

Board of Ethics Special Called Meeting Minutes

December 1, 2011

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City of Sandy Springs Board of Ethics Meeting was held at Sandy Springs City Hall, 7840 Roswell Road, Building 500, Sandy Springs, Georgia, 30350, on December 1, 2011, at 9:00 a.m.

Call to Order

Chairman Ted Sandler called the meeting to order at 9:02 a.m.

Roll call

City Clerk Michael Casey called the roll.

Board Members Present: Ted Sandler, Stuart Steinmark, Dick Isenberg, David Price, Cindy Johnson, Lorrie Mell. Kevin King joined the meeting later.

Staff and Representatives Present: City Attorney Wendell Willard, City Clerk Michael Casey, Assistant City Clerk Kelly Bogner, and Communications Director Sharon Kraun

Ruling on Quorum

City Clerk Michael Casey stated a quorum was in place for the meeting.

New Business

Chairman Ted Sandler asked the following individuals to introduce themselves: From the Sandy Springs Reporter newspaper Dan Whisenhunt; City of Sandy Springs Communications Director Sharon Kraun; Sandy Springs citizen Daniel Fries; Councilmember Dianne Fries; Assistant City Attorney Cecil McLendon; and Sandy Springs citizen Patty Berkovitz.

Chairman Sandler stated this special called meeting is in response to a complaint that was filed and submitted to the City Clerk. The City Clerk distributed the complaint to the Boardmembers and the City Attorney for a preliminary opinion. Chairman Sandler confirmed with the Boardmembers that they reviewed the complaint and the City Attorney's response regarding the complaint. He reviewed the complaint process to ensure the Boardmembers understand their role in responding to the complaint. He referenced the Code of Ordinances Section 2-155, Procedures for hearing complaints.

Boardmember Kevin King joined the meeting at this time.

City Attorney Wendell Willard stated Chairman Sandler is not referring to the Bylaws, but the ethics ordinance instead.

Chairman Sandler stated there is a process for how a complaint is to be filed and he believes there has been no issue regarding the complaint being properly filed. At this point it is up to the Board to determine the approach to take. He reminded everyone to please identify themselves before they speak. This will help with the transcription of the recording for the minutes.

City Attorney Willard stated there are procedural items the Board should consider before discussing the complaint. The process is to first accept the complaint and accept the response. The Board should then review the response and may go into Executive Session when the complaint is discussed. If the Board decides to go into Executive Session, then only the Boardmembers and those invited by the Board will be

allowed in the session. Once the Executive Session is terminated and the meeting is opened, the Board may make a decision during the regular meeting.

Chairman Sandler stated the Board does not plan on having a hearing today. The purpose of this meeting is to explain the process and receive initial thoughts from Boardmembers. City code Section 2-155, subparagraph (f)(1), states it is the Board's responsibility to be fundamentally fair and reasonable. The Board is not bound by the civil procedures statutory rules of evidence. In subparagraph (f)(5) it states there shall be a preponderance of the evidence admitted. Today, this will be a preliminary discussion on what the Board has been given and how to approach the issue. The Board has thirty days to review and consider a complaint after receiving the City Attorney's analysis. The purpose of this hearing is to abide by the thirty day requirement by reviewing the information, deciding what approach to take, and if a formal hearing is needed.

Kevin King asked Chairman Sandler if he was reading from the Ethics ordinance.

Chairman Sandler stated he is referencing City code Section 2-155. An option available to the Board is to dismiss the complaint, for which reasons would need to be given. Another option is to determine that the complaint alleges facts sufficient to constitute a violation of the ordinance and then a hearing would be scheduled and conducted. The last option available would be to determine if further information is required to determine if a violation of the ethics ordinance has occurred. The Board will determine if the complaint is sufficient and if a hearing should be held to gather more information from the complainant and the respondent, or if there is not sufficient information to go forward.

City Attorney Willard stated the Board can also request the City Attorney to investigate for any additional information desired by the Board prior to moving forward to a full hearing situation.

Kevin King asked if the Board will choose today to do one of the three options.

Chairman Sandler responded yes. He asked if any of the Boardmembers have questions regarding the process. It would be more beneficial to discuss the complaint in Executive Session.

City Attorney Willard stated a matter was brought to his attention yesterday that is not directly related to the complaint or the response of the respondent, but is a material matter that should be brought to the attention of the Board. In the Ethics Bylaws Section 7.3 states a complaint being considered is insufficient if the Board determines by a majority vote that the compliant does not state a violation of the Ethics Ordinance upon which relief can be granted. In deciding whether a complaint is frivolous, the Board may also consider if the complaint is too indefinite, does not identify the alleged violator, is unsigned, or unsworn to by the complainant. Communications Director Sharon Kraun had a conversation with Sandy Springs Reporter Dan Whisenhunt yesterday who informed her he became aware of the complaint because he was contacted by the complainant. The Board has a reason to inquire about that as a matter of considering the issue of what action may be taken by the Board in the review process.

Chairman Sandler stated he would like to have an Executive Session first.

City Attorney Willard stated this new information is not part of the complaint, but pertains to the actions of the complainant. He suggested the discussion regarding the complainant speaking to the media be done before the Executive Session. This would be to gather information for the consideration of what will be done in the discussion phase and final decision phase before the Board takes action on the complaint. The Ethics Bylaws discuss if there is a question of conduct by the complainant in contacting news media.

Chairman Sandler stated this issue should be opened for discussion before going into Executive Session. This issue would be addressed in the Bylaws under Section 7.3 Insufficient Complaints. He is not sure how contacting the media applies to the merit of the complaint.

City Attorney Willard stated this issue would apply when the Board considers the basis of the complaint and whether it was frivolous. Contact by the complainant with the news media is addressed in Section 7.3 (b) of the Bylaws. He suggested this is a prerequisite if the Board determines to hold a hearing.

Chairman Sandler stated he does not feel the complainant speaking to the news media has merit in this situation. There has not been much information in the media regarding the complaint that would affect the Board's deliberation or influence the Board's decision.

City Attorney Willard stated the issue is not the effect from the news media, but the question of motivation.

Chairman Sandler stated there is not concern that there is motivation other than the merits of the complaint from the complainant contacting the media.

Kevin King asked if City Attorney Willard can develop the facts as to what occurred, if anything.

Chairman Sandler asked if the Board feels they need additional information regarding this issue in order to make a decision.

David Price stated if the Board finds it to be a frivolous complaint, the Board can then go to the City Attorney and request information about any publicity undertaken by the complainant.

City Attorney Willard stated the Board should consider whether or not the complainant contacting the media is part of the motivation of the complainant.

David Price stated he is ambivalent to the discussion being held prior to the Executive Session, or during which time a decision might be made on whether or not the complaint is frivolous.

Stuart Steinmark asked the facts to be restated regarding the information given to the newspaper.

City Attorney Willard stated he received information from Communications Director Sharon Kraun that she had a conversation with a reporter. The reporter had been contacted by the complainant and told the complaint had been filed with the City.

Stuart Steinmark asked if it is possible the complainant contacted the news reporter the day the complaint was filed or a few days prior to the complaint.

City Attorney Willard stated there is an article on the Sandy Springs Reporter webpage regarding the complaint.

Lorrie Mell asked if there was a date on the article.

City Attorney Willard stated he did not check the date on the article.

Chairman Sandler asked Sandy Springs Reporter Dan Whisenhunt when he was first contacted by the complainant.

Sandy Springs Reporter Dan Whisenhunt stated he contacted the complainant under his own initiative. When he received the email notice there was to be an Ethics Board meeting, he worked his sources to find out the reason for the meeting. He was able to determine who the complainant was and what the complaint was regarding.

Chairman Sandler asked if he contacted the complainant recently.

Sandy Springs Reporter Whisenhunt stated he contacted the complainant yesterday. After he received the agenda by email from the City Clerk, he made a few phone calls to find information on what the meeting was to be about.

Cindy Johnson stated she believes that takes away the question of motivation.

Motion and Vote: David Price moved to enter into Executive Session to discuss the complaint. Dick Isenberg seconded the motion. The motion carried unanimously, with Ted Sandler, Kevin King, Stuart Steinmark, Dick Isenberg, and David Price voting in favor of the motion. Executive Session began at 9:35 a.m.

Motion and Vote: Dick Isenberg moved to adjourn Executive Session. David Price seconded the motion. The motion carried unanimously, with Ted Sandler, Kevin King, Stuart Steinmark, Dick Isenberg, and David Price voting in favor of the motion. Executive session adjourned at 11:07 a.m.

Chairman Sandler stated he would like to discuss how the Board should respond to the complaint.

Stuart Steinmark stated it is important the Board go through the applicable rules that govern the decision making process of the Board. He read City code Section 2-105 Declaration of policy, subparagraph (b) which states: "it is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence." The other governing principal that impacts the Board's decision was brought to the Board's attention by the City Attorney. The City Attorney's confidential memorandum to the Board contains a reference to the Charter provision.

City Attorney Willard stated he included in the memorandum a quotation from the City Charter.

Stuart Steinmark stated the Charter states no member of the City Council shall abstain from voting on any matter properly brought before the Council for official action, except when such member of Council has a clear conflict of interest which is disclosed in writing prior to or at the meeting and made part of the minutes.

Cindy Johnson stated that public servants are held to a higher standard of conduct. The Board needs to remember that the Councilmembers are also members of society and should be allowed to express their opinion.

Chairman Sandler stated the Board should now focus on the next step. The decision is whether to dismiss the complaint; a hearing is necessary; or there is not enough information to make a determination, necessitating further fact finding.

Motion and Second: Kevin King moved to dismiss the Ethics complaint. Ted Sandler seconded the motion.

Kevin King stated the Board has read the complaint, discussed it, considered the issues thoroughly, considered the appearance, the rights of the complainant, and the rights and duties of the Councilmember. The complaint does not constitute a clear conflict of interest.

Cindy Johnson stated as an alternate member of the Board she can participate in the discussion, but not on the motion.

Chairman Sandler asked City Attorney Willard if the alternate members can participate in discussion of the motion.

City Attorney Willard stated this complaint is a matter for voting. It would be best for the discussion to stay limited to those who will be participating as a voting member.

David Price stated the complaint alleges a conflict of interest by Councilmember Fries. There may be the appearance of a conflict of interest, because of Councilmember Fries background and career in the real estate business, but it does not appear to rise to the level of a clear conflict of interest.

Dick Isenberg stated he agrees with David Price's opinion, but he would like more information on the complaint.

Stuart Steinmark stated it appeared the complaint alleged sufficient basis for concluding there is an appearance of impropriety. He is not certain there is a clear conflict, of interest because there is not a tangible benefit to Councilmember Fries, either presently or in the future. The benefit that Councilmember Fries would have is not substantially greater than any other homeowner in Sandy Springs. There is a potential conflict between the two governing rules. The question is which provision takes precedence. The voting provision would more likely take precedence. Councilmember Fries was obliged to vote, because there was no clear conflict of interest, but merely the appearance of a conflict.

Chairman Sandler stated he agrees with Stuart Steinmark's comment. There is not a direct benefit to Councilmember Fries in exchange for her pushing the vote forward. The appearance is another issue and it may have looked like there may be a benefit to one group or another. The agenda item was something that needed to be corrected, because it was an oversight in the sign ordinance. The City Charter takes precedence over the Ethics ordinance.

Vote on the Motion: The motion carried unanimously.

Adjournment

Motion and Vote: David Price moved to adjourn the meeting. Kevin King seconded the motion. The motion carried unanimously. The meeting adjourned at 11:24 a.m.

Date Approved: January 11, 2012

Ted Sandler, Chairman

Michael Casey, City Clerk