

March 13, 2015

Ms. Amy C. DeVan
Executive Director
State of Colorado Independent Ethics Commission
1300 Broadway, Suite 240
Denver, CO 80203

CERTIFIED MAIL DELIVERY

Dear Ms. DeVan and Commissioners,

I am writing in response to the letter I received dated February 17, 2015 regarding the complaint filed pursuant to Art. XXIX, sec. (5), of the Colorado Constitution. I understand that the complaint was deemed non-frivolous by the Commission.

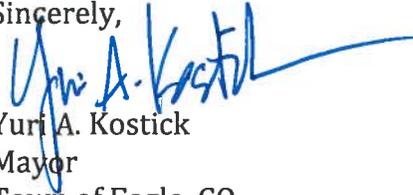
I am not currently represented by any legal counsel.

Please review the following response which explains, rebuts, and provides information concerning the facts and allegations in the complaint.

I have responded in four sections and have provided the following; 1) a narrative discussion of the relevant facts, 2) a timeline of events, 3) a personal commentary about my actions and an explanation of the events that occurred, 4) direct response to the "*General Allegations*" provided in the complaint.

I appreciate the opportunity to provide this information to the Commission.

Sincerely,



Yuri A. Kostick
Mayor
Town of Eagle, CO

Statement of Truth in the enclosed response

I, Yuri A. Kostick, to the best of knowledge, information and belief, do represent that all statements set out in the enclosed response are true.



March 13, 2015

Yuri A. Kostick
Mayor
Eagle, CO

SECTION ONE

Narrative discussion of Relevant Facts:

I have served as the Mayor of Eagle, CO since I was elected in April of 2012. Prior to serving as Mayor, I served the town as a Trustee at large on the Eagle Town Board of Trustees (TBOT) from 2008 until 2012. The TBOT reviewed a PUD and Major Development Permit for the Haymeadow project during the fall and winter of 2013-2014. The project was unanimously approved by the TBOT on March 25, 2014. Per the development agreement with the Haymeadow project, the Town of Eagle was to receive significant financial investment benefitting the public in the form of; direct fees, land dedication including a school site, parkland dedication, a new fire station site, money for a water treatment plant, and many other elements over time.

On October 17, 2014, I was contacted via phone by Alan Cohen, the owner of the Haymeadow property who left a voice mail message. Prior to the phone message, Mr. Cohen and I had never spoken, exchanged correspondence of any kind, nor ever met in person. In his message, Mr. Cohen expressed serious concern about the status of the development and questioned the willingness of the Town of Eagle to allow the development to proceed.

On October 20, 2014, I was contacted via phone by Scott Schlosser, a local Eagle, CO resident. He asked me to meet him and Doug Seabury, current Town of Eagle trustee elected November 2014, to discuss news that Mr. Schlosser had regarding the Haymeadow project. On October 20, 2014, the three of us met and Mr. Schlosser explained that he had been recently engaged by Mr. Cohen to be his local representative for the project. In addition, he explained that the owner had serious concerns that even though both parties had signed the Development Agreement, the Town of Eagle was no longer willing to allow the project to continue. Finally, Mr. Schlosser informed Mr. Seabury and me that Mr. Cohen had extended an invitation to fly to Mr. Cohen's home in Florida to meet him and discuss the status of the project. Mr. Cohen stated that, at the time, his schedule did not allow him to personally to travel to Eagle, CO to meet and instead requested our presence at his primary residence.

Mr. Schlosser and Mr. Cohen's representatives made our travel arrangements. On October 29, Mr. Schlosser and Mr. Seabury and I flew together by commercial airline to Orlando, Florida. Upon arrival, we were transported by a hired car to Mr. Cohen's home at his sole expense. Over the course of the visit, we stayed at a guest house on Mr. Cohen's property. Together with Mr. Cohen, we discussed the project and reviewed the Development Agreement and concluded that both parties (Mr. Cohen and Town of Eagle) were still in agreement with the terms. In part, based on our conversations and his better understanding of the Town of Eagle's position on the development, Mr. Cohen expressed his renewed willingness to commence his project. On November 1, Mr. Schlosser, Mr. Seabury, and I returned to Colorado by commercial airline.

On November 2, I personally contacted each member of the TBOT via phone message and requested to meet with each to inform them of the trip and meetings that had transpired. On November 3, I contacted the Town of Eagle town attorney via phone call and also informed him of the trip and meetings that had transpired. Also on November 3, I contacted the acting Town Manager, Tom Gosiorowski and the Town Planner, Tom Boni, via email to schedule a meeting to inform them of the trip and the details of what had transpired.

On November 11, the TBOT held its regularly scheduled bimonthly meeting. During executive session (held to receive legal advice from the Town Attorney), I informed the TBOT of the trip and of the details of what had transpired. I did not request any reimbursement for the trip expenses from the TBOT. After the executive session was complete, by consensus agreement, the TBOT decided that they desired to reimburse travel expenses and to issue a statement to the press regarding the trip.

The correspondence with the press issued by the TBOT is as follows:

“Hi Pam, The Eagle citizens, the Town staff, Planning and Zoning Commission and the Town Board of Trustees have invested significant time, effort and expense helping to crafting a residential development project which meets the Town’s vision as stated within the Eagle Area Community Plan. The Town has several crucial infrastructure projects which are, in part, dependent upon the success and timing of this project. A comprehensive understanding of the status and timing of this pending development project is important as the Town finalizes its 2015 budget this month. As you may know, Abrika recently announced that its local representative for the project, Ric Newman, has left his position with the company. At its budget work session on October 28, 2014 the Board discussed its desire for more information on the projected development schedule of Haymeadow so that the Town appropriately budgets for capital expenditures in the 2015 budget. Following that work session, Mayor Kostick and Trustee Seabury met with representatives of Abrika in Florida on October 29 thru November 1. Total expenditures for the trip were approximately \$2380.00, which will be approved for payment in December in connection with the November bill pay schedule. As you are aware from your long history of covering development projects, trips like this occur in almost every major development project. The Town Board is pleased to have established an open and more direct relationship with Haymeadow’s principals and is confident that the expense of the trip will enable it to budget for 2015 expenses more effectively and to, ultimately, help insure the success of the project.

I acknowledge your open records request. This has been forwarded to the Town’s attorney and Town Staff to ensure a thorough and accurate response.”

At the November 11 Town Board meeting, subsequent to information that I received from the Town Attorney, I announced my decision to recuse myself from all future deliberations regarding the Haymeadow project in order to protect the Town of Eagle from any appearance of impropriety regarding my personal experience with the travel to Florida. To date, I have not participated in any discussions or taken any action as Mayor regarding the Haymeadow project. In the future, I do not intend to participate in any discussions or take any action as Mayor regarding the Haymeadow project.

Subsequent to the November 11 Town Board meeting, I requested an invoice from Abrika Properties (Mr. Cohen's company) for the travel expenses. Immediately upon receipt of this invoice, I reimbursed Abrika Properties for the travel expenses.

During the public comment period at the beginning of the December 9, 2014 TBOT board meeting, I made the following statement on the record:

"On October 17th, I was contacted by the owner of the Haymeadow Property, Alan Cohen. He informed me that there was a change in his local representation and that Ric Newman, had concluded his work for the project. In addition, he expressed his desire to better understand how his approved development was going to move forward into a construction phase. On October 29th, Doug Seabury and I flew to Florida to meet with Mr. Cohen at his request to discuss the future of the Haymeadow development. When we returned, Trustee Seabury and I met with Trustee Andy Jessen and Trustee Kevin Brubeck in separate meetings and also immediately contacted our town attorney and notified the town board and met with town staff. We both have come to understand that we made mistakes in procedure and sincerely apologize for any distraction and additional time and attention that our actions have brought to the town board and to the citizens of Eagle."

On December 9, 2014, the TBOT held its regularly scheduled meeting. During executive session the Town Attorney advised the TBOT on matters surrounding the repayment of the trip expenses. I was not party to the executive session. After the executive session, the TBOT voted unanimously not to reimburse me for the trip expenses based on legal advice received from the town attorney. I did not request reimbursement for the travel expenses nor did I protest the board's decision on the matter.

The relevant minutes from the December 9 are as follows:

EXECUTIVE SESSION

Baker made a motion to enter into Executive Session to conference with the Town Attorney for the purpose of receiving legal advice on Board expenses, Haymeadow water matters, and the Stanton & Cissna Ditch under CRS 24-6-402(4)(b). McKibbin seconded and the Board

entered into Executive Session at 9:13pm. Kostick and Seabury recused themselves from the Executive Session.

Benitez made a motion to come out of Executive Session. Brubeck seconded. The motion passed unanimously and the Board exited Executive Session at 10:43pm.

Benitez made a motion to continue the meeting past 10:00pm. McKibbin seconded. The motion passed unanimously.

Baker made a motion to direct staff and counsel, with respect to Resolution 12, Series 2014, to review the Annexation and Development Agreement for the Haymeadow development to understand and evaluate the Town's remedies in respect to failure to deliver the deed for water rights pursuant to Sections 8.1 and 28.4 of the Annexation and Development Agreement and exercise those remedies. McKibbin seconded. Kostick and Seabury abstained. The motion passed unanimously.

McKibbin made a motion that it is the decision of the Board that the Town of Eagle cannot reimburse Mayor Yuri Kostick and Trustee Doug Seabury for expenses related to a trip to Florida taken on October 29 to November 1, 2014. The Town cannot reimburse the expenses and remain in compliance with the Independent Ethics Commission Position Statement 12-01 which addresses gifts and travel reimbursements. Jessen seconded. Kostick and Seabury abstained. The motion passed unanimously.

Acknowledgments from the Board of Trustees To: Mayor Yuri Kostick and Trustee Doug Seabury

Trustee Jessen said "I think that what both of you guys did was something that was right for the Town and important. It just seemed to be a way to help out".

Trustee Benitez said "Based on the advice we have received we realized that it would almost be considered to be double jeopardy and it would put people at risk based on the advice that we have gotten".

Trustee Baker said “We obviously think that you’re well intentioned and I appreciate what you did. I think that this was some type of obscure law that you were not aware of, again we appreciate what you did”.

On January 13, 2015, the TBOT held its regularly scheduled meeting. During executive session the Town Attorney advised the TBOT on matters related to the Haymeadow project. I was not party to the executive session because I had recused myself from all matters concerning the Haymeadow project. After the executive session, the TBOT had the following statements:

Acknowledgments from the Board of Trustees

To: Mayor Yuri Kostick and Trustee Doug Seabury.

Benitez said “I would like to acknowledge the Mayor and Doug for walking through this process with us. I think that every single person on this Board has a choice and within that choice comes a lot of difficult decisions and often times brings about choices that we don’t have the answers to. I appreciate the effort that you have put in and the vulnerability that you have both showed to address this issue while jumping into all of the challenges that come with it and hopefully set yourself and the Town up for success by stepping out of this process. We can acknowledge that it is not an easy decision and I appreciate you being willing to make that decision and I want to say for the record how much I appreciate everything you’re doing for the Town with regards to making sure this is done in a correct manner to protect both yourselves and the Town”.

McKibbin said “Not to take advantage of that but it is very well stated and I agree 100 % with Luis”.

Brubeck said “Not speaking for the other trustees but towards the Board, for what you guys have done for this Town in support of projects that are very important to the future direction of this community and so for that, thank you”.

Jessen said “I’d like to reiterate and acknowledge that I firmly believe that the Mayor and Trustee Seabury have always acted in the best interest of the Town and always have on any actions they’ve taken. I’m just happy to offer my support in any way that I can. I appreciate their continued dedication to the Town of Eagle”.

Baker said "I don't think that there is anything better than that. I don't know what I can add that hasn't already been said, and I wholeheartedly endorse what everyone has said. I mentioned at the last meeting that I so appreciate the decision you made. I know that it was done with the best of intentions with this obscure law and that sometimes laws are like that; ask any lawyer and they will tell you it's impossible to know every one. So thank you and I thank you for your decision tonight. I think in my mind it's evidence of the integrity that you have both demonstrated throughout this process and I know it hasn't been easy for you but I sincerely appreciate what you have done".

Kostick thanked everyone and stated "I really do appreciate it".

SECTION TWO

Timeline:

- March 25, 2014: Haymeadow Development Permit and PUD Approved by Eagle Town Board
- October 17, 2014: Phone message from Mr. Cohen to Mayor Kostick
- October 20, 2014: Meeting with Mr. Scott Schlosser, Trustee Doug Seabury, and Mayor Kostick
- October 29-November 1, 2014: Travel to Mr. Cohen's property
- November 2, 2014: Mayor Kostick notifies Eagle board members of trip details and schedules meetings to discuss
- November 3, 2014: Mayor Kostick schedules meeting with town staff to notify staff of trip details
- November 3, 2014: Mayor Kostick notifies Eagle Town Attorney of trip details
- November 11, 2014: In executive session at the regularly scheduled Eagle Board meeting, Town Board receives legal advice from Town Attorney regarding the trip details and Board takes action to repay Mayor Kostick for the trip expenses
- November 11, 2014: Mayor Kostick requests invoice from Abrika Properties and reimburses for trip expenses
- December 9, 2014: In executive session at the regularly scheduled Eagle Board meeting, Town Board receives legal advice from Town Attorney and reverses its action to repay Mayor Kostick for the trip expenses

SECTION THREE

Personal Commentary:

On Friday, October 17th, in his phone message to me, Mr. Cohen expressed considerable concern about the future of the Haymeadow project. On Monday, October 20th, Mr. Schlosser informed me that he had been involved with intense conversations over the weekend with Mr. Cohen and that Mr. Cohen was prepared to abandon the project completely. Furthermore, he had recently terminated his contract with his local development representative, Mr. Ric Newman. The Town of Eagle and Ric Newman had spent over nine years in discussions regarding the Haymeadow project. The Haymeadow project was found by the Town Board to be aligned with the town's goals, plans, and policies including a positive finding of compliance with the Eagle Area Community Plan.

The Development Agreement outlined that the Town of Eagle stood to receive significant public benefit from the project. These benefits included a new public park, land dedicated to construct a fire station, 50+ acres dedicated to a new school site and public park, \$700,000 payment for roadway planning, the construction of significant off-site road improvements, and \$3,000,000 in a direct payment for a water treatment facility needed by the town not solely because of the Haymeadow project.

Because I had information that the project was in immediate jeopardy and that this situation in my estimation was urgent, I felt that it was in the best interest for the town that I meet with Mr. Cohen to learn more about his intentions to develop the property and to get additional information about the status of the project. I also hoped to positively influence Mr. Cohen so that he would be encouraged to proceed with his project and bring the proposed public benefit to our community.

Because the project was previously approved, annexed into the Town of Eagle, and there was an executed Development Agreement in place, I did not believe that there was any prohibition against travel to meet with Mr. Cohen at his sole expense. It was my belief that the acceptance of an offer to travel to meet with the owner did not violate title XXIX of the Colorado Constitution because there were no open files, there were no public hearings scheduled, nor were there any pending land use actions involving the project at the time. Thus, I accepted his request to meet.

In order to dispel any appearance of impropriety or conflict of interest, I reimbursed Mr. Cohen's company for the travel expense and provided complete transparency to my fellow board members and the citizens of the community of Eagle to whom I serve. In addition, I have pledged to recuse myself from any future land use actions that may involve the Haymeadow project. To date, there has been no offer or promise of personal benefit to me from Mr. Cohen or anyone involved with the Haymeadow project. My actions were taken solely to benefit the community of Eagle and the citizens for whom I serve.

SECTION FOUR

General Allegation Responses:

6. Mr. Stevens claims that Haymeadow *"will be the subject of numerous future quasi-judicial public land use hearings before the Town of Eagle."*

This statement is not fact; it is conjecture. The file was approved in the spring of 2015 and the vested rights for the project run with the property until 2018. Currently, there are no pending land use hearings or files proposed by the owner. My mayoral term runs until April of 2016. I do not know if I will run again for Mayor nor do I know if I would be reelected if I choose to do so. The reason that I reject Mr. Stevens' statement as conjecture is that there is no guarantee whatsoever that the owner will continue with this project. As stated in the personal commentary section above, it was precisely my conviction to understand whether or not the Town had a reasonable assumption that it could start to receive the public benefit by the project moving forward. Also as stated above, I have recused myself from any deliberations regarding the Haymeadow project and will continue to avoid any and all participation with the project if and when it moves forward through the town land use review process.

7. This statement is true and accurate. These expenses have been repaid.

8. This statement is true and accurate. These expenses have been repaid.

9. This statement is not true. I do not work for Mr. Seabury or Mr. Schlosser's company but they have assured me that their company does not have any *"listing agreement to sell lots and homes at the Haymeadow development."*

10. I am unclear about what is intended by Mr. Stevens' statement. I did not disclose the to any other members of the Board of Trustees, the Town of Eagle Manager or the Town Attorney. As stated above, immediately upon return, full and complete disclosure was made to the trustees, town staff, and to the public.

11. This statement is untrue and inaccurate. As stated above, immediately upon return, full and complete disclosure was made to the trustees, town staff, and to the public.

12. It is true that both Trustee Seabury and I did seek to meet and actually met with two trustees individually on two separate occasions. I do not believe nor do I agree with Mr. Stevens' statement that these meetings were a violation of any open meetings laws.

13. This statement is untrue. Neither I, nor Mr. Seabury ever requested repayment by the town for the trip expenses. As stated above and shown through the sequence of events explained in the timeline, the Town Board of Trustees initially decided to repay us for the trip expenses precisely because it was the Board's decision that the

trip was for public benefit and not for any personal gain by either me or Mr. Seabury.