

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 20-22

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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IN THE MATTER OF: HARALD KASPER

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This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Michelle Parmeter (“Complainant”) against Harald Kasper, a councilmember for the city of Salida. Complainant alleged that Mr. Kasper took certain actions, in his official capacity, that constituted conflicts of interest.<sup>1</sup> 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 and 24-18-109(3)(a), C.R.S. The Commission has jurisdiction over those ethical standards of conduct pursuant to § 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 Mr. Kasper 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

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<sup>1</sup> 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. Kasper's vote regarding the UPRR Land purchase.

3. On October 15, 2019, Mr. Kasper was a city councilmember for the City of Salida.

4. Mr. Kasper 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 4-1 to approve the purchase of the UPRR Land. Mr. Kasper voted with the majority to approve the purchase.

7. Prior to voting on the matter, Mayor P.T. Wood disclosed publicly that he and Mr. Kasper owned property in some proximity to the UPRR Land.

8. Mr. Kasper's property, which he subdivided into three separate lots in 2018, is located approximately 400 feet from the UPRR Land at an acute angle.

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

10. 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.

11. Complainant alleges that Mr. Kasper "did not recuse himself from approving the resolution to purchase the [UPRR Land]."

12. Complainant alleges that Mr. Kasper had an interest in the Salida City Council's approval of the UPRR Land purchase because the UPRR Land was "adjacent to" property owned by Mr. Kasper and increased in value "close to \$100k."

13. The acquisition of the UPRR Land did not improve or increase the existing access to open space lands from Mr. Kasper's property.

14. Mr. Kasper's testimony, which was uncontroverted at hearing, was that he had no financial interest in the City's purchase of the UPRR Land.

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

16. 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.

17. According to documents provided by the Chaffee County Assessor's Office, the values of Mr. Kasper's three lots on his Hillside Drive property in 2019 were \$126,910, \$126,910 and \$145,602, respectively.

18. In 2018, Mr. Kasper sold one of the lots valued at \$126,910 for \$152,000. Mr. Kasper attributes the sales price to well and septic improvements he had installed on the property.

19. According to documents provided by the Chaffee County Assessor's Office, the values of Mr. Kasper's remaining two lots on his Hillside Drive property in 2020 and 2021 were the same as in 2019.

20. 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 Mr. Kasper's property as the value of that property prior to the UPRR Land acquisition. That assessed value did not increase following the UPRR Land acquisition.

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

## **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(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. Mr. Kasper’s Vote in Favor of the UPRR Land Purchase.**

25. The Commission finds that Mr. Kasper’s vote in favor of the UPRR Land purchase did not constitute a conflict of interest within the meaning of Section 24-18-109(3)(a), C.R.S. and did not violate the public trust within the meaning of Section 24-18-103, C.R.S.

26. There is no evidence that Mr. Kasper derived a personal or private benefit from the UPRR Land purchase. He owned property nearby, but the acquisition of the UPRR Land by the City did not increase the value of his property. Nor did it create access from Mr. Kasper’s property to open space that did not exist prior to the acquisition. Mr. Kasper’s benefit in Salida’s acquisition of additional open space land was common to that of other Salida citizens.

27. The type of tangential benefit allegedly received by Mr. Kasper 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 Mr. Kasper did not violate any standard of conduct by his vote at the October 15, 2019 City Council meeting.

**THE INDEPENDENT ETHICS COMMISSION**

Elizabeth Espinosa Krupa, *Chair*

William Leone, *Vice Chair*

Selina Baschiera, *Commissioner*

Debra Johnson, *Commissioner*

DATED: June 17, 2021