I believe that, to the best of my knowledge, information and belief formed after reasonable reflection, the information given in this ethics complaint is accurate and factual.

I request the City of Fort Collins Ethics Review Board evaluate the information given herein which includes supplemental evidence, and to take appropriate measures in accordance with the procedures outlined in the Fort Collins Municipal Code, Section 2-569.

COMPLAINANTS

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COMPLAINEES

Wade O. Troxell
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Associate Professor, Mechanical Engineering, Colorado State University
Director, Center for Networked Distributed Energy, Colorado State University
Director, RamLab, Colorado State University

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Kristin Stephens
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ALLEGATIONS

As current employees of Colorado State University, Wade Troxell and Kristin Stephens should not be participating in the decision making process for the re-zoning of the parcel of land currently owned by Colorado State University located northwest of Overland Trail and Dixon Canyon Road (the former site of the Hughes Stadium). Each has both *personal interests* and *financial interests* as defined in Article IV, Section 9 of the City Charter (**EXHIBIT 1**) because a reasonably prudent person would judge that Mr. Troxell and Ms. Stephens would realize a direct and substantial benefit different in kind from that experienced by the general public. **Based on these personal and financial interests in the re-zoning of this parcel of land, Mr. Troxell and Ms. Stephens should refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.**

FACTS

(1) Wade Troxell and Kristin Stephens are currently and gainfully employed by Colorado State University. Mr. Troxell is an Associate Professor in the Mechanical Engineering department as well as the director of the Center for Networked Distributed Energy and RamLab (**EXHIBIT 2**). Ms. Stephens is the Graduate Coordinator of the Department of Statistics and Program Assistant II in the Department of Statistics (**EXHIBIT 3**).

(2) Colorado State University is the owner of a parcel of land located northwest of the intersection of South Overland Trail and Dixon Canyon Road, the former site of the Hughes Stadium.

(3) The University is attempting to sell this land to a developer (Lennar Homes) via a Purchase Agreement (**EXHIBIT 4**).

(4) The Purchase Agreement in place specifically states an "Additional Purchase Price" for every housing unit sold on the parcel of land, thus incentivizing CSU to achieve the highest zoning density possible for the developer to gain the highest sale price for said land parcel (**EXHIBIT 4 [Section 15a]**)

(5) The Purchase Agreement in place specifically enumerates a "Preliminary Entitlement Confirmation" that allows the buyer, Lennar Homes, to walk away from the Purchase Agreement as well as be reimbursed for all out-of-pocket expenses incurred during its effort to achieve the minimum number of 600 lots zoned for development on the parcel (**EXHIBIT 4 [Section 4d]**)

(6) The gainful employment of Mr. Troxell and Ms. Stephens at Colorado State University is based in part on the University's financial health, which causes them to have a personal interest in the University's ability to profit from decisions they make while in office.

(7) Specifically Mr. Troxell possess a *financial interest* in the re-zoning decision being made concerning the former Hughes Stadium site—the ability to attract top students in mechanical engineering, develop technologies in the two labs of which he is the director, and potentially bring these technologies to market hinges on the University's ability to fund these labs and capital-intensive projects which they undertake.

(8) Mr. Troxell has specifically enumerated his desire to bring University technologies to market while he is both Mayor of Fort Collins and Associate Professor in the Mechanical Engineering Department: “I focus on expanding the research enterprise in the College of Engineering and linking these efforts to technology transfer, startup companies, strategic industry partnerships, government relationships and technology-based economic consortia.” (**EXHIBIT 5**)

GOVERNING LAW

The financial success of any business is a key concern of its employees. A financially healthy business provides job stability, improved benefits, increased financial compensation, and generally has a greater ability to ensure a positive work environment.

Wade Troxell and Kristin Stephens have a direct personal interest in the financial health of CSU as their primary employer. There is no plausible argument to the contrary.

Whether or not this personal interest in the financial health of CSU constitutes a *conflict of interest,* as enumerated in Article IV, Section 9 of the City Charter, is determined by the judgement of a reasonably prudent person that an officer of the government would realize a direct (1) and substantial (2) benefit different in kind from that experienced by the general public (3). I will break this litmus test down into its components and show that each is satisfied by the current situation in which we find Mr. Troxell and Ms. Stephens.

(1) DIRECT - we see that employees of businesses which have significant financial resources, especially those in the non-profit sector (which CSU is), generally distribute those funds in the form of investments in capital and labor. The former may be in the form of improved facilities, upgraded laboratories, new technology, improved office spaces, entirely new buildings for residential and commercial purposes, and the like. The latter may be in the form of employee benefits, increased compensation, recruitment of high-level employees, increased numbers of assistants, additional support staff and grounds keepers, and the like. All of these potential investments in capital and labor improve the quality of life of employees, in a very direct manner.

(2) SUBSTANTIAL - According to the Office of Budgets of CSU, the University spent $36,093,716 on all line items within “Education and General Research” in 2017-18 and estimates it will spend just $24,904,798 in the following 2018-19 year (**EXHIBIT 6 [page 3]**). This is a drop of 31.0% from one year to the next, and directly impacts all research activities at the University—an area of the University in which Mr. Troxell is deeply involved. The successful sale of the Hughes Stadium parcel would almost completely erase that deficit, just based on the “base price” of $10M that can be read in the portion of the purchase agreement which has not been redacted.

(3) GENERAL PUBLIC - as described above, the general public, not being employees of Colorado State University, would not share in, depend upon, nor benefit from the revenue increase CSU would realize with a successful sale of the Hughes Stadium parcel to Lennar Homes based on its Purchase Agreement.

ANALYSIS

To further elucidate the situation and possible outcomes, I will describe **two mutually exclusive scenarios** and show the substantial economic difference between them for CSU, and then connect this difference with possible difference in financial outcomes for areas of CSU in which Mr. Troxel and Ms. Stephens are involved.

SCENARIO 1 - Purchase Agreement Executed

Hughes Stadium parcel is successfully sold to Lennar Homes with at least 650 units of density (this would be described by the 1/2 RF and 1/2 LMN re-zoning which Mr. Troxel and Ms. Stephens voted in favor of at the City Council meeting on 11/11/19).

1/2 RF zoning allows for 81 acres of the 161 total to be developed at a maximum density of one unit per acre, meaning 81 lots total. 1/2 LMN zoning allows for a maximum density of 9 units per acre, or 720 units, erring on the more conservative approach of granting the "odd acre" in the 161 acres to the less-dense zoning classification. **That is a total of 801 units of housing possible with 1/2 RF clustered and 1/2 LMN.**

In this hypothetical scenario, the Purchase Agreement in place for the land would result in Lennar Homes paying $10M to CSU as a "base rate", another $16,000 per additional lot above 625 up to a total additional of $400,000, and an "Additional Purchase Price" (APP) for every single Home which is sold to a Homebuyer. That equates to $10,400,000 + APP as a total sale price.

The APP has been redacted, but with some rudimentary calculations, one may estimate it conservatively as follows: with a parcel containing 650 lots at a total value of $10,400,000, each lot is priced at an average of $16,000. This is the exact additional price to be conveyed for each home above 625, or to be subtracted for each home under 625—so we have a logically established "base lot rate" of $16,000. With 161 acres, and assuming clustering and increased demands for open space and drainage—estimating with a worst-case scenario of smallest lot size for lowest assumed price—we have a likely 100 acres of land within Hughes which is devoted specifically to private home plots. That means an average of 0.15 acres per home, or more likely many homes with 0.25-0.3 acre plots and many multi-family homes with similar acreage but two to four units on each.

Luxury lots (0.5 acres and up, with comparable neighboring homes valued at over $800,000) are few and far between in Fort Collins. With research done on Zillow and using their "Zestimate" calculation, one can determine that most buildable lots of this variety are around $250,000 each. Because the lots in the Hughes site will be much smaller, but in a pristine and highly desirable area, one may heavily discount the lot size but assume it generally scales with that type of $/acre. While real estate professionals will agree that a lot half the size is never half the cost—it is generally 2/3 of the cost—we will again be conservative in our estimation and say that the price scales directly with the acreage.

That means that luxury-located land in Fort Collins, similar to that of Hughes—with high-end neighborhoods The Ponds and Bella Vira located directly to the north—generally sells for about $400,000 per acre. **If we look at an average of 0.15 acre per lot, that equates to $60,000 per lot…much greater than the $16,000 per lot "base rate" which is visible within the Purchase Agreement, and makes a reasonable person believe that the APP is at least as much as the base rate, and possibly significantly more.**

As a real estate professional, I would estimate the average sale price per lot at $30,000 to $50,000, since the developer would be required to place improvements, roads, etc. **The calculations above speak to a very significant APP, and the critical reason this matters is that the DENSITY of the land—the potential total number of lots that may be developed—very directly and substantially affects the net revenue CSU will realize in its Purchase Agreement. CSU's total revenue from Lennar for 650 built and sold homes would be over $20,000,000 and possibly over $30,000,000 based on its Purchase Agreement.**

SCENARIO 2 - Purchase Agreement Withdrawn

Hughes Stadium parcel is zoned entirely RF, which allows for a maximum of 161 units of density based on Fort Collins Land Use Code 4.3 (E) (2) (b) assuming maximum density based on a "clustered" development style and no more than one unit per gross acre of land.

In this scenario, assuming the Purchase Agreement would remain in force, CSU would earn $10,000,000 base rate MINUS $400,000 for the lower total number of plots (25 lots less than 625 multiplied by $16,000 each), and then an APP of 161 lots multiplied by an APP that we have estimated above at $14,000 to $34,000.

Assuming the best possible scenario for CSU in this case, and also assuming that Lennar would not back out of the Purchase Agreement as it is specifically entitled to if the zoning density allowed is less than 600 total units, we calculate a MAXIMUM possible estimated revenue of just over $15,000,000. This aggregate revenue number is at least 25% less, and more likely closer to half, of the total revenue CSU would achieve with the higher density partial LMN zoning that was voted for by Mr. Troxell and Ms. Stephens on 11/11/19.

To be sure, however—the actual revenue number achieved would be $0.

This is because Lennar Homes, officially the second largest home construction company in the United States (according to trade publication builder.com's 2019 ranking "Builder 100 List"), is not in the business of creating luxury homes. Based on a $15,000,000 sale price to CSU, Lennar would be looking at a price of almost $100,000 per plot of land—a very high price for unimproved land with no roadways or utilities. This kind of per-plot land price for a builder means that every home constructed would be well over $500,000 to break even, and more likely closer to $1,000,000 per home.

In the current market, and looking at the high-end average home prices in the 80526 zip code of Fort Collins, achieving success at scale with that many homes and those prices would be very unlikely. It's also an endeavor which has no precedent for Lennar Homes in Colorado. Its numerous developments can be found up and down the Front Range, and generally look as most people imagine dense new-home developments do: tightly packed large homes on small land parcels, all facing each other, with little desire to capture the unique aspects of land next to mountains, topography that creates expansive views, or other "luxury features" that are more likely found in custom homes.

These home developments are the bread and butter of developers like Lennar, and its contract with CSU is not subtle in its desire for maximum density. The listed "hurdle rate", or the rate at which the contract may be voided without penalty, is 600 homes—this number is almost four times greater than the maximum density allowed by 100% RF zoning, and would surely cause the Purchase Agreement to fall through…a disastrous outcome for the financial health of CSU.

As these two scenarios show, CSU stands to profit greatly from the sale of the property to Lennar with density allocations of over 650 homes, or lose greatly after the failure of a Purchase Agreement in which much time and energy has been invested. This is not to mention the fact that a failure of the Purchase Agreement would likely make the land more difficult to sell to another large developer for the same price premium…and increase the likelihood that CSU is left looking for a buyer for an extended period of time and at a reduced price.

FINANCIAL RELATIONSHIP

Mr. Troxell is the head of both the RamLab and the Center for Networked Distributed Energy at Colorado State University. As such, he has a financial interest in the money CSU spends on in-house research, as well as the staff it can devote to supporting grant writing and administrative activities which all labs must perform.

Mr. Troxell has a history of using CSU as an incubator to help identify and support new technologies. At the Manufacturing Excellence Center, Mr. Troxell helped bring these technologies to market. In Mr. Troxell's own words: "He co-founded and directed the Manufacturing Excellence Center (MEC) at Colorado State University for 10 years. MEC was a consortium of 41 laboratories and centers focused on improving the competitiveness and profitability of small to medium-sized manufacturers in Colorado." (**EXHIBIT 2**)

Ms. Stephens acts as the Graduate Coordinator of CSU's Department of Statistics in its Graduate School (**EXHIBIT 3**) and deals with "administration of National Science Foundation Grant funding" (**EXHIBIT 7**). In her role as Academic Contact and Admissions Contact within the CSU Graduate School's Statistics Department (**EXHIBIT 8**), her goal is to attract the highest quality students seeking advanced math degrees. The pursuit of that goal is strongly facilitated by offering the most compelling benefits packages to highly qualified applicants who may otherwise be looking at more elite universities.

This logical extension of incentives strikes at the heart of her conflict of interest: Ms. Stephens' job performance and, logically, security and compensation, is strongly tied to **CSU's financial ability** to attract and retain the highest level of graduate students.

CSU's research budget is anticipated to drop very significantly in both percentage terms and gross dollar terms, in an amount that is roughly equivalent to the value of CSU's Purchase Agreement with Lennar Homes. While this is just one fiscal year, the value to CSU of the former Hughes Stadium site should not be underestimated. The majority (79.6%) of CSU's revenue comes in the form of tuition (**EXHIBIT 6 [page 13]**) and therefore can only increase at general market rates. The other 20.4% of its revenue equates to a total of $83,689,592 (2017-18 ACTUAL) and is projected to drop to $63,890,847 (2018-19 ESTIMATE). That means a Hughes land sale would increase non-tuition revenue by possibly 30% to 50%, and would—by my estimates—entirely make up for the projected decreases in revenue for the University.

The fall in CSU's revenue is almost exactly the same amount as the projected decrease in overall research funding—a direct correlation and causal relationship which cannot be ignored. Research funding is the first to get cut when revenue drops, as the majority of CSU's function is tuition instruction.

CONCLUSION

It is impossible for any employee of CSU, also in a governmental position of authority, to decide impartially and without bias upon a re-zoning which might cause their employer to lose upwards of $20,000,000. The personal and financial conflicts of Mr. Troxell and Ms. Stephens, as employees of CSU, are too great to ignore.

Based upon the aforementioned facts and analysis presented to the Ethics Review Board, I respectfully request that my claims of financial and personal conflicts of interest regarding Mr. Troxell and Ms. Stephens, in relation to the re-zoning of the former site of the Hughes Stadium, be investigated fully.

I have asserted that a reasonably prudent person would judge that both Complainees would receive some direct and substantial benefit or detriment different in kind from that experienced by the general public depending upon their decision in this re-zoning matter. If the Board agrees with my assertions and finds sufficient evidence that a (number of) conflict(s) of interest exist(s), I respectfully request that they issue an Ethics Opinion to the City Council stating this and allow time for consideration.

While these allegations are being investigated, I respectfully request a delay in the Council's second reading of the re-zoning matter relating to the former Hughes Stadium site. Without proper guidance from the Ethics Review Board, a final vote from the City Council and Mayor could have a shadow of suspicion and doubt cast over it by the general public's belief that allegations of conflicts of interest were not addressed in the proper manner.

As Wade Troxell stated in the press release from February 10th, 2015 announcing his intent to run for Mayor, "Narrow ideology without facing real issues won't help us move forward toward a vibrant future for all in our community." I believe that Fort Collins' elected officials are able to face the very real issues I have enumerated.

Respectfully submitted to the Ethics Review Board this fourteenth day of November, 2019.

Nicolas Murphy Frey

Mary Satterfield Grant