COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 20-21

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: P.T. WOOD

This matter comes before the Independent Ethics Commission ("Commission") on a complaint filed by Michelle Parmeter ("Complainant") against P.T. Wood ("Mayor Wood"), mayor of Salida. Complainant alleged that Mayor Wood took certain actions, in his official capacity, that constituted conflicts of interest.[1] The Commission issued a Notice of Issues for Hearing informing the parties that the IEC would consider the allegations of Complainant under the following ethical standards: §§ 24-18-103, 24-18-109(2)(b), and 24-18-109(3)(a), C.R.S. The Commission has jurisdiction over those ethical standards of conduct pursuant to section 5(1) of Article XXIX of the Colorado Constitution.

On June 15, 2021, the Commission held an evidentiary hearing and considered the case submitted. For the reasons set forth below, the Commission determined that Mayor Wood did not violate the standards of ethical conduct set forth in the Notice of Issues for Hearing.

I. FINDINGS OF FACT

a. Jurisdiction and Background

1. Complainant alleges that, on October 15, 2019, the Salida City Council took certain official actions, including: (1) the vacation of a portion of E. Crestone Avenue in Salida; (2) the rezoning of land next to E. Crestone Avenue; and (3) the purchase of a parcel of land previously owned by Union Pacific Railroad ("UPRR Land").

2. At hearing, Complainant dismissed her allegations of ethical violations related to the vacation and rezoning of E. Crestone Ave. and adjoining land. She maintained that vacation

[1] Complainant's other, general allegations regarding due process, compliance with city zoning laws, public safety, and fiscal responsibility are outside the IEC's jurisdiction and thus dismissed. *See* Colo. Const. art. XXIX, § 5(1).

of the street violated state statute, but that allegation is outside the IEC's jurisdiction. Accordingly, the IEC addresses only Mr. Wood's ratification of the UPRR Land purchase.

3. On October 15, 2019, Mayor Wood was the mayor of Salida.

4. Mayor Wood is a local government official subject to the IEC's jurisdiction pursuant to Colo. Const. art. XXIX, § 2(3).

5. Complainant timely filed her complaint on July 14, 2020.

b. UPRR Land Purchase.

6. On October 15, 2019, the Salida City Council voted 5-1 to approve the purchase of the UPRR Land.

7. The UPRR Land purchase was funded by Salida's Parks and Open Space fee-in-lieu funds.

8. The UPRR Land purchase was intended to add to the city's open space portfolio; and was spelled out as a city goal in Salida's 2007 Historic Downtown Improvement and Economic Sustainability Plan, and again in Salida's 2013 Comprehensive Plan.

9. Complainant alleges that Mayor Wood "did not recuse himself from approving and signing the resolution to purchase the [UPRR Land.]"

10. Complainant alleges that Mayor Wood had an interest in the Salida City Council's approval of the UPRR Land purchase because the UPRR Land was "within 200 feet of property owned by [Mayor Wood]," and that the assessed value of Mayor Wood's property "increased close to $100K" from 2018 to 2019 as a result of the UPRR Land purchase.

11. Mayor Wood's property on Hillside Drive in Salida, which is held in the name of Wood Development Company LLC, is located approximately 200 feet from the UPRR Land at an acute angle.

12. Salida's acquisition of the UPRR Land did not improve or increase the existing access to open space lands from Mayor Wood's property.

13. Mayor Wood's testimony, which was uncontroverted at hearing, was that he had no financial interest in the City's purchase of the UPRR Land.

14. The relevant periods for the assessed value of Mayor Wood's Hillside Drive property were the Chaffee County Assessor's assessment of that land's change in value from 2019 to 2020.

15. The Chaffee County Assessor's Office uses sales data from the prior two years to set values for the current year, and assessment data is released in May for the prior year. Thus, sales data from July 1, 2016 to June 30, 2018 was used to assess land value for 2019 and 2020, and sales data from July 1, 2018 to June 30, 2020 was used to assess land value for 2021.

16. According to documents provided by the Chaffee County Assessor's Office, the value of Mayor Wood's Hillside Drive property in 2019, 2020, and 2021 was $181,935.

17. Because the assessment period for 2019 was completed June 30, 2018, prior to Salida's purchase of the UPRR Land in October 2019, the IEC looks to the 2019 value of Mayor Wood's property as the value of that property prior to the UPRR Land acquisition. That value did not increase following the UPRR Land acquisition.

18. Complainant argued that the IEC should consider the appraised value of Mayor Wood's property rather than the assessed value, but she did not present any evidence of appraisals completed on the property.

19. The duties of the mayor are set forth in Section 2-2-20(d) of the Salida City Code: To "execute and authenticate by [his] signature all … instruments of and concerning the business of the City."

20. Mayor Wood is not a regular voting member of the Salida City Council. He votes only to break ties, and did not vote regarding the UPRR Land acquisition because the matter did not result in a tied vote.

21. Consistent with those duties, Mayor Wood signed the resolution to purchase the UPRR Land and presided over the meeting at which the City Council voted to approve the purchase.

II. CONCLUSIONS OF LAW

a. Applicable Law

22. Section 24-18-103, C.R.S., sets forth the general principle that the holding of public office is a public trust, that public officers shall carry out their duties for the benefit of the people of the state, and that public officers owe a fiduciary duty to their constituents.

23. Section 24-18-109, C.R.S., which applies to local government officials, provides that violation of one of its provisions is a violation of the public trust as set forth in Section 24-18-103, C.R.S.

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

25. "Official act," as that term is used in Section 24-18-109(2)(b), C.R.S., is defined as a "vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." § 24-18-102(7), C.R.S.

26. Section 24-18-109(3)(a), C.R.S., prohibits an official from voting on any matter pending before the governmental body in which the official has a personal or private interest. The official is also prohibited from "attempting to influence the decisions of the other members of the governing body in voting on the matter."

b. Mayor Wood's Involvement in UPRR Land Purchase

27. Even if Mayor Wood's signing of the UPRR Land purchase resolution could be construed as an "official act," the UPRR Land purchase did not directly and substantially affect to his economic benefit a business, specifically, Mayor Wood's LLC that owned the Hillside Drive property. There was no evidence that the City's purchase of the UPRR Land increased the Hillside Drive property's value at all, much less "directly and substantially". *See* § 24-18-109(2)(b), C.R.S. Rather, Mayor Wood's benefit in Salida's acquisition of additional open space land was common to that of other Salida citizens.

28. Similarly, Mayor Wood did not vote on the UPRR Land purchase or attempt to influence others to do so within the meaning of Section 24-18-109(3)(a), C.R.S. He presided over the October 15, 2019 meeting without comment, and his signature on the resolution was not a vote.

29. Even if Mayor Wood had voted on the UPRR Land purchase, or if his signature on the resolution could be considered a vote in favor, Mayor Wood did not derive any personal or private benefit from the UPRR Land purchase.

30. The type of tangential benefit allegedly received by Mayor Wood in this case is not the type of self-dealing to which the conflict of interest statute is directed. It is expected, if not encouraged, that local officials will be invested in the communities they serve, and will make policy decisions that they believe will benefit the greatest number of constituents. If the public

official falls in that category of persons benefitted by their policy decisions, that fact does not create a conflict of interest, unless the public official's benefit is above and beyond that of the general public.

THEREFORE, the Commission finds by a preponderance of the evidence that Mayor Wood did not violate any ethical standard of conduct by presiding over the October 15, 2019 City Council meeting and signing the UPRR Land purchase resolution.

THE INDEPENDENT ETHICS COMMISSION

Elizabeth Espinosa Krupa, *Chair*
William Leone, *Vice Chair*
Selina Baschiera, *Commissioner*
Debra Johnson, *Commissioner*
DATED: June 17, 2021