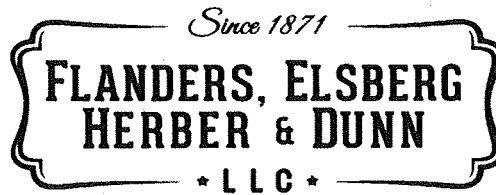


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August 26, 2024

VIA ELECTRONIC MAIL [Eugene.Mei@longmontcolorado.gov](mailto:Eugene.Mei@longmontcolorado.gov)  
Eugene Mei, City Attorney  
City of Longmont-City Attorney's Office  
350 Kimbark Street  
Longmont, CO 80501

**RE: Modern West 2 Concept Plan Amendment**

Dear Mr. Mei and Members of City Council:

As you know, our client Modern West Longmont, LLC ("ModernWest") submitted a major development application (the "Application") which is set for second reading with City Council on August 27, 2024. In preparing for the August 27<sup>th</sup> council meeting and in reviewing the meeting packet, ModernWest identified two issues that need to be brought to your attention in anticipation of the upcoming hearing.

**1) Council Member McCoy's Participation**

The Longmont Municipal Code (the "Code") details several restrictions and procedures the City Council must follow when acting in a "quasi-judicial capacity" – like it is with respect to the ModernWest Application.

Specifically, the Code has very stringent limits that prevent Council Members from receiving or considering any ex-parte communications relating to a pending development application. In this regard, Sec. 15.020.030 of the Code defines ex-parte communications as any type of information (written, verbal, electronic or graphic) received outside the hearing record.

The restriction on receiving ex-parte communications is an important due process protection for applicants, and the Code goes so far as to recognize that any receipt of ex-parte communications by a council member acting as a decision maker is improper and may serve as grounds for overturning the council decision at issue.

In this case, it has come to our attention that Council Member McCoy received ex-parte communications relating to the Application from members of the public and members of the Airport Advisory Board ("AAB") while attending a meeting of the AAB on August 8, 2024. Specifically, while Mr. McCoy recused himself from portions of the AAB's August 8 meeting, the video recording of that meeting shows that Mr. McCoy was present for large portions of that meeting while various aspects of the Application were discussed. Just a few examples of this are shown in the meeting video in the following link at time stamps 7:20, 1:02:55, 1:09:08 and 1:15:18. <https://youtu.be/KcARJdkTPIM?si=ZxzwsoZHf4TnJzZ0>

Given Mr. McCoy's presence at the AAB meeting where the Application was discussed at length, it is apparent that Mr. McCoy received ex-parte communications relating to the Application.

Mr. McCoy did not disclose his presence at the AAB meeting or receipt of these ex-parte communications at the Council's first reading on the Application on August 13, 2024, although there were concerning comments that give rise to the impact of ex-parte communications made by Mr. McCoy at that August 13<sup>th</sup> meeting. These comments are linked at time stamp 1:21:46 to 1:23:00. [https://www.youtube.com/live/D0ZokEBCJQM?si=LsNKUfFIReaf1\\_jB](https://www.youtube.com/live/D0ZokEBCJQM?si=LsNKUfFIReaf1_jB)

Given Mr. McCoy's receipt of ex-parte communications, ModernWest has no choice but to request that Mr. McCoy be recused from participating and voting in the quasi-judicial hearing on the Application on August 27<sup>th</sup>.

## **2) July 18, 2024 Letter from the Airport Advisory Board**

In reviewing the meeting packet that was recently posted for the upcoming August 27<sup>th</sup> Council meeting, we also found that the AAB's letter dated July 18, 2024 is to be included in the record for determination of the Application.

ModernWest has concerns that this letter from the AAB is not proper and therefore should not be included in the record for a decision on the Application.

As an initial matter, the Code makes clear that Council and P&Z have the power and authority to review and take public comment on pending development applications under Sec. 15.02.020. The AAB, however, is not designated as a reviewing body for development applications.

Instead, the AAB is an advisory body formed under specific provisions of the Code with specific, limited powers and authority described in Sec. 2.94.040. The powers and duties granted to the AAB do not include the right to review, take public comment, or actively oppose individual land use or development applications.

As it relates to the AAB's advisory powers, the AAB's bylaws require the AAB to provide an agenda and written notice to all interested parties before the AAB is permitted to take any advisory actions that are within the scope of its authority. Unfortunately, when the AAB took public comment on the Application and approved action to recommend denial of the Application through its July 18<sup>th</sup> opposition letter, no written notice or agenda was ever provided to ModernWest as an interested party. So, even had this action been within the AAB's advisory powers, ModernWest could not participate in the process it should have been afforded under the Code.

Finally, ModernWest has concerns that because the AAB took public comment relating to the Application at the meeting, and then summarized those public comments in its July 18<sup>th</sup> letter to the Council in opposition to the Application, this letter likely constitutes ex-parte communication that should not be considered by Council for purposes of the Application. ModernWest's concern regarding ex-parte communication is heightened by the AAB's solicitation in the letter that members of Council contact the AAB members directly to discuss the Application.

In light of these concerns, ModernWest requests that the AAB's July 18, 2024 letter and its attachments be excluded from the record for purposes of the Application, and that the letter not be considered by Council in making a decision on the Application.

We appreciate your prompt attention to these concerns in anticipation of the Council meeting on August 27.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott W. Dunn', with a long horizontal flourish extending to the right.

Scott W. Dunn