklist attached to the AIS 3a.

Councilmember Cunniff made a motion that the Board find that having reviewed the allegations of Mr. Heath's Complaint and the applicable laws, the Board has determined that the Complaint fails to allege that Mayor Troxell has a financial or personal interest or conflict related to the decision on the Hughes Stadium property rezoning and no further investigation is warranted. Councilmember Pignataro seconded the motion and the motion passed by unanimous voice vote.

The Board moved to AIS 3(b) relating to Mayor Pro Tem Stephens.

Rory Heath spoke that this was the same issue, different person. Mr. Heath stated he felt the materials from the City Attorney's Office were very biased. Asked again that this issue be reviewed instead by an independent panel of outside experts.

Andrew Bertrand spoke that this is very similar to the last argument and that Amendment 41 has been glossed over. The issue is about optics.

Mr. Heath spoke about financial benefits and drew a correlation with UNC announcing possible layoffs. If the development deal does not go through, CSU can experience those same realities. Mr. Heath stated he feels CSU is a business or other undertaking.

Mayor Pro Tem Stephens talked about the factual allegations and stated she does not take an oath to CSU. Ms. Stephens stated as far as Mr. Heath's statement about career opportunities, this is not relevant. Mayor Pro Tem Stephens does not believe she has personal or financial interest in the CSU Hughes Stadium rezoning issue. Ms. Stephens insisted she is a state classified employee in the Statistics Department, and as a State classified employee, her pay is awarded by the state; CSU has no say in her pay raises.

Rory Heath rebutted this as follows. Mr. Heath stated Mayor Pro Tem Stephens is an employee on a one-year contract renewal who has to "sing for her supper" every year. There is a method for reward – better position, etc. Andrew Bertrand stated based on public perception, Mayor Pro Tem Stephens should have recused herself.

Mr. Heath stated we need to fix this hole in the system before voting on this. We need to address it now, not in the future.

Mayor Pro Tem Stephens' rebutted his comments. Mayor Pro Tem Stephens stated she is not on a one-year contract. Mr. Heath's facts are not true. Mayor Pro Tem Stephens stated she works for the State; there is no benefit or money involved in a rezoning and this is a City administration decision.

Councilmember Cunniff stated the Ethics Review Board is not free to ignore the City Charter or Code or adopt State rules in lieu of a City process. Doing so would be a violation of our Code to shift this decision to a group of other people. While members of this Board have expressed sympathy, we have to change the Charter by a specific process. This Board is required to follow City Code, Charter and State laws as they now apply.

Chair Pignataro directed the Board to go through the checklist attached to AIS 3b.

Chair Pignataro then made a motion that the Board find that having reviewed the allegations of Mr. Heath's Complaint and the applicable laws, the Complaint fails to allege that Mayor Pro Tem Stephens has a financial or personal interest or conflict related to the decision on the Hughes Stadium property rezoning and no further investigation is warranted. Councilmember Gorgol seconded the motion. The motion passed by unanimous voice consent.

Chair Pignataro directed the Board to AIS 3c, relating to Ken Summers's alleged personal, business-related conflicts of interest.

A statement Councilmember Summers had submitted to the Board was noted. Chair Pignataro asked City Attorney Daggett to read the statement.

Rory Heath stated this matter was a little more difficult. Councilmember Summers' website advertises that he helps influence decisions. Mr. Heath stated the Board should subpoena the records of Councilmember Summers including any and all clients he has had. Mr. Heath stressed an investigation is needed here; this billboard is still up for the public to see.

Andrew Bertrand stated he was not sure how anyone voted, but doesn't care; he cares about how it looks. Now is the time to deal with it – not after Hughes gets decided.

Councilmember Cunniff stated he would like to know if Councilmember Summers has received any revenue on this website.

City Attorney Daggett explained it was unclear in Mr. Heath's complaint if this was tied to Hughes Stadium or a more general complaint. Ms. Daggett explained if the complaint warrants further investigation, there will be a need to schedule a further hearing for more evidence to be presented. At that time, the Board would have power to subpoena more information if it chooses to. City Attorney Daggett explained that this process would next go to the hearing step where a decision would be made as to whether the Complaint alleges a violation specifically related to Hughes Stadium or otherwise.

The Board asked Rory Heath if this complaint was related to Hughes Stadium.

Mr. Heath replied it was intended to include everything – including Hughes Stadium.

The Board discussed next steps in this process. City Attorney Daggett stated the Board could continue its screening review if that would be helpful or find that the allegation warrants further investigations.

Councilmember Cunniff stated the allegations of the Complaint are broader than Hughes and need further investigation, although regarding a specific complaint on Hughes, there is no evidence to sustain an allegation Councilmember Summers has acted unethically.

Councilmember Gutowsky did not agree with this and stated the Complaint cast doubt in her mind.

Councilmember Cunniff made a motion that the Board find that the allegation that political consulting and lobbying activities could constitute a potential ethics violation, if true, and that further Ethics Review Board investigation and review is warranted on the specific issue of whether Councilmember Summers has carried out political consulting or lobbying activities that constituted an ethics violation. Councilmember Gorgol seconded the motion. The motion was passed by unanimous voice consent.

City Attorney Daggett discussed the timing of the next meeting to review the one remaining allegation and stated her office would get started on scheduling the next meeting.

Under Other Business, the Board briefly discussed Amendment 41 of the State Constitution and stated this process was already in motion.

Meeting adjourned at 7:56

ETHICS REVIEW BOARD -- REVIEW CHECKLIST

August 19, 2020

Knebl Complaint re Mayor Troxell

Hughes Stadium Property Rezoning (and related Land Use Matters)

Limit Triggered?

Potentially Applicable Limit - FORT COLLINS CHARTER:

Yes No

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

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.**

ETHICS REVIEW BOARD -- REVIEW CHECKLIST
August 19, 2020
Knebgl Complaint re Mayor Troxell
Hughes Stadium Property Rezoning (and related Land Use Matters)

Limit Triggered?

Potentially Applicable Limit - FORT COLLINS CHARTER:

Yes No

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

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.**

For the purpose of interpreting and applying these provisions, the Council has adopted in Section 2-568(a) of the City Code the following relevant definitions:

- (2) *Benefit* shall mean an advantage or gain.
- (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.
- (18) *Substantial* shall mean more than nominal in value, degree, amount or extent.

ETHICS REVIEW BOARD -- REVIEW CHECKLIST
August 19, 2020
Knebgil Complaint re Mayor Troxell
Hughes Stadium Property Rezoning (and related Land Use Matters)

Limit Triggered?

Potentially Applicable Limit – STATE LAW:

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)(a), C.R.S. - prohibits engaging in a **substantial business transaction for private business purposes with a person he/she inspects or supervises in his/her official duties**.

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. - prohibits 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 from participating in the decision unless necessary to obtain a quorum (and requires disclosure of the interest).