

ADISORY OPINION 2021-02

CITY OF DURANGO BOARD OF ETHICS

In response to a Request for an Advisory Opinion received from Durango Mayor Dean Brookie, dated 13 January 2021 (copy attached), the City of Durango Board of Ethics (BOE) met with Dean Brookie at its regularly scheduled meeting on Thursday, 14 January 2021. His request concerned an email dated 18 November 2021 from Tracy Reynolds of Reynolds Ash and Associates (RA+A) to Dean Brookie and copied to the Durango City Council requesting that Mayor Brookie recuse himself from discussions of RA+A projects which might come before the City Council (copy of this email also attached).

In the discussion with the Board, Mayor Brookie put forth his case that his votes on RA+A projects have been entirely appropriate. He stated that sometimes his questions may appear to be negative or difficult, but that is because he knows the ins and outs of real estate development, and he should not be forbidden from bringing this knowledge to the discussion of RA+A's projects. Mayor Brookie further asserted that, since his election to the City Council, he has not pursued local business as a competitor to RA+A; he has instead developed a clientele in other areas of the country. He also pointed out that he had voted against only one RA+A project, that being the Boker Lumber site proposal which had obvious negatives, and he could name at least 7 projects where he had voted in favor of RA+A development projects.

Board Chair Burgess then read into the record an email (attached) that she had received from two residents of the neighborhood community who would be affected by the proposed Cummins Property development currently under discussion by the City Council. In the email, Durango residents Marc Saphir and Doe Youtz praised Mayor Brookie's efforts to pay attention to the concerns of the neighborhood in determining the scope of the project and attempting to remedy residents' concerns.

The general feeling of the Board was that there was no apparent conflict of interest in Mayor Brookie's participating in reviews of RA+A's projects. Board Member Smith pointed out, however, that the Board would need to hear from Mr. Reynolds before they would have complete and sufficient information to rule on this issue. The Board agreed and it was decided to invite Mr. Reynolds to appear before the Board to state his case. Mayor Brookie was advised to follow his conscience in recusing himself or not from the upcoming Council meeting where an RA+A project was under current consideration.

A special Board of Ethics meeting was scheduled for Thursday, 4 February 2021 and Mr. Reynolds was invited. He appeared before the Board and stated his feeling that Mayor Brookie had shown prejudice and bias against RA+A projects. Although concerned by Mr. Reynolds sincere feeling that he had been dealt with poorly, the Board failed to find any hard evidence of bias or conflict since 1) Mayor Brookie had voted in favor of at least 7 RA+A projects and had rejected only one such project, and 2) Mayor Brookie had not been a competitive bidder and had no apparent "interest" as defined by the Code of Ethics in the RA+A projects that came before the Council.

The Board of Ethics, therefore, concluded that it found no apparent conflict of interest in the matter before them and that Mayor Brookie not be required to recuse himself from consideration of future Council issues relating to Reynolds Ash and Associates.

Issued by the City of Durango Board of Ethics on April 8, 2021.



Chair, Katherine Burgess

Sitter, Suzanne

From: Dean Brookie
Sent: Wednesday, January 13, 2021 12:58 PM
To: Katherine Burgess
Cc: Nelson, Dirk; Sitter, Suzanne
Subject: Fwd: Conflict of Interest/ Tracy Reynolds

Dear Chair Burgess and Vice Chair Meininger

I respectfully request this item be placed on your agenda for consideration as to conflict of interest, as has been asserted by Mr Reynolds.

I have become aware that the City council agenda for next Tuesday does in fact include a project for review for which Mr Reynolds is the applicant.

As such I am making this request in hope that I might be able to present my defense to the members of the Board in tomorrows meeting.

That said, I am interested in at least "beginning" the process and have no expectation that a final finding in this short time frame.

I have made accurate observations of the recent Cummins Property annexation request and asked the obvious questions raised by the neighborhood in response to access issues.

I have also question the design of over 100 dwelling units utilizing a single point of access at 9% grade onto Highway 150 at the site of the the old CDOT complex.

His allegation that clients leave my firm is false. The Elevation Park client continues to use our services as I address you today.

I have NO financial interest in or with ANY projector client that Mr. Reynolds has brought before Council.

My firm Brookie Architecture and Planning does affordable housing on a national scale and while I have significant expertise in judgement for safe and compliant housing design, I suggest I have no conflict of interest in making sound review and fair judgement as to any projects brought before Council.

Respectfully

Dean Brookie
Mayor - City of Durango
deanbrookie@durangogov.org

Begin forwarded message:

From: Kim Baxter <kimbaxter@durangogov.org>
Subject: Re: Conflict of Interest
Date: November 28, 2020 at 9:57:31 AM MST
To: Tracy Reynolds <treynolds@ra-ae.com>, Dean Brookie <DeanBrookie@durangogov.org>
Cc: Chris Bettin <ChrisBettin@durangogov.org>, "Noseworthy, Barbara" <barbaranoseworthy@durangogov.org>, Melissa Youssef <MelissaYoussef@durangogov.org>,

"Hall, Kevin" <kevin.hall@durangogov.org>, "Shine, Scott" <scott.shine@durangogov.org>, "Nelson, Dirk" <dirk.nelson@durangogov.org>, Brad Ash <bash@ra-ae.com>, Elizabeth Boone <eboone@ra-ae.com>

Tracy,

Thank you for your email expressing your concerns. I wanted you to know that Council did receive it.

Regards, Kim Baxter
Passion, Patience, Persistence

Durango City Council
kimbaxter@durangogov.org
970/799-5799

Please note that any items sent or received from this e mail address may be subject to disclosure as a public record under the Colorado Open Records Act, unless specifically noted as "Confidential & Private".

From: Tracy Reynolds <treynolds@ra-ae.com>
Sent: Wednesday, November 18, 2020 6:19 PM
To: Dean Brookie <DeanBrookie@durangogov.org>
Cc: Kim Baxter <kimbaxter@durangogov.org>; Chris Bettin <ChrisBettin@durangogov.org>; Noseworthy, Barbara <barbaranoseworthy@durangogov.org>; Melissa Youssef <MelissaYoussef@durangogov.org>; Hall, Kevin <kevin.hall@durangogov.org>; Shine, Scott <scott.shine@durangogov.org>; Nelson, Dirk <dirk.nelson@durangogov.org>; Brad Ash <bash@ra-ae.com>; Elizabeth Boone <eboone@ra-ae.com>
Subject: Conflict of Interest

External message - please be cautious when opening links or attachments in email.

Dean,

I am formally requesting that that you recuse yourself any time RA+A has a project in front of City Council.

Given the competitive nature of our architectural practices, a significant conflict of interest exists with you commenting on RA+A projects.

Examples of conflicts:

- We know that over the years you have had clients leave your firm and hire mine to finish their projects; the Elevation Park project is the latest and I'm sure that you are not happy about the loss of a six-figure contract over the next couple of years. But business is business, and I have the manpower to complete the project.
- You recused yourself *one* time from *one* project—Boker/Creekside the first time it went to Council. The second time it went to Council you did NOT recuse yourself, and you were the lone vote against the project. This is a pattern, not an isolated incident.
- Although you did vote in favor of our project last night, it was after what I believe were inappropriate comments, including incorrectly referring to the project as "affordable housing", and trying to stipulate standards above and beyond the LUDC (our compliant driveway grades).

- Every time I present a project to City Council, the next day I get half a dozen comments from people such as “what did you do to piss Brookie off”, or “wow, Brookie really hates you”. This morning was no exception; your animosity was clear to people listening to the public hearing.

I would respectfully request that you recognize that we do have a conflict with each other that affects your judgment, and I ask that you recuse yourself in the future any time RA+A has a project in front of City Council.

Tracy Reynolds
Reynolds Ash and Associates
1140 Main Ave.
Durango CO 81301
(970) 259-7494
(970) 759-0490 cell

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