

Citizen Minutes
Regular Meeting of City Council
City of Littleton, Colorado

6:30 p.m.
Littleton Center

Tuesday
March 2, 2010

Council Reception for Metropolitan Mayors and Commissioners Youth Nominees

7:00 p.m.

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Agenda**
- 4. Minutes**
 - a) Minutes of Special Meeting February 9, 2010
 - b) Minutes of Regular Meeting February 16, 2010
- 5. Introduce New City Employees**
- 6. Citizens Appearances**
 - a) Guest Citizens-
 - i. Pete Barrett, Colorado Youth Soccer Hall of Fame inductee
 - ii. Metropolitan Mayors and Commissioners Youth Awards
 - b) Scheduled public appearances
 - c) Unscheduled public appearances – Several citizens, including Charles Robbins, spoke on his behalf about his homing pigeons. Apparently someone has filed a complaint against this man who has raised and trained homing pigeons in his back yard for 30 years. The complaint is that his household exceeds the limit of 3 pets and the pigeons are pets. He has been told that three of his neighbors have complained but he does not believe his neighbors have complained. He submitted a polling of his neighbors who are in support of his hobby. He explained the difference between his pigeons and Ferrell pigeons.

Rick Brown, President of the Foothills Pigeon Raising (or Racing – not sure) Club stated that they needed to know the nature of the complaints in order to address the problem. Ferrell pigeons are a nuisance but Robbins pigeons are athletes of the sky.

There was a discussion on the care and hygiene of the pigeons. Some of the neighbors also showed their support and their enjoyment of watching Mr. Robbins training the pigeons. Doug Clark asked the staff to provide the Council with a memo.

Carol Brzeczek appreciated the response from the City Attorney on Conflicts of Interest but was concerned about having a City Code that required a legal explanation as any citizen should be able to read the City Code and understand what it. Apparently the Mayor had to ask for a legal explanation himself since it was he that was going to respond to my questions.

In Suzanne Staiert's response she stated that "personal or private interest" phrase in the standards was likely adapted from a provision of the Colorado Constitution that is applicable to members of the General Assembly". However, the term **likely** did not reassure me. The General Assembly is a much larger body than our Council. Brzeczek suggested that they turn the clock back a few years and think about the area where WalMart wanted to build. What if South Suburban came in with a proposal to build a recreation center and ball fields on that property and what if one or maybe even two members of Council were sitting on SS boards we would still not be certain if they were allowed to vote on the issue or not.

Once again Brzeczek suggested that the City Code be written so any citizen could understand the meaning.

I am including the response from Suzanne below:
:

LEGAL MEMORANDUM

To: City Council

From: Suzanne Staiert, City Attorney

Date: February 24, 2010

Re: Conflicts of Interest

The purpose of this memorandum is to address public official conflicts of interest, specifically focusing upon service on other non-profit boards.

In 1988, the General Assembly enacted a code of ethics for both state and local government officials, entitled "Standards of Conduct". The standards establish recommended guidelines, as well as mandatory rules of conduct. The standards also address circumstances where a member of a governing body of a local government has a "personal or private interest" in any matter proposed or pending before the governing body. Such members must: (1) disclose the interest; (2) not vote on the matter; and (3) refrain from attempting to influence the decisions of the other members. *See* C.R.S. 24-18-109.

The "personal or private interest" phrase in the standards was likely adapted from a provision of the Colorado Constitution that is applicable to members of the General Assembly.

Littleton City Code Section 1-12-5(b) mirrors this provision of the statute and Constitution:

1-12-5: DISCLOSURE:

(b) A member of the city council who has a personal or private interest in any matter proposed or pending before the city council shall disclose such interest to the city council and shall not vote thereon, as provided for in section 37 of the city charter, and shall refrain from attempting to influence the decisions of the other members of the city council in voting on the matter. (Ord. 9, Series of 2007)

The “personal or private interest”, as interpreted by the courts and various ethics commissions, is limited to personal, economic and pecuniary interests.

As a general principle, this type of conflict of interest involves any action, inaction, or decision by a public official in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated.

There are numerous examples of personal or private interests that might require recusal. The official might: (1) be involved in a zoning matter, represent an applicant, or attempt to represent himself or herself at a hearing; (2) own or have an interest in a business that is affected by a vote; (3) have financial dealings with an applicant; (4) have a financial interest in a business that is a competitor of an applicant; or (5) be a creditor of the business asking for action.

A conflict does not exist simply because an official is acquainted with a proponent or opponent. However, any time an elected official feels their relationship with a proponent or opponent will necessarily affect their decision, they can choose to recuse from a vote. This is the personal decision of the elected official.

With respect to service on another non-profit board, both the State Independent Ethics Commission and the Ethics Board of the Colorado General Assembly have issued opinions on this issue. In opinion 2006-2, the Ethics Board of the Colorado Assembly found that a legislator would not violate the statutes if a legislator advocates or votes upon a measure that directly affects the financials of a non-profit if the legislator serves on the board as an unpaid fiduciary. However, the Board further recommended that a legislator disclose the interest prior to voting.

In another opinion, the State Independent Ethics Commission found it would not be a violation of Colorado Constitution Art. XXIX or Colorado statute for the Secretary of State to serve as a member of the Board of Directors of a nonprofit entity registered with and regulated by the Secretary of State's Office.

Based upon these interpretations, there is no legal requirement that a council member recuse from a vote where the vote would affect a non-profit where they serve on a board. However, where a council member believes he or she cannot be independent in their vote because of an association with another person or entity the council member should disclose the conflict, recuse from the vote and refrain from influencing the vote of the other members.

If you have any further questions on this issue, please feel free to contact me.

7. Consent Agenda Items

Consent agenda items can be adopted by simple motion. All ordinances and resolutions must

be read by title prior to a vote on the motion. Any consent agenda item may be removed at the request of a Council Member.

- a) Approval of updated Rules of Procedure for Licensing Authority - This passed with one change – the total number of members to constitute a quorum was changed from three to four on a 7/0 vote.

8. Second and Final Reading on Ordinances and Public Hearings

9. General Business

- a) Request from South Suburban Parks & Recreation concerning South Platte Park/Carson Center Improvements – Dave Lorenz, Executive Director of South Suburban Parks and Recreation (SSPR) requested \$212,087+ from the City of Littleton to fund certain improvements at the Carson Nature Center (CNC) and South Platte Park (SPP).

Peggy Cole said it looked like Littleton was being asked to cover all the costs of the improvements and Lorenz said that was so and if they did not get the support for the improvements (since they did not believe that the 1 mill levy money should be used for the improvements) then the projects would not get done this year.

Debbie Brinkman asked who pays the Xcel bill for the CNC and Lorenz said it is split between the City and SSPR. Brinkman asked if the Reynolds's Landing was paid for with the mill levy funds and Lorenz said yes.

Bruce Stahlman asked for the payback period on the Photovoltaic panels (\$107,807) and Skot Latona said 12.5 years but the panels are guaranteed for 25 years. Stahlman thought that was a long payback period.

Clark said he was in favor of funding each request except the photovoltaic and moved to FUND THE REPLACEMENT OF THE WINDOWS (\$25,000), EXERIOR SIDING AND RESTOR THE HISTORIC LOGS (\$26,280) AND PROVIDE FOR THE INTERPRETIVE SIGN ON THE BUILDING (\$3,000) FOR A TOTAL OF \$54,280.00. **BRINKMAN SECONDED AND MOTION PASSED 6/1 WITH PHIL CERNANEC DISSENTING.**

JIMM TAYLOR MOVED TO FUND THE PHOTOVOLTAIC PANELS AT THE CNC (\$107,807) AND CERNANEC SECONDED. TAYLOR THOUGHT IT WOULD SHOW THE PUBLIC THAT THEY ARE TRYING TO REDUCE THEIR CARBON FOOTPRINT AND MAKE THEMSELVES LOOK GREEN AND WE HAVE THE FUNDS. **MOTION FAILED ON A 3/4 VOTE WITH COLE, CERNANEC AND TAYLOR IN FAVOR.**

TAYLOR MOVED TO PROVIDE \$50,000 TO IMPORVE THE ROAD TO THE DOG PARK. CERNANEC SECONDED. Cole said she would oppose the motion until they had a firm bid on the cost of building the road.

Brinkman said she would not support the motion that it was a substantial amount of money in these difficult economic times and it is not needed. RTD has an unpaved parking lot and it is used everyday of the year. She thought the safety of the confluence is more important and she did not see anything on the table to correct that particular problem which she considered more important than paving the road.

Stahlman asked why it needed to be paved and Lorenz said when it rains or snows they close the gates as users get stuck. Stahlman said he thought they already had the funds to pave the road and Lorenz said they do – Great Outdoors Colorado will fund the project.

Taylor did not see a downside to contributing \$50,000 no matter what the bid is. It will be an improvement for fishing on the lakes.

Clark said he had been there many times when the road has been closed and thought since we get the Arapahoe County Shareback money and SSPR does not that it would be appropriate to pave the road and it will make parking more accessible.

Peggy Cole moved to postpone the vote until they had bid information. Her motion died for a lack of a second.

THE MAIN MOTION PASSED 5/2 WITH COLE AND BRINKMAN DISSENTING.

10. Consideration of Committee, Commission and Board Matters

From this point forward, the remainder of the agenda will be held in the Community Room

a) Motion approving appointments to Boards and Commissions – *(As I did not have a list of names I am using initials or just the last name.)* The results:

Planning Commission – David Metcalf reappointed, Craig Coronado appt Alt 1 and J. Ranville appointed Alternate 2.

Historic Preservation Board – P. Kastner and A. Grove were newly appointed and Bill Hopping and K. McMurray were reappointed.

Housing Authority – Jerry Valdes was appointed and Esther and Hancock were reappointed.

Licensing Authority – Victor was moved from Alt 1 to a regular member, Donovan O'Dell was made Alternate 1, A. Cole was appointed to Alternate 2 and Susan Price was reappointed.

Fine Arts Committee – Peggy Dietz was reappointed, M. Rue and Van James

were appointed to terms expiring in 2013 and D. Senn was appointed to a term expiring in 2011.

Election Committee – Hershey was appointed.

Library Board – Joseph was reappointed and Paul Bingham and Shepherd were appointed.

Tree Committee – D. Redford and Sandy Snyder were reappointed.

Museum Committee – K. Anton, K. Field and V. Fraser were reappointed.

Riverfront Authority – D. Reynolds was reappointed.

Victim’s Assistance – L. Suttle and N. Feldman were both reappointed.

Building Board of Appeals – Eldora was reappointed, McDaniel was appointed and Watson was appt Alt. 1

Board of Adjustment – Lane was reappointed, Felt was moved from alternate to a regular member, J. Spencer was appointed Alternate 1 and Dave Mitchell was appt to Alternate 2.

Taylor moved that they nominees be approved by consent agenda on the March 16th meeting.

11. **Ordinances on First Reading**

12. **Resolutions**

13. **Comments / Reports**

- a) City Manager Jim Woods mentioned Sterling Ranch and Jim Taylor moved to invite Sterling Ranch to the March 23 study session with the proviso that their proposal has been modified. Jose suggested that if the motion passes the study session should be held in the Council Chambers. Woods agreed. Motion passed. ***This meeting should not be missed. One reason, I am told, that Sterling Ranch wanted to be moved up on the Council’s calendar is that they need enough lead time to take the annexation to the voters this November. This is an issue that we need to watch very carefully.***
- b) City Attorney
- c) Council Members Phil Cernanec said he was in support of discussing the refinancing of the COPS – *this statement was made in response to something he received from staff in his council packet for what I can tell.*
- d) Council President

e) DRCOG

14. Adjournment