



AGENDA OF THE ETHICS BOARD

WEDNESDAY, OCTOBER 28, 2020, 5:00 PM

Virtual Meeting. Public may join via Zoom.

A. Zoom Meeting Information.

- I. This item contains documents which provide call in information and instructions for the Zoom Meeting.

B. Roll Call.

- I. William Vande Castle, Chair; Alder Bill Galvin; Branka Bakovic; Chari Graham; Cheryl Renier-Wigg; Aaron Weinschenk

C. Approval of the Agenda.

- I. Approval of the Agenda for Wednesday, October 28, 2020.

D. Approval of Minutes.

- I. Approval of the Minutes from the October 7, 2020 Ethics Board Meeting.

E. Regular Business.

- I. Deliberations and possible action on the Motions filed in the matter of the Ethics Complaint against Alder John Vander Leest, filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials.

The Board may convene in closed session pursuant to Sections 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governing body. The Board will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

2. Scheduling of further proceedings.

F. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
- 2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Ethics Board meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

Virtual Meeting Instructions



Ethics Board 10-28-20

Zoom Meeting Information

City Of Green Bay is inviting you to a scheduled Zoom meeting.

Topic: Ethics Board 10-28-20

Time: Oct 28, 2020 05:00 PM Central Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/88960055245?pwd=aS8waGprV3BRWm1VcDlzZk5BSFlzdz09>

Meeting ID: 889 6005 5245

Passcode: 634311

One tap mobile

+19292056099,,88960055245#,,,,,0#,,634311# US (New York)

+13017158592,,88960055245#,,,,,0#,,634311# US (Germantown)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 889 6005 5245

Passcode: 634311

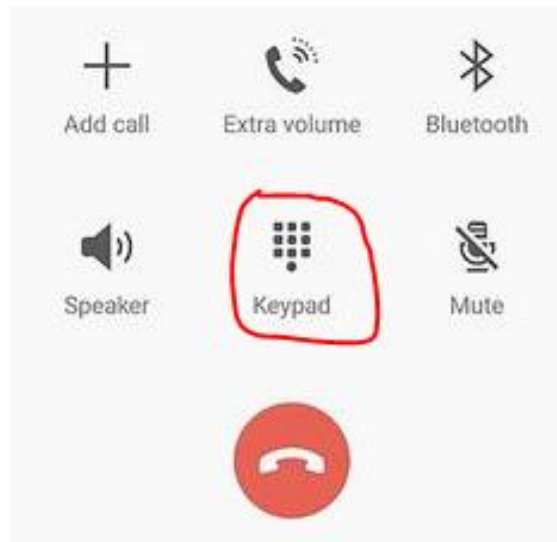
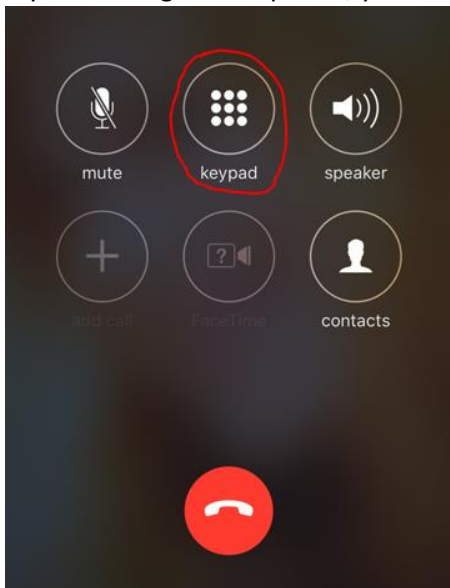
Find your local number: <https://us02web.zoom.us/u/kehcacBFX>

Additional Information

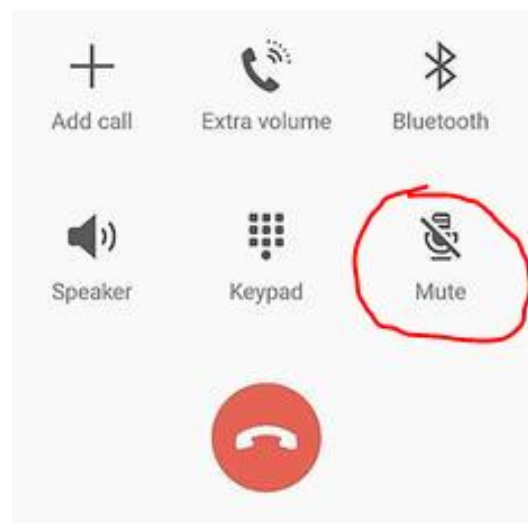
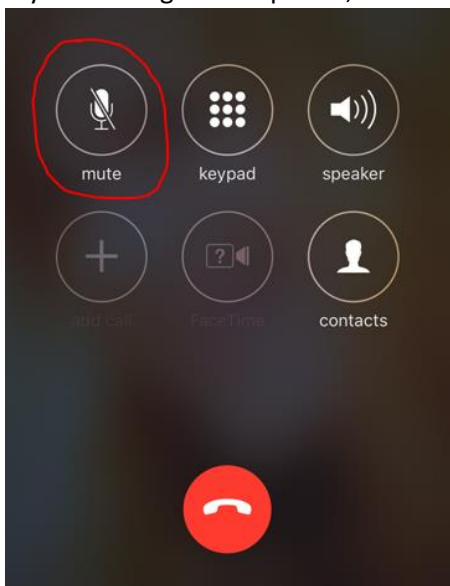
1. Wisconsin Open Meetings Law still applies
 - a. Persons interested in speaking to an item must give their name and address
 - b. Committee/Commission/Board members will still follow *Roberts Rules of Order*
2. All zoom meetings will have a password in the instructions. Please enter when prompted.
3. Please log into the Zoom meeting 10 minutes before the meeting starts to ensure proper technology is working.
 - a. If you are a Board Member, please log into [CivicClerk](#) with a computer, laptop, or tablet device.
4. Once you are in the meeting please mute yourselves.
 - a. You may unmute yourself when you are called upon to speak.
5. Waiting room
 - a. When you call in, all callers/participants will be placed in a “waiting room.”
 - b. Persons on the agenda will be admitted to the meeting, and then once the item is concluded, the host will permanently mute you from the meeting (you can still hear the meeting).
6. Using Zoom with a tablet or computer
 - a. Tablet—you will be asked to sign in. Download the app either with the Apple Store or the Play Store
 - b. Computer—you will be asked to sign in. You may download the app or click on the link to open Zoom in your browser.
7. Registering
 - a. The host may ask you to register for the meeting. A registration link will be sent to you along with the invite. You’ll receive another email confirming that you’re registered for the meeting.
 - b. If you’re using a phone, your registration will still be tied to an email.
8. Raising your hand
 - a. Committee members—you can either use CivicClerk and request to speak or you can “raise your hand” in the zoom meeting (you’d need to use a computer or tablet) to let the host know you’d like to speak. You can also un-mute yourselves and start speaking.
 - b. Persons on the agenda—you can “raise your hand” but you’d need to use a computer. You will be allowed to speak, per Wisconsin Open Meetings Rules, once the committee has “opened the floor for interested parties to speak.” Once the committee is finished with your agenda item, the host will mute you permanently, unless the committee opens the floor again.
9. What devices should I use?
 - a. Smart phone (please see more detailed instructions on page 3)
 - b. Land line
 - c. Tablet—well in advance of the meeting, please download the Zoom Meeting app before you join a meeting by using either the Apple Store or the Play Store. You will be asked to input your name, thus identifying you for the meeting. You’ll also be asked to verify your email.
 - d. Computer—well in advance of the meeting, please download the Zoom Meeting app, but you can also click on a link to open the Zoom Meeting in your browser. You will be asked to input your name, thus identifying you for the meeting.
 - e. For tablet and computer users—if you download the app you will be asked to verify your email.
10. Zoom etiquette
 - a. Muting yourselves when you’re not talking will prevent your background noise from interfering with others’ ability to listen to and participate in the meeting.
 - b. If you’re using a telephone, please identify yourself with your phone number and name before you speak. Zoom meeting hosts can see only your telephone number and will ask you to identify yourselves.
11. Closed session
 - a. Persons in the Zoom meeting will be put into a waiting room while the committee meets in Closed Session. Participants will be admitted back into the Zoom meeting once the committee reconvenes in Open Session.
 - b. Persons watching live on YouTube will see a gray screen with the City logo during closed session.
12. Persons interested in attending anonymously or listening to the meeting may call in by dialing *67 followed by the phone number above.

Calling into the Zoom meeting using a smartphone

1. Dial the phone number listed at the beginning of this document.
2. When prompted, enter the Meeting ID number followed by #
 - a. If you're using a smartphone, you can access the keypad by clicking "Keypad" on your screen



3. Once you are in the meeting, notify the meeting host that you are in and state your name.
4. If you do not need to talk, please make sure your phone is on **Mute**
 - a. If you're using a smartphone, look at your screen and click the Mute button



- b. If you're using a computer, you should see a Mute button in the Zoom application





Report to the
Ethics Board
of the City of Green Bay

MEETING DATE

October 28, 2020

PREPARED BY

AGENDA ITEM # C.I

Approval of the Agenda for Wednesday, October 28, 2020.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None



Report to the
Ethics Board
of the City of Green Bay

MEETING DATE

October 28, 2020

PREPARED BY

AGENDA ITEM # D.I

Approval of the Minutes from the October 7, 2020 Ethics Board Meeting.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. 2020-10-07



MINUTES OF THE ETHICS BOARD

WEDNESDAY, OCTOBER 7, 2020, 5:00 PM

Virtual Meeting. Public may attend via Zoom.

A. ZOOM MEETING INFORMATION.

I. This item contains documents which provide call in information and instructions for the Zoom Meeting.

B. ROLL CALL.

I. William Vande Castle, Chair; Alder Bill Galvin; Branka Bakovic; Chari Graham; Cheryl Renier-Wigg; Aaron Weinschenk

Present: Bill Galvin, William VandeCastle, Aaron Weinschenk, Cheryl Renier-Wigg, Excused: Chari Graham

C. APPROVAL OF THE AGENDA.

I. Approval of the Agenda for Wednesday, October 7, 2020.

Moved by Ald. Bill Galvin, seconded by Staff Cheryl Renier-Wigg to approve. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None, Abstain- None

D. APPROVAL OF MINUTES.

I. Approval of the Minutes from the September 1, 2020 Ethics Board Meeting.

Moved by Staff Cheryl Renier-Wigg, seconded by Aaron Weinschenk to approve. Motion carried.
Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None, Abstain-
None

E. REGULAR BUSINESS.

I. Hearing on the following Motions filed in the matter of the Ethics Complaint against Alder John Vander Leest, filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials:

- Motion to Specify Plaintiff's Claim with Particularity and Clarity filed by Alder Vander Leest on August 31, 2020
- Motion to Suppress filed by Mr. Knight on September 18, 2020
- Motion to Dismiss filed by Alder Vander Leest on September 18, 2020
- Motion to Suppress filed by Mr. Knight on October 2, 2020

2. Deliberations and action on the Motions filed in the matter of the Ethics Complaint against Alder John Vander Leest, filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials.

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Moved by Ald. Bill Galvin, seconded by Chair William VandeCastle to go into closed session. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None, Abstain-
None

Moved by Board Member Cheryl Renier-Wigg, seconded by Board Member Aaron Weinschenk, to return to open session. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None, Abstain-
None

F. ADJOURNMENT.

Moved by Aaron Weinschenk, seconded by Staff Cheryl Renier-Wigg to adjourn. Motion carried.
Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None, Abstain-
None

VERBATIM MINUTES

- And we're good.
- All right, very good. So, a little after five on October 7th, I would call to order the meeting of the City of Green Bay Ethics Board. I believe that there is roll call taken electronically here, so we'll move to... And it does appear that we have a quorum so that we can proceed. So we'll move to item C. That's approval of the agenda. Is there a motion to approve the agenda for the Wednesday, October 7th, 2020 Ethics Board meeting?
- Motion to approve. Second.
- We have a motion and a second. Any additions or corrections to the agenda? Hearing none. agenda signify by saying, "Aye."
- [All] Aye.
- Any opposed? Motion carries. Moving on to item D, approval of the minutes. We have in our packet, the set of minutes from the September 1st, 2020 Ethics Board meeting. Are there any additions or corrections? Hearing none. Is there a motion to approve?
- Motion to approve.
- Motion.
- I have motion. Is there a second?
- I'll second.
- There's a motion and a second. Again, last call. Any additions or corrections? Hearing none. All in favor of approval of the minutes from the September 1st, 2020 Ethics Board meeting signify by saying "Aye."
- [All] Aye.
- Any opposed?
- [Rob] So, you called in and what was the problem?
- All right, doesn't sound like there are any opposed, so that motion carries. Minutes from the September 1st meeting are approved. Moving on to regular business. Do we know if we have Alder VanderLeest connected yet?
- Looks like Rob's still working on that.

- May I interject? He told me that he can watch things or whatever, but he can't hear. You want me to have him try calling in again? What's the pleasure of the participants?
- We can certainly try calling in again.
- Okay, I'll call him and you can go forward. I'll have him call in again. Okay.
- Rob, you might want to have him check the thing at the bottom left, where it goes through all this-
- Oh, the ?
- That thing. I think he's not catching that.
- Okay, I'll go to try again.
- Lindsay, I have somebody in the waiting room.
- Yep, I'm on it.
- Okey-doke.
- Thank you.
- [Rob] Yeah, John, why don't you call in again and make sure you push the start audio and start video? Something like that.
- [Rob] Yeah.
- [Rob] And has it worked?
- Yeah, okay.
- Mr. Conley, he's got those buttons pushed. Has he been muted? Is that possible?
- He's not muted.
- He just shows up as--
- Is not...
- --not having audio.
- Mr. VandeCastle?
- Yes.
- One thing that you have to do, it's almost before you get to that part with the microphone and the video, is when it goes in it says "Connect with computer audio." You have to press that, and then you get to this screen. So, he may have forgotten to press that.
- Ah.
- That's before you get to--

- Did you hear Alderperson Dorff?
- [John] .
- I can say it again.
- Excuse me. Might I interject and ask Alderperson Dorff to repeat that and I'll put my phone near the computer. Okay? If that's okay? Is that okay?
- Sure. Yes, go ahead.
- Okay.
- So, John, you almost have to go back out and then when you first get admitted in it will give you a choice of "Connect with computer audio" or "Connect with iPhone audio". You have to press "Connect with computer audio". And then, again, when you get into it, you have to connect to the audio and the video. So, you have to actually start out all over again. That could be it.
- He indicated he will try it again. Thank you, Alderperson Dorff.
- .
- Are we all connected? Alder Vanderleest, can you hear us?
- It looks like we still don't have audio for him.
- How about connection by phone? Is there a way to do that?
- Yeah, we should probably just have him dial in on the audio. Just have them call that phone number and enter the meeting ID, and he should be able to participate fully without video.
- [Rob] Why don't you just dial in on a phone and listen? How about that?
- [Rob] It's 312
- [John] .
- [Rob] 312
- [John] 312
- [Rob] Just a minute. 312-626... 312-626-6799
- [Rob] Or just try this. 312-626-6799
- [John] .
- [Rob] 626-6799 I think you need them. If you get to that point, I'll give you meeting ID and the password.
- [Rob] 312
- [John] 312

- [Rob] 626
- [John] 626
- [Rob] 6799
- [Rob] Okay.
- [John] This is Alder Vanderleest calling in.
- We're good We can hear you.
- [John] Okay. I'll keep my tablet going. At least I'll be able to hear what's going on in the meeting. Thank you.
- Very good, very good. All right. So, getting back on our , procedural aspects of the meeting, we're now ready to move on to regular business. Item number one, we are scheduled tonight for a hearing on a number of motions that have been filed in this matter that is the ethics complaint against the Alder John Vanderleest as filed by Mr. Tarl Knight, under the City of Green Bay code of conduct for elected officials. You should have all received packets of documents from... I believe they would have come through the packet with the agenda for tonight's meeting. There are number of motions that were filed by the parties. Some that were filed before our last meeting when a scheduling order was put in place and a number of them that were filed after that scheduling order was put in place. The first one, Mr. Conley, correct me if I'm in error here, but the first one... First motion filed was that by Attorney Miller, for specificity. That one looks like it was filed back in... Sometime in late August, if I'm not mistaken. And it appears--
- That's August, 31st.
- And it appears that there was a response filed by that. So, is there... I would turn this over to Mr. Miller and Mr. Knight. Is there anything further that we need to address with respect to that motion?
- This is Rob Miller. May I speak for a minute?
- Yes, please.
- My understanding at this point is that we're proceeding with the alleged as a violation of the public meeting section of the code of ethics. And, if that's the understanding, no further clarification is necessary.
- Very good. Mr. Knight, anything to add to that?
- No, I don't have anything extra to add other than--
- All right. Very good. And, just from my reading of it I would assume... It was my impression that that was the case but the motion was filed, so it needed to be addressed. So then... It's like the next motion that was filed under the scheduling orders were; A Motion to Dismiss, that was filed by Mr. Miller. And a... I'm sorry. And at the same time, there was a Motion to Suppress, filed by Mr. Knight. So both of those, looks like they came in on September 18th. So... Mr. Conley, do you have an idea of which one came in first? We'll go in order of which ones they came in.
- They came in pretty much at the same time. The Motion to Suppress was based on some evidence in affidavit that was filed by Mr. Miller, and the Motion to Dismiss was an overall motion to dismiss the complaint.
- And so then, the first one would be Mr. Knight's motion to suppress?

- Probably makes some sense to address that first.

- Right. So, Mr. Knight--

- fine with me, by the way. I'm agreeable with that.

- Okay.

- I'm sorry, Mr. Bill, you're agreeable to what?

- To his proceeding first with his motions.

- Oh, okay. Very good. So, Mr. Knight, we will address your Motion to Suppress first. I know you have two of them. It looks like another one was filed in October, but we'll deal with the September, 18th one first. So, the floor is yours. You can address anything that you would like to the board regarding that motion.

- Thank you. So, filed by Attorney Miller was an affidavit. And that was assigned or written... Assigned at least, by Rhonda, who's a member of the Green Valley area school board, as is addressed in the affidavit. I had a conversation with Ms. about these hearings and about the issue here. And, she was clearly unfamiliar with the case. With the whole situation. She had talked about a number of personal instances, which are addressed in your affidavit, that she had been harassed on social media. But when I had explained to her the situation here with the formal complaint, in that, a number of people in the community had been blocked and their comments and posts and been deleted, she didn't understand the significance or the relevance to the case. And, she was concerned further that she wasn't sure how this affected the case. Because, had she known what the entire situation was about would not have come out to sign this affidavit. She has suggested that she's willing to come on and to clarify her on the things that are being addressed in the formal complaint. And that she's very pro-freedom of speech. She, as a member of the school board, has many times allowed people to speak even when their voices were disagreed over her own opinions. And she has communicated to me that she's willing to come here to communicate about the policy of the school board, in order to help to educate this board and any aldermen in the City Council, as to what she believes with the school board and other parties would be ethical. And, I know she would see that people could be heard. Especially on social media. So, I guess my Motion to Suppress here is that I'm not familiar... Although I'm sensitive to his situation, I'm not familiar with how it's relevant to this situation. And furthermore, I haven't communicated with her personally. But it's clear that she's unfamiliar with it. And, I think she was a little bit upset that she didn't understand how she was being... in what context this was being used and whether she was maybe being framed to be supportive of the respondent. When in fact, her beliefs might align more with the complaint.

- So basically, it sounds like that's... You're saying . I don't know why .

- Sorry. I should have been just more clear and succinct and simple than that. Yeah. I don't understand how this is clear, and I think that the person who signed the affidavit is unsure how it's relevant as well. It's a little confusing to me as to what this has to do with anything.

- Thank you. Anything further on this issue?

- No, not on this issue.

- Mr. Miller--

- Alder Galvin has lost his connection, to tell you that.

- Yeah, I noticed he wasn't there.

- Yeah. He's trying to get back in. He just texted me.
- All right. So let's hold the phone, Alder Galvin gets back connected so that we have a quorum.
- Quorum, yeah.
- [Woman] Hi, this is . Calling on...
- He's trying to text me something. I'll let you know when it comes through.
- Thank you for your assistance here.
- I need help. Come on, Bill. He's getting a message that his internet is down. Can I send him the phone instructions? Yes, I will. But, I will mute myself so I don't sound silly.
- All right.
- -- That's an interesting sound, isn't it? He said his internet said it's coming back up again. I said, "Stay on the phone with me." And then that sound came up. So, he didn't. So, we'll see. There he is. And there he is.
- All right, he's back.
- You're muted, Alder Galvin.
- It's probably a good thing I was muted. I said some things I shouldn't have about my internet and my phone connection. I think I live just about underneath the tower that never works very well. So, thank you.
- All right, very good. So, just for the record. We took a brief pause here as one of our members, Alder Galvin, lost his internet connection to our Zoom meeting here. So, he is back online and attending the meeting, so we will continue. Alder Galvin, is there anything that you missed from Mr. Knight in his presentation on his Motion to Suppress?
- I hate to say this, yes. I think I checked out about the time he was saying he had talked to Ms. , and that she had related that she had a couple instances happen to her over the internet. I think on social media, but then, that's when I got locked out.
- Okay. Would you like Mr. Knight to readdress those issues for you?
- If he could, just briefly. I mean, I don't want to make everyone go through that whole thing again--
- That's fine.
- --however long it was. But, I really appreciate that.
- I'll try to make it brief.
- Thank you.
- Actually, I've spoken with Ms. and I'm familiar with this situation, but I'm just unsure of the relevance of this affidavit to this case. It's... And furthermore, it seems like it... I don't know if bad faith is the correct term or not but Ms. wasn't familiar with this entire formal complaint. The situation. The basis of it. And had she known, she communicated to me that she probably would not have not cooperated with something. And furthermore,

she is staunchly... pro-allowing the community to speak and not deleting their comments. And, as a member of the school board is entrusted with a number of different stipulations that allow her and other members of that body to do so. So, she would come out and in support of this complaint. And if it's applicable, I would love to call the ring when the time is right to do that. But that's my Motion to Suppress. It's not relevant and I think it might've been in bad faith. But, that's it.

- Okay, thank you. So next, we were about to give Attorney Miller a chance to respond. So, Attorney Miller, the floor is yours.

- Thank you. Well, with regard to the affidavit, I spoke with Ms. at some length. Explained exactly what the situation was, just for informational purposes. Thereafter, I called her again and asked her if she would be willing to sign an affidavit outlining her experiences with death threats via voicemail and social media, with which she has received. And in fact, she has a injunction against the individual who's made these death threats. The exact relevance is that I've cited section 230 of the Communications Decency Act. And, I am a big proponent of First Amendment rights, the ability to speak. But I think when people are making death threats to anyone and most especially, a public official, that needs to be policed and addressed. And, the ability to do so is contained in that section 230 of the Communications Decency Act. And my view is that the ability to police and delete posts is absolutely inherent in reasonable and decent discussions and I would further add that my material from the Wisconsin Ethics Bard... The people that supervise ethics for the state legislators and advise local attorneys on this, indicates that state legislators have the ability to police and manage Facebook posts. So, it's entirely consistent with my defense that public officials need the ability to police and manage their posts so they're not put in a position of endorsing repugnant postings on their social media items on the internet. So, it's relevant. It's... Ms. was well aware of What's going on. I talked to her multiple times. I had to solicit the affidavit. I don't know where Mr. Knight is coming from with that recitation but it stands as it is. And, I guess it's a matter of debate if we get to that point.

- Mr. Miller, a question. I'm not sure I heard you correctly. Did you say with this particular person that there is a restraining order or a injunction or something?

- Yes. Against the person that made the death threats on social media and voicemails. So, she has every reason to be supportive of the ability to police and manage Facebook posts , and that's where this is coming from. And I've outlined the-- The section 230 of the communications decency act, which permits people who have cited that as preempting local laws to the contrary.

- All right. All right. Any board members have any questions for either party? Yes, Cheryl.

- All of the information that I've read so far, were there death threats involved with the social media? I'm talking about with this here?

- I mean, do I need to address it?

- Yeah.

- Yeah. Whoever.

- No death threats. My understanding is that there were names of... inappropriate names utilized and also, there was some disparaging of Mr. Vanderleest's business and his integrity. Those are the types of things that were present here. As well as just things that were off topic.

- Mr. Knight.

- When you address that none of the material which I have come across have been supplied with... Which makes up the basis of the has any evidence or proof of anyone threatening anything or making any sort of bad

faith or rude or inappropriate Everything has been quite succinct with the business of the office of aldermen. city issues and address those ones as well included as exhibits. And also, Ms. has also not any of the posts which were made. And she has allowed all of the posts and comments on her professional even though there is an injunction. She's even allowed those to remain. That's how staunchly she supports freedom of speech. Though, I'm not sure why you... I'm not sure what's going on.

- Okay. Any further questions from the board?

- I have a question.

- Go ahead .

- I guess I'm wondering if Attorney Miller is saying that based on what has happened to Ms. , you think that just the VanderLeest deleting comments that he doesn't agree with on his Facebook page?

- That's the argument.

- And so, because what she does... You think if it's good for her to do it or it's because she got threatened?

- No, no. That's just an example. The basis of deleting posts is section 230 of the Communication Decency Act and the Wisconsin Ethics Board, with regard to policing and managing Facebook .

- Okay. So, it's just an example of what happened?

- That's just an example.

- Okay.

- Yes. I'm not suggesting that... The fact that it occurs makes it important.

- Okay.

- That's simply the basis for its relevance. And we've got a lot of real world examples that are occurring daily on Twitter and in Facebook in the like of death threats. So, that was the one that I had access to. I had access to a specific individual but that's common knowledge to anybody that's reading the news.

- Okay. I guess a follow up comment I had to that and... Mr. Conley, if I'm out of the line shut me down right away. But, I seem to recall in the recent past politicians on state level, in Wisconsin, who were reprimanded or they were at some kind of hearings because they were deleting Facebook posts and comments from followers and they were reprimanded or... They got in some kind of trouble for doing that. So I'm just wondering, how this... You draw this conclusion but on paper and seen on media, where it's the opposite of what you're claiming here.

- And may I respond to that?

- Yes.

- There are cases all over the place. There's a case that I cite in my brief. The Governor of Kentucky did basically, exactly what Mr. Vanderleest has alleged to have done and he was upheld. His actions were upheld by the district court in Kentucky. So, my point is, not that... Or my point is, that it's an area of flux according to some judges. There are diametrically opposing decisions in this area and in that circumstance, it's not clear which path to follow. And I'm suggesting to you that there are divergent paths and it's unclear what is appropriate at this point. Is that responsive?

- Yeah, that makes sense. All right, thank you.

- Any further question from any of the board members regarding the Motion to Suppress? All right. Hearing none. I think the next motion up then is Mr.... Excuse me, Attorney Miller's Motion to Dismiss. So, Attorney Miller, I will give you the floor to address your motion.

- Okay. I'm going to just hit the highlights because I did file a five-page brief that went into these points in substantial detail. So, I'm gonna start off at the most remote level and then hone in on the specifics as to why this should be dismissed. First of all, I want to go over a couple of general considerations here that I think have to be kept in mind. And they're pretty simple ones. When we seek to punish somebody, either via criminal actions or Ethics Board's actions or somewhere in between, we state the conduct expected in clear unmistakable terms. When we write a statute or ordinance it should be very clear. The courts apply the rule of stare decisis. So, we apply previous precedents so we have people know what to expect. In this case, if we're going to the aspect of public meetings, this is a complete surprise to anybody as is to the meaning of public meetings. And also, just from the standpoint of the relevant cases which I addressed with the exchange with Alderman Galvin. And also, there's a certain idea of Sometimes we talk about it in stark terms of the ex post facto laws. We don't charge you with driving through an intersection improperly and put up the stop sign the next day. So, here we have... At the outset of this, we have cases from the Second and Fourth Circuit Courts of Appeals that really have no application to this jurisdiction. And that's one of the themes that runs through this proceeding. We also have a conduct that really... appropriately wasn't within the scope of, I believe, the ordinance. The public meeting section. And finally, we have the complainant citing social media sections of the personnel policy that simply wouldn't be applicable to City Council members. So, that's where we start. At this point, we have boiled it down to the public meeting section. We are looking at Mr. VanderLeest's conduct as a violative of a public meeting. And, I go over that aspect in some detail. We have definitions of a public meeting in Wisconsin, and I'm citing section 1982 of the Wisconsin statutes. It's basically, "The convening of members of a body to conduct a business." And, I further cite a case that states that "We don't have one-person public meetings in Wisconsin." It's very plain, and in fact that's the Canon of Construction that I'm citing here or utilizing. We look at the plain meaning of the term when we're trying to interpret an ordinance or a statute. The plain meaning of public meeting would not include exchanges on a Facebook site or a Twitter feed. And in fact, if we expand or push or contort the meaning of public meeting to something else, what wouldn't it include? I indicate, wouldn't it expand to meeting... to a chance meeting on the street? Or in a store? Or in a place of worship? What wouldn't be subject to this ethics code if the public meetings limitations are eliminated. And, I also note that.... that we don't look for ambiguity in trying to understand what an ordinance means. I believe that public meeting is perfectly clear. I've given you some definitions and I cited a couple of cases indicating... And some authorities to the extent that we're... Interpreting us in ordinance is not a search for ambiguity. And I think, a reasonable English speaker would understand what a public meeting is very easily. And if there are any doubts, one goes to Wisconsin statutes or even the city's codes of ordinances. A public meeting in Wisconsin, by the City of Green Bay is always noticed for the press. We have no notice for open meetings law purposes or for any exchanges on Facebook. And in fact, I just suggest that if we start transmuting public meetings to be Facebook exchanges, the City of Green Bay is going to be violating the open meetings law multiple times a day. The other Canon that I look at in trying to interpret what a public meeting is, is the will of lenity, well, or leniency. Basically, the idea is that the defendant is given the benefit of the doubt very simply. We're seeking to punish. The defendant is being given the benefit of doubt. We utilize that in the "Beyond a reasonable doubt" standard in our criminal cases. And, when we utilize that to look at this ordinance, we would keep it at its current meaning or contract it. We don't expand it to encapsulate new vistas of public meetings that were not contemplated by the City Council. And I use a quote by the United States Supreme court. And I'll repeat that here. And I quote, "The conduct proscribed must be defined specifically, so that the person or persons affected will remain secure and unrestrained in the rights to engage in activities not encompassed by the legislation. Blurred signposts to criminality will not suffice to create it." Now, obviously there's no criminality here but the same theories apply. And, it's very strange to me that my client would be thought to have read the advance sheets of the Second Circuit Court of Appeals or the Fourth Circuit Court of Appeals. Or even, now would be contemplating that a

Facebook exchange or interchanges in the course of a campaign, is a public meeting. For the purposes of the ethics code. And I might note here in one of the basis of the motions to dismiss, is that it creates two sets of individuals. The individuals that are running for public office to stay incumbent, are under the strictures of this code of ethics as it stands or as it's interpreted. Whereas, the challengers can do whatever they want. Which seems to be profoundly unfair. I guess, one of the very important aspects of this interpretation in my brief, is that the Ethics Board is not empowered to by rewriting city ordinances. The city's personnel policy is not relevant to the aldermen and the legislative power of the City of Green Bay was not vested in its Ethics Board. The City Council did not delegate to the Ethics Board, the right to legislate. It passed a specific set of ordinances with regard to what is contained or what is subject to the Ethics Board. It did not specifically incorporate social media. It could have. It obviously spoke with regard to the actions of its other employees. But it chose not to. So, for the Ethics Board to expand this ordinance beyond the normal definition of a public meeting, is essentially to rewrite a city ordinance. I also addressed the sections 230 of the Communications Decency Act, which preempts any state from enforcing... Or state, or local government from enforcing anything that's contrary to it's dictates. And one of the things that is granted under the Communications Decency Act is the ability to manage and delete posts. I guess the other point here is that there's really no violation of any controlling law whatsoever. And this is probably surprising. But, the jurisdictions of the Second Circuit Court of Appeals and the Fourth Circuit Court of Appeals have no application here. We are sitting in the Seventh Circuit Court of Appeals and they have not spoken on this. At least in the Eastern district. In the Western district, that's . But, there is no control and precedent in the Eastern District of Wisconsin, and that's true of state law, as well. So, for someone to figure out what's appropriate or inappropriate would be very difficult. As I've told you before, there are conflicting opinions on this. And, I cite Morgan versus Bevin from the Eastern District Court of Kentucky, which approved the basic . And, importantly here, the court said that, there's no constitutional right for a person to be heard. Nothing in the First Amendment indicates that a member of the public has a right for the representative of the government to listen to him. So, this is exactly analogous to someone ripping up a letter or reading a letter or ripping up, failing to take a phone call. Turning away from a discussion because they want it to end. This is exactly what's done every day by public officials. Granted. Maybe, you think that it would be better. Maybe it would be better if every constituent was heard out to the end. But in our public meetings, we control access to the floor. We can control time. We eliminate people's right to speak. Sometimes we deny their right to speak entirely. So, this... What happens on Facebook or Twitter is exactly the way that we conduct public meetings. We control access and there is no constitutional right to be heard. In fact, a legislative body can legislate without hearing from any member of the public at all. Now, I guess the overriding concern here... is that the ethics standards need to be clearer. They need to be clearly understandable and they need to be made available to the people that are supposed to comply with this. I indicate that it should not be a scavenger hunt or a guess as to what the public officials should do with regard to the compliance with the ethics code. There's no way that... I mean, I don't know how many of you are familiar with the Second Circuit or Fourth Circuit Court of Appeals cases or the Western district cases. But, I knew very little about this and certainly I would not have been able to give an opinion on the applicability to the City of Green Bay's aldermen. And... I think it's important here to measure the standard that Mr. VanderLeest is being held to. He is apparently being told that he must understand in advance what a public meeting is. And that it's been transmuted from a regular public meeting at City Hall or via Zoom, to virtually anything. That, he should review at his peril the decisions of the Second Circuit Court of Appeals and the Fourth Circuit Court of Appeals. Even though they have no applicability here. And, what of the city attorney's office here? It's interesting that they never warned Mr. VanderLeest about the... Or any Alderman about the conduct of websites. In this case, the website was a campaign website. And I would submit to you that the reason that the city attorney's office failed to warn, is that much... As I said before, we have conflicting cases. It's in a state of flux and it's really unknown. There is no controlling precedent. So, Mr. VanderLeest is being held to a much higher standard than anyone else, even as on one line of cases is perfectly acceptable. So, let me just summarize the Motion to Dismiss. I think I've hired... I've argued about our... I mentioned most of them. I mean, the advice of the Wisconsin Ethics Board, which I've submitted in a previous filing, seems to be perfectly consistent with his conduct. That state legislators have the right to manage a post. That was the last posting that I could find on the Ethics Board website, which I produced in full. I guess the other aspect of this is the idea that one has to speak with clarity. If you want people to comply with ethic's standards, it has to be clear in advance. Not changing the definition of public meetings after the conduct has occurred. And that's

what I would be occurring here. It's not an ex post facto law in the literal meaning of that, it's changing the definition of the term after the conduct has occurred. So, for all the reasons I've cited in my brief, in my motions, I think this action should be dismissed. If we are interested in solving the problem, it seems to me the problems should be solved via communication to the City Council, to specifically outline what members of the City Council should do or should not do on social media. To the best of my knowledge that has not been done. There has been a submission by Alderperson Dorff to ask to us... to have the city attorney's office offer some training. I think that's a very positive step. But, putting heads on posts such as this proceeding to punish Mr. VanderLeest, the problem needs to be solved by clear, unequivocal standards of conduct posted in advance of the conduct taking place. And at that point, these problems will not arise. And, I'm in favor of solving the problem as opposed to punishment for the sake of punishment. Thank you. And I would appreciate if this matter was dismissed.

- Thank you, Mr. Miller. Mr. Knight, any response to Mr. Miller's argument?

- Yeah,

- Mr. Knight, just hold on. Could you turn up your volume somehow? I'm having a hard time hearing you.

- So, what I'll do is I'll come close to the computer and I'll speak a little bit louder so you can hear me.

- However you want to do it is fine.

- If I may, Mr. Chairman. If I may. Lindsay, if you could allow me to share. I'd like to make sure that we clarify some of the arguments because there's some things in the motion that I don't think were discussed that I think are important for the board and when they deliberate. And I want to make sure the board understands the basis of Mr. Miller's argument. So--

- You're still a co-host so you should still be able to share your screen.

- Okay. It wasn't allowing me to before. Okay. Code of conduct

- Are these what you're pulling up? Okay. Very good. That's in our packet as well, I think, but go ahead.

- Okay. Can you folks... Where am I on the... For some reason, I'm blind to it.

- It starts... You've got section four of the code of conduct pulled up.

- Perfect. And, I want to make this clear to everybody because this is exactly what Mr. Miller was arguing about. And I want to make sure that Tarl responds to this, because I do think this is an important issue. The provision of the code that Mr. Knight quoted is this provision. He quoted it starting "No signs of partiality, prejudice or disrespect, should be evident on the part of an individual council member toward an individual participating in a public efforts should be made". And then he went through the rest of the statute. Excuse me. The rule. What Mr. Miller is pointing out in his argument, and I'm in the position he appears to be taking, is that this should only apply in public meetings. Mr. Miller, am I correct in that interpretation and trying to clarify this for the board?

- That's I understand to be the plain meaning of .

- Okay, very good. Now, I'll probably have some questions about this after Mr. Knight has a chance to address it. But, I just wanted to make that clear to the board. That, that's where he's coming from. That, that's where Mr. Miller was coming from. I also would like to talk about a couple other issues that I think are important, that are in Mr. Miller's motion that were not discussed at this point in time. Let's see here. Let me find the right motion. I've got to go to the share. Okay. Let me share something else here if I can find it in time here.

Okay. Got to find your motion here, Rob. I'm not sure where I have it. Is that Mr. Ma... Which motion do I have up there? That's the motion--

- Motion to Suppress.

- No, that's not the one I want to share.

- These --

- What I'm trying to find is Mr. Miller's motion that actually sets up. I can find it on my screen but I can't seem to find it here.

- You can address those as Mr. Knight goes through his presentation.

- Yeah. I was kind of hoping we could look at those so that Mr. Knight could .

- Right.

- [Lindsay] I can find it if you would like.

- Why don't you do that for me? And then put it up. In the meantime, Tarl can start addressing this first issue.

- [Lindsay] Is it the brief supporting the Motion to Dismiss?

- No. What I think is important is the Motion to Dismiss. It's shorter, easier for to understand. And I think we can walk through that a little quicker.

- [Lindsay] Okay.

- You just said a one and a half page document?

- Right. Right, it's a shorter document, easier to go through.

- It's got eight stipulations on it.

- Hey, Mr. Knight make sure your .

- All right. Now is a very good time for me to continue upon.

- Well, one thing I just wanted to clarify with Mr. Miller. I noticed that Mr. Miller also believes that the charge regarding social media section should be dismissed. You didn't touch on that very much, Mr. Miller. Can you clarify that portion of your motion before Mr.--

- Well, my understanding is that the social media section refers to, and correct me if I'm wrong, is the personnel policy of the city. And it would not be applicable to a City Council member. Is that the case?

- That's one of the things we would be deliberating on and discussing.

- Okay. Is my understanding correct? Or that is a personnel... When I saw it on the internet, it said "personnel policy" or something like that.

- I believe it is one of the personnel policies.

- And, my understanding and... If I'm not supposed to ask the question, Mr. Conley, you tell me, but my understanding is that the council members would not be subject to the personnel policy of the City of Green Bay. Is that correct? Or--

- Well, that's going to be your position and we will discuss it.

- Okay.

- I understand what you're saying. That they're not employees. That they're not subject to .

- Right, yeah.

- Okay. The second thing... The public meeting argument we've already covered, it's a 230 decency. What's the next issue? If you could... Number four. I think you did cover the rest of them. Those were the two that I wanted to make sure we're covered. I believe. Okay. But, those are the issues. That pretty much sets out... This document pretty much sets out the motion that Mr. Miller has made. That, Mr. Knight, you probably want to respond to those issues for the board.

- Yeah,

- Can I ask a question for clarification?

- Mh hmm. At this point. Or do I need to wait?

- No, go ahead.

- No.

- So, I guess I'd like to know if the social media site we're talking about was a campaign site or not a campaign site.

- --

- 'Cause I think, Attorney Miller, you had mentioned it was a campaign site. And I think some of the things I saw looked like an aldermanic site, not like a campaign-related site. I'd like clarification on what the site was. The social media It started... If I may, this is Rob Miller. It started as a campaign site. It was put forward as a campaign site in his first campaign, which he lost. And he just couldn't continue that. And, most of the postings... At least, my understanding is that many of the postings that are in dispute here were occurring in the course of the campaign for his election. So, he considered it a campaign site. And I documents indicating that he put that he was a politician. And there's obviously, a mixture of materials for a sitting Alderman to tell people what he's accomplished and why he should be reelected. So--

- So, he doesn't have two sites other words? He doesn't have two sites

- No, no. He doesn't--

- Just has one site. Okay.

- No, he doesn't have two sites and I might further clarify. It's not owned and operated by the City of Green Bay which distinguishes itself from the Fourth Circuit Court of Appeals case. So, he...

- Thank you.

- This position, it's a campaign website and we'll leave it at that. Thank you.

- Aaron.

- [Aaron] I have one question. This is Aaron. Can everybody hear me?

- Yes, yes.

- Okay. In the section on public meetings, it uses the word forum. Do we... Is the interpretation that forum is just a synonym for meeting? And then also, it describes how people should conduct themselves publicly and privately. That, if a meeting is public then there's sort of a disconnect there. Right? So is that section... Is that section saying that in private communications during public meetings, like, if I lean over to another Alderman and say something, I have to be respectful and honest and have integrity? Or is that sentence talking about my conduct outside of the council chambers? I guess, I could read that paragraph in a couple of different ways. Forum doesn't necessarily mean meeting. Conduct conducted privately could be conduct conducted when I'm not officially sitting in a City Council meeting.

- Do you want me to respond?

- I mean, you had spent a lot of time talking about the definition of meeting.

- Right.

- And so, I'm wondering if your interpretation of forum is that it's a meeting?

- Yeah. The heading says public meetings is describing a public meeting, in addition, further down and the code of ethics, it's going through conduct outside of public meetings. So, I am interpreting that the common... My interpretation, I think that it's a reasonable one, is that public meetings... When it says a heading of public meetings, it's referring to public meetings. We have specific definitions in the Wisconsin statutes and the Green Bay city code of ordinances. I think it means what it says and public forum is just a variation on the term public meeting. So, given that we have a demarcation between public meetings, that heading and the next one outside of public meetings, I think it's a distinction. And I think that it makes some sense. I think one can reasonably expect a public official to have a welcoming and decent demeanor when people are speaking to you as an incumbent City Council member in a public meeting. That might not be the case if you're engaged in a private internet exchange during a campaign. I see a substantial distinction between the demeanor that one can reasonably expect at a public meeting when people are offering their viewpoints, and you're an incumbent official, versus outside of that setting.

- What do you think the... What's your interpretation of what the private conduct... Public and private conduct? I mean, if public meetings are public, what's the private part about?

- I think the private conduct... I don't have that section in front of me, so I'm going to have to wing this. But, I think it's --

- I think we can put it up so you can look at it real quick.

- Okay, okay. That would be great. My recollection here is that it's referring to City Council members representing that they speak for the City Council, when they really can't speak for the City Council. Or making misrepresentations to members of the public as to what they can do or what the viewpoints of the City Council is.

- All right.

- is set up now.

- I think we have to go down further. Okay--

- So, City Council members are... Or council members are expected to demonstrate both publicly and privately their honesty and integrity and to be an example of appropriate and ethical conduct. How does privately apply... My thought is that that is intended to be a more general statement.

- It can't be private conduct if it's in a public meeting, otherwise it makes no sense.

- No, certainly it can. Certainly, it can be private conduct. I mean, as between alderpeople or between the other people in the room.

- Okay.

- Any further questions?

- I understand your point. I mean, your viewpoint is a reasonable one. I don't think there's only one reading there. And I think when it's talking about... Well, I think there's more than one reading. That's the reading that I see there. Mr. Conley, if you can scroll down further, you'll see-- I'll try. Let me see if I can make it work. Is it scrolling?

- Yeah.

- Yes.

- Oh, okay. Okay then, I am seeing what your--

- It says "Outside Public Meetings".

- Yeah, if you go down further. Conduct with other board members, Elected official... Enforcing. No, I must've zipped by it. Okay. Outside public meetings. Is that what you're talking about?

- Yes. Make no promise on behalf of the City Council or... That's... That's an addition. So, it's making a clear distinction as to what's happening. But... From my standpoint, I've been a public official and heck, I've had paper airplanes thrown at me at a public meeting. I would say that that conduct... And presumably, it wasn't seen by everybody. I don't know. I mean, you could definitely have outrageous conduct that may well be only known to some of the individuals that are members of the body. So, I don't see that my interpretation is ruled out in any event. I think there's multiple interpretations of what public meeting is. Suggest that, if you want to sanction somebody, it should be clearly find what the ambit of public meeting is. And, I would submit that regardless of what reading one has that a Facebook exchange doesn't fit within that.

- Okay, thanks for the clarity. Just wanted to follow up on those things.

- All right. So, Mr. Knight, you've heard some vigorous discussion. Here are various points that were raised by Attorney Miller in his brief. I'd like you to respond to those and make your... or provide us with your position on that Motion to Dismiss and the points that were made. So, hopefully there's some clarification here from this recent discussion as to what those points are. And I will turn the floor over to you, just again, remember to speak loudly so we can all hear you. Go ahead.

- Thank you, Mr. VandeCastle. Before I go on, I want to make sure that Alderman Galvin is still in the chat.

- Mr. Knight, we're having a hard time hearing you again.

- Before I continue, I just want to be sure that Alderman Galvin is in the chat, because .

- There he is again.

- Okay. Well, you know, I don't want to have to go through the whole thing again.

- I'm sorry. My wife was to me, so I had to out. She'd kill me if I put her on , so...

- All right. Well, I want to begin by talking about section four of the code of conduct, that we just went over. And, as it was brought up . There's the terminology "public forum" used there. Not just public meeting. And, in a number of different places in the formal complaint and as has been brought up by Mr. Miller. I have cited a number of cases, which are federal cases and although they don't reach as far as our federal district here, they do in both of those cases. Knight First Amendment Institute versus Trump, in 2019 and Davison versus Randall, in 2019. Both refer to public official social media accounts as public forums. And, although Mr. Miller has gone on to discount those cases, because they don't extend to this district, he still continues to cite the case. Which which supports his cause. So, I think that there's a double standard there. And I think there is a precedent set, anyway, at the federal level for what can happen at state and local levels for public forums constituting social media accounts and... What is social media? Particularly Facebook, which is the social media brand that we're talking about here. Where these offenses were committed. The places where people gather, they're not physical locations but they are virtual locations where people can gather virtually. And there are forums there. Online forums. I mean, that's a term that's referred to when we're talking about things like Reddit and Tumblr and Facebook. They're public forums. And, this is where the public can gather and communicate and be open about debate and about policy and about their opinions. And in no place on any of these pages, particularly... Although, a number of offenses have occurred, resulting in people being blocked in private communication with that page. Most of these offenses are happening publicly. Where, they're made public. They're happening in public. Anyone with or without an account can go onto the internet and can engage in these communications that are occurring with groups of people. None of these are singular. They're all groups of people communicating. And a number of places on this social media account, constituents and other people in the city are asked for their opinion. He's asking for their input. And so, they're doing that. And they're not doing it in a private way, of a private correspondence on email or in message or on the phone. They're doing it in a public place. So, I think it constitutes a public forum and I think that there are federal and state examples of that, to back that up. So, I don't subscribe to agree with that. That this isn't a public meeting or a public forum, even if it's not called to action. Public input was asked for and it was expressed in a public place where people can engage in a public conversation. And, I think if we're going to discount that in the 21st century, then we ought to take a look at language and exactly what's going on here with the falling behind in the 20th century. Because in 20 years social media's being used. And all of these people cited in this complaint are hardworking, tax-paying people, who have jobs and families. And this is their way of communicating with their aldermen in a public way. This is their way of doing that. Secondly, I wanted to talk about the page itself. Because, the matter is kind of being tossed around, depending on the status of the page being a public official account or a campaign account. I've included in exhibit two to everyone here, all of the campaign posts and non-campaign posts, which have been posted on this public page. There are 115 posts that were made, as of the creation of this page, as of April 10th, 2020. Which is when this compilation of posts was made. Now, there's no definition of what a campaign post is versus an official city post. But... It was my delineation that the vast majority of these posts do not contain campaigning material. And a wide majority of them... 78% of them, were posted not during election cycles. In between the time when an a campaign person or an elected official, hopeful, has to file for candidacy versus when the election occurs. So, there's a small window there, of the number of months, and it's 78% of these posts. 90 of 115 were posted, not during that time frame. I don't think that those constitute his campaign post because of that. And because that's almost 80% of the posts made on this page, I would argue this is not a page that is being used for campaign purposes. Not only that, but Facebook has a rigorous third party confirmation... process, which they can confirm the status of an office, so that not everyone can just create a Facebook page claiming that they are a public official. Facebook has the ability, and they do go ahead and confirm with local sources or state sources. Or sometimes federal sources.

Whether those are election campaign submission documents, or whether they're a matter of public record. Whether you are indeed running for office and for what district. And they confirm all of that before you can go public with this information. And, they also confirm whether you've been elected or not. So, they know what they're doing there, and they have Alderman VanderLeest's page confirmed it to be a politician site. This is not political campaign site. There are two different terminologies that they use to differentiate between the two. There's a political campaign and there is a politician, which means that you are a confirmed politician. Which means this is no longer a campaign site. This is now a public forum for you to be able to discuss city or state or federal issues that correspond with your office and the office that you've sworn into. And so, almost 80% of these are not ambulated and Facebook doesn't confirm that this is a campaign page at all. In fact, just the opposite. This is a confirmed political public official page. So, any time that it's been brought up that... And actually, just further one more point on this is you have to have a public... I'm sorry. You have to have a personal campaign... I'm sorry. You have to have a personal Facebook page in order to run a public, whether it's a campaign page or a political campaign page. And, Alderman VanderLeest, to my knowledge does not have one of those. He does not have a personal Facebook page. So, I'm wondering if he doesn't, and if evidence can be supplied to if that's true, then I'll believe that. But, as far as I know, talking to a number of sources, he does not have his own personal Facebook page. Which means he cannot own or operate this public page. So, I'm wondering who is running the site? Because it's not him. And if it's not him then someone else is involved here, who might also be at fault or someone else is partially responsible. And Mr. VanderLeest is therefore responsible for allowing them to make these changes and delete people. And, I brought that up in a number of different exhibits that I've submitted, but I don't think that this is just one person. So, in any case, I want to continue on... In the code of conduct, in section four, as has been brought up now, by Mr. Conley and Mr. Weinschenk, I've sectioned off a number of different sentences that, whether you agree with the public forum or whether you don't agree with the public forum stance... And I hope you do. Because I do believe this is a modern public forum as has been declared by these federal cases. These federal judges. "No signs of partiality, prejudice or disrespect should be evident on the part of individual council members, toward an individual participating in a public forum. And besides that, all council members should convey to the public, their respect and appreciation for the public's participation, input and opinions". Now, on this page, those things were asked for. All of the communication that has occurred. And if there's evidence of people being rude or inappropriate or slandering him or giving him death threats, I've not seen any of those. I've not seen a single bit of evidence supplied for that argument. I haven't. All of these things are honest people asking about Colburn pool. Asking about their street. Asking about taxes and the wheel tax. These are people who want to know. Because they have busy lives and this is their way of communicating. And I wonder if, when their input and opinions are asked for and they supply them, when they're not agreed by the Alderman, why are they then deleted? Does that match the code of conduct's section, which States that "Council members should convey their public... their respect and appreciation for the participation, input and opinions." I'm not sure why he's asking if they're just going to be deleted. It's confusing to me and it's... This isn't a silly quarrel or a vendetta or something. These are people, who for a number of years have felt and have expressed many, many times on social media, in other public forums and in person. And have written to me and expressed to me when I visited their homes and I had no knowledge of this. They didn't have to bring it up with me but they were that concerned about... They felt that their participation, input and opinions were not appreciated and were not respected. In fact, just the opposite. They were removed. And they were met with combative communication and a rebuttal. And they have no chance then, in order to communicate that, because they're blocked from the page. They have no chance to continue that conversation. A number of these people also separately... also cannot communicate with the aldermen by phone. And a number of people are concerned that they're not given any attention, because they openly supported another candidate. So, there are a number of issues here with whether you believe that the internet constitutes the public forum. If it's just kept in a general sense. Anyway. There is partiality, prejudice and disrespect evident here. On the behalf of this individual council member and all of these people feel very strongly that they're not being appreciated and just the opposite. So, I wanted to bring that up again because that's the basis of this. Whether you talk about federal cases or local cases. These are local people and they feel like they're being shut out. And they're being told to be quiet. And, they're just asking questions a lot of the time. But... There are a number of different ways where the aldermen can have a campaign site and a public official site. A number of very prominent, famous, world-renowned politicians use this tactic. Including, Bernie Sanders, the Senator from Vermont, who was the City of Burlington Mayor, and

then a Congressman, and then a Senator. And then, in both bids for the presidency of the United States, had a campaign site for the new office he was running for as well as maintaining his public official site for the office that he had maintained at the time. And on one, he could communicate any number of things and monitor that. And dispose of things that were inappropriate. And on the other, as he was running for president, but remained a Senator on the Senator page, that was a confirmed politician account. And so, he had to maintain all the quorum and all of the rules according to the First Amendment rights and everything. Mike Gallagher, is a local congressman to the United States House of Representatives. He represents the eighth district of Wisconsin and he has both the campaign site, which is still active and still public on Facebook, as well as his official declared and confirmed congressional Facebook account. So, when you're running for office, there are no special rules that give an incumbent less of an advantage, I would argue, over the new incoming challenger. In fact, I would argue the opposite. Because, the incumbent has two opportunities then. One, in order to dictate whatever communication they would like and to delete and to erase and remove whatever on their campaign page. But also, to still have their confirmed current office page, which they have to abide by with the First Amendment. But they have two opportunities there. And, there are a number of politicians that amalgamate those into one, and then just decide to kind of merge those two. And the basis of people that follow each page. But people sometimes keep them separately, such as Senator Bernie Sanders and Congressman Mike Gallagher. And there are, I mean, hundreds and thousands of people across the globe who take this approach. This isn't some trick. That's not why. This is something, with anyone who's familiar with social media, you can see what I'm talking about is true. And, this is a workaround in a way that the people at the federal level find that this works. So, there's not an argument here. I would argue that that would enable someone to... to remove people's expression when they're asking honest questions about the city. About the County. About their community and their neighborhood. They feel like they're being shut out. That their participation, input and opinions are not appreciated. In fact, just the opposite. And there are quite a few combative examples that you can find in the exhibits, where they've addressed it in private. Not in a public place first. But, we try to be decent and address it privately with the aldermen over private message. And... Simply, we were shot back with the "I can delete whatever I'd like to" kind of thing. And that's not the kind of discourse that should be happening here. That's not at all what officials should be doing. And I just... I can't stand by that sort of behavior, which is why I decided to take this up on behalf of these people. Furthermore, all of the posts that I've submitted as exhibits, that I can provide as proof that these people did, in fact, post things and comment things that were deleted. Although, there are dozens that can't be proven, because they were just deleted. And so, there's no way to be able to prove that those things even existed in the first place. There are still a number of exhibits which I have submitted that prove that things were posted and deleted. Because, these people started to catch on that their things were being deleted and so, started having to screenshot their conversations with their aldermen, ahead of time. Because they weren't sure whether or not it would survive the next day. And that's just ridiculous that someone would have to go to that length in order to communicate with their aldermen. But they did that anyway. And, none of these exhibits or examples occur within a campaign period. They all occur outside of campaign time and the campaign yet. So, none of these are campaign issues. The account is not campaign related. Or if it is, a very minority amount of those posts. And, these are city issues and they talk about the city and they talk about local affairs that they have concerns over. And so, my next point that I want to bring up here is, if that's not grounds for meeting the social media policy then I'm not sure I understand the point of the social media policy. Because, if Alderman VanderLeest is being paid through the city by tax-payer dollars and whether or not he comes... I mean, that constitutes being an employee of the city or not, I'm not sure. Honestly, I don't know the logistics of that or the specifics. But... But, city... Social media has to adhere to federal state and local laws. That would mean that it has to adhere to any number of laws that were freedom of expression upheld. And, it would include open records requirements. Any content that's maintained in a social media format that is related to city business is supposed to be public record. And that's stated in the social media policy. So, if a majority of this page that is city related, that has been dictated by Facebook to be... Which is a rigorous standard that they apply for themselves. If this does indeed regard city business and if by a confirmed public official, who is an employee of the city or is employed by the city or employed by the people city. Or whatever the case is. Then I why the contents wouldn't have to be managed or stored or retrieved with applicable laws. And, why it wouldn't have to be maintained in the same format that other city business, which is posted on the city-ran accounts, would they If he's an extension of the government there, then that I'm not sure why that won't apply. That's my

argument on that. I guess I just kind of want to cool it down here and come to a close, 'cause I've been talking for a long, long time. But... This is an elected official, who I'm sure does good work. And I'm not doing this for any sort of vendetta or whatever the case is. This is real people in the community who stepped forward when they did not have to. And it should not have had to. Because, there are many people who are not accounted for in this complaint, who did not want to step forward but still had this. This is a wide spread issue and it may be in a number of other districts, I'm not sure. But, if this is an issue that's being faced and it needs to be addressed, particularly in this district. There are dozens of people who have faced this issue. They're being silenced. There's no communication occurring, which allows them to connect or correspond in a public way with their aldermen, besides going to the meetings. And we all know that's not always an option. Especially when they occur in person. And people have busy schedules and families and jobs. So, how is someone like this held accountable when they're not acting in an ethical way? And, I'm not an attorney. And I'm not a law professional, so I don't know all of the specifics that we're going through here today. And I can't agree to all of those bits. But, I can say as a lay person who is attracted to helping people in the community and that has inspired me to do this. Is this ethical behavior? And, is it ethical by the standard of the code of conduct, which is supplied online and is visible to anyone who wants to run for office or is currently in office? This isn't something you have to look for. Or you have to scavenge for. This isn't hidden anywhere. I'm a member of the public. I'm private citizen and I found this very, very easily. And it would probably even be asked for, at the Mayor's office or anywhere. I'm sure that it may even be provided to city officials when they're sworn in. I'm not really sure, 'cause I haven't been sworn in. But, I think that this is something that's easy to find. And if you can find this and if you're going to apply for this job and if you're going to promise to do this job and swear to do this job in an ethical way, which all of the City Council people have, then you should know what you're signing up for. And I think it's not difficult to check your behavior, online or in person. According to these standards, are you being ethical? Are you being respectful and appreciative of the public's participation, input and opinions? In a personal public forum, on the internet in a public forum, in any communication with anyone at a professional level. Whether it's public or private. And, I don't see that happening here. And, this is the only thing that I could really do in order to try and remedy some of these symptoms. But this is a larger issue so I can only apply it to this one issue with the social media. I would ask that you take a look at the code of conduct and a number of the arguments that are made here and try and think ethically as possible, as I know you all do. There's a lot of involved and a lot of legal stuff that I'm sure applies and... But, this is my argument and I hope that you'll consider it because these people have no other course of action and no other way in order to be heard when they're being silenced like this. So, that that's my counter and, of course, I can answer questions.

- Thank you, Mr. Knight. I've had the privilege, I would say, to serve on this Ethics Board for more than 20 years. So, that kind of dates the board itself. It was... The Ethics Board was created, to my knowledge, decades ago. And, it was originally charged with dealing with the city's code of ethics. And that code of ethics is based on the statutory code of ethics for local elected officials. About a decade ago, maybe. Maybe a little less. The city in its infinite wisdom, City Council decided to create a code of conduct for the elected officials. So, with the code of ethics, we have a lot of statutory and attorney general opinions and other guidance to guide us on what we're supposed to do with that. Unfortunately, with the code of conduct, we do not have that advantage. The code of conduct was a pure creature of the City Council. They created it. They edited it. They monitored it and they established it. And unfortunately, it gives us as a board, very limited authority. Very limited jurisdiction. And so, we are limited to essentially what's on the paper that we've all looked at. The code of conduct. And so, Mr. Knight, I ask you to address this as we've noted and as was pulled up by Mr. Conley, that section four is divided into two sections. Public meetings and non-public meetings. And, the section that you quoted accurately is under the heading of public meetings. I understand your analysis and the work you've done was spot on here in terms of, what is a public forum when it comes to social media? But... I'd like you to address how the definition of a public meeting gets expanded under this code to include a public forum outside of a schedule-noticed called public meeting that we are all familiar with. City Council meetings. Committee meetings. This meeting. They're all published, they're all noticed and scheduled and all those good things and they're published in the paper. So, how does this public forum concept that's under public meetings, get expanded outside of the public meeting heading of the code of conduct? That's my question. How does that... How are we... What authority do we have as a board that definition? No question that it says public forum.

But the issue is that it's under the heading of a public meeting when there's another heading for how officials are supposed to act outside of a public meeting. So, if you can address that for us that might be helpful.

- Sure. Well, I would first point out that under section four, it doesn't give a definition of what constitutes a public meeting. That, there's nowhere there that says, "This is the strict definition of what a public meeting is and what constitutes that." And so, I think that maybe it's open to interpretation. I think that a public meeting would, in the most general sense, be a gathering of people or a meeting of constituents in public, and that the internet is a public place. It's not private. And, there are sections of the internet which are private, but in this case, we're talking about a very public place where people can meet. There are message boards. There are online chats. There are public forum pages such as Facebook. And that's... That is, although... Like you've mentioned, that's an internet public meeting. A public forum, I would say that there isn't... There's no definition here of what exactly the public meeting has to be. And, I know that there are public meetings that are called officially by the city where people are. Like in this case, they conduct themselves within the matter of Robert's rules of order and everything is very professionally laid out and ahead of time with the schedule. But in this case, it doesn't address those. It just says "in public meetings" and "conduct towards the public". So, I think that this certainly addresses the conduct toward public people in public when people are meeting in public. And, I don't know that there is a definition here that says "in a material or physical manifestation of a meeting" or "an internet meeting". So discounting one could be just as easy as discounting the other.

- Mr. Knight, I understand that point. If you look at what Mr. Conley has pulled up here, it's section four. And under the heading of public meetings, the phrase of "No sign of partiality, prejudice or disrespect, they should be evident." That's sort of preamble to the public meetings sections.

- Okay.

- But when you get into the subsections A, B, C and then D, it does seem to talk about a public meeting as would come under the definition of a public meeting that Attorney Miller addressed. That being a statutory meeting that constitutes a public meeting. So, it talks about speaking in front of the council. It talks about the Mayor allocating time to people to speak. And, it talks about a number of other things that appear to suggest that this public meeting component is in fact, even though it's not defined, as you said, incorrectly noted. The public meeting isn't defined. It seems to point us, as the board, in the direction of what we all know as a classic statutory public meeting. So, again, the phrase "public forum", I understand how that applies and how the Federal Courts of appeals have addressed that in both ways. But again... appears on this sheet of paper in front of us, section four of the code of conduct. So, again, anything you can add? I'd like you, if you could, to address how this whole section, not just the one line pulled out of the preamble, but how this all pulls together from your perspective of how does a public forum on an internet site come up under a public meeting, as it appears to be reflected in this document?

- Well, I would say that it's not just a line, it's the entire preamble that I'm referencing almost, besides the first sentence. But that's just as applicable. And, it doesn't state... Like, I haven't expressly... utilized any of those A, B, C or D stipulations under the preamble. But if the preamble is there then that must be able to communicate something of its own importance. And so, I think that I'm citing the preamble in a general sense. I understand that I'm not citing any of the specific A through D stipulations under that. And those go on to directly communicate a definition of public meeting as a public hearing which is held. Wherein, someone would speak in front of the council in a physical sense or even like this, virtually. Which occurs. Which is certainly utilized as the internet as well. 'Cause this is not a physical meeting. So, I think that already have cross-over there and that's probably a good example. And I think that either way. And, I know what you're asking me is something very specific from these sections, but there isn't something from these spare sections that I decided to use, because I don't think that there's anything here that adequately, in A through D, adequately expresses this situation. And I don't think that it negates the seriousness of the situation or that it occurred, I think that it's addressed most easily and in a very broad sense. It's addressed by the preamble and almost everything in the preamble correlates to this case. And so... I think that's the best answer I can give to that. Is, there is a section of this document that appreciates the situation. Although, it's in a general sense. It's flexible. But, it still does

that job. And it's in this document. And so, I think it should be held with as much seriousness as any of the very specific definitions later on. Just because it's not given its own definition in a section E or F, under this section four, I think that it's still a situation that has occurred and can be counted under the definition or the lack of definition in the preamble.

- All right. Board members, any of you have any questions for Mr. Knight? I do intend to give Attorney Miller a chance to respond but before we leave that, do you have any questions for Mr. Knight?

- , I actually have a question for anyone who can answer. When was the code of conduct drafted? What year? Do we know? Roughly?

- I would say, roughly five years ago.

- Five years ago. Okay.

- There were many iterations of this before it got approved. The last draft, the one that we have before us, was prepared by city attorney, Jim Miller. So that might give us a time frame done.

- Certainly, it was drafted during the time period that Facebook was around, I guess was my question. So, social media existed when this was drafted?

- Yes. Yes.

- Okay. Thank you.

- I started Ethics when I was elected five years ago and I believe the current copies that we have now were in place before I was elected.

- Right.

- Definitely, for at least five years.

- This is , I just looked it up and it looks like it was... We saved it as approved in September of 2015.

- So it's six years ago. Okay.

- Any further questions from any other board member? All right. Mr. Miller, any response to... or a rebuttal to-

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- Yes.

- First off, I think Mr. Knight has very eloquently pointed out a problem. And... I think, as I stated in my opening remarks, the problem is not going to be solved by punishing Mr. VanderLeest. On the contrary, I think the problem needs to be solved via communication to the City Council to clarify this with specificity, as to what city council members may or may not do on social media. And this ambiguity difficulty and understanding what's expected has exacerbated the problems here because know enough, assuming he or she is able to do it to preserve the exchanges with no expectation that his or her deletions or restrictions are gonna be reviewed by the ethics panel. With the heads up or with a for a warning. That, the ethics panel is going to review your conduct on Facebook. Then, we would have a complete record, at least for prudent City Council members. A complete record of what's going on, as opposed to the recitations of only, perhaps, half of this. Or whatever's preserved at this point. So, we have a very incomplete record because of the ambiguity and nebulosity of the code of ethics, as to whether... Whether social media was... was to be... Or what you're supposed to do on social media. And if it's five years ago, it seems to me that if the City Council wanted to speak clearly and

coherently on conduct of social media, it could have done so. And as I said, I think Mr. Knight points out a very substantial problem. And the problem is remedied by the City Council revisiting this and putting together a very clear guidelines for its members to observe. Now, with regard to public forums and the morphing of the phrase "public forum" in section four, what we have here... Well, first of all, this is a hyper-technical area of law. And it befuddled me for quite quite some time until I read eight or 10 cases. I am not a First Amendment attorney, and this is a very complex, and as I said, hyper-technical area of law. Now, the term "public forum" is a term of art in First Amendment law. In fact, I'm quoting from Price versus the City of New York, and there are public forums that are present in First Amendment law. There are limited public forums. So, the fact that the First Amendment law terms of art jive with the section four is an absolute chance occurrence. I don't think the City Council is choosing to use the term of arts of First Amendment law and it's basically, plain recitation of what's happening in a public meeting. But, this is extremely complex and it took me a lot of cases... Reading a lot of cases to figure out what's going on. And to expect that a 72-year old, semi-retired electrician is going to read the same cases as I did is just unbelievable. This is a very difficult area of law and I don't think you can keep up with it because it's constantly changing. And unless you're really an expert in the area and pay attention to it all the time. What it underlines here is the need for the professional staff to summarize what should be the applicable public policy and for the City Council to basically, promulgate clear guidelines for its members to occur. To observe, excuse me. With regard to some of the niceties of Facebook, it would have been really helpful if Mr. Knight had put those in written arguments. Frankly, I am not a user of Facebook in any meaningful sense... To address the distinction between a politician and somebody who's running for office, I can just recount the history of the website as I understood it. I can also recite that for many aldermen and city and County board members, they are constantly running for reelection. I know that Mr. VanderLeest's brother, who was a City Council member for 20 years, used to constantly run for office by distributing a newsletter. So, it is a constant cane for many of the members of these bodies. And, that has to be understood. I don't know that one can make a clear distinction between the transmission of information by a public official for just communication and the transmission of public information for the purposes of being reelection. The two are intermixed and probably can't be separated. A public official is always trying to curry the favor of the public for his next or her next election. So, I don't see the distinction between campaign posts and the transmission of public information as being significant. With regard to whether they can communicate with their aldermen or County board member, well, it seems to me that the ultimate accountability is to run against the individual to utilize other avenues. Be it other Facebook sites. Be it writing letters to the editor. Ultimately, just running against the person until he or she is defeated. I would note here that I believe Mr. VanderLeest won via a large margin. Something like 60%. So, apparently, the bulk of the populace is satisfied with his representation. That being said, it is indeed regrettable that everyone is not permitted to communicate with their aldermen, but as I said... Or other public officials. But as I said, it's clear First Amendment law that the public does not have an absolute right to communicate with a public official. Thus, my letters to a U.S. senator might not be read. They might not take my phone call. They might not talk to me if I see them at Lambeau Field. This is entirely the same as we see in the ordinary course of business. So I think, on balance, I only differ with Mr. Knight as to how this problem should be solved. I don't see that punishing a 71-year old, semi-retired electrician for his lack of knowledge of First Amendment law is going to be really productive of a solution to this problem. Rather, the Ethics Board should communicate with the City Council, or the City Council members that are present here tonight should take it upon themselves to resolve this problem once and for all. To put forward a very clear cut set of guidelines that the City Council can observe at their peril. So, for all those reasons I think this should be dismissed and it should be placed in the lap of the City Council to resolve it once and for all. Thank you.

- Any board members for Attorney Miller? Right. Anybody have any further questions for Mr. Knight on this Motion to Dismiss issue? All right. I will assume that we are closed with this issue. Last motion that looks like we need to address is another Motion to Suppress, filed the by Mr. Knight. That one appears to be dated October 2, 2020. Mr. Conley has pulled that up. And so, Mr. Knight, I'll give you an opportunity to address that motion.

- Thanks. This was a simple motion that I filed just arguing that I didn't think any of the points, which were just brought up in the last argument, which is in response to the document and motion that was filed and brought

up by Attorney Miller. I didn't think that any of those applied to the language of the... Basically, of the preamble of of section four of the code of conduct. I still think that those were all applicable and I still feel very strongly about that. And so, I wasn't sure about the relevance of any of those issues because, as you just saw, anything that was argued formally could just be refuted, again, in response. So, that's what this motion is. It's a simple motion saying I didn't think that it was relevant. And, I would still ask that... that everyone take a look at the exhibits. Because, a number of things that have been brought up in this last motion are refutable by exhibits that have been submitted. And, maybe there'll come a time for that conversation But, I still feel very strongly that there's grounds for this complaint to be made. And I think it happened over a number of years. This is not an isolated incident. This is repeatable. And so, I don't think that I understood any of the argument and how it applied to everything that I know about this. That's all.

- Mr. Miller, any response?

- Well, I think obviously my brief was relevant to all the subjects raised in this proceeding. But, I guess I would emphasize that there's really nothing particularly novel about this controversy. Representatives have been ignoring or been have alleged to have ignored constituents' wishes since there have been representatives. What we have here is a variation in the form of not listening to people or not reading their letters or not taking their phone calls. Somehow, we feel that everything has changed or it's been transmuted. Because these actions are taking place on the internet as opposed to, via United States mail or a phone call. Or before that, a Telegraph. These are common concerns, with regard to every type of representative. There's nothing particularly novel here. If, in fact, the City Council is concerned about this then they should have a specific social media policy for its members. If it was produced in 2015, certainly the Facebook and Twitter and the like, were present. Omnipresent, perhaps, in everybody's lives. And the City Council could have spoke to this in specificity. At this point, I've made my argument several times. I think it needs to be resolved by the legislative body not by the Board of Ethics rewriting ordinances. In fact, I think it would be very problematic for the Ethics Board to rewrite ordinances in the circumstance. Under those circumstances, I think the matter should be dismissed. And, I would join with Mr. Knight in trying to have the City Council solve this problem once and for all. Thank you.

- Any... Mr, knight, go ahead.

- I want to make it clear that this is not as it has been stated in the formal complaint and in our deliberation here, this is not simply people being ignored. This is people, over a number of years, having not only been ignored or not given access to communicate but denied it to sort of add in finum. They're not able to communicate because they've been blocked. This is not someone who can't get a hold of... This is intentional blocking of communication. This isn't just ignored. They are being deleted. Their letters are not only not being read on the internet, they're being removed. And, when there is the opportunity given for communication and they communicate, in a public setting, they're being deleted and removed entirely. And they're disappearing. And, there goes their opinion which they were asked for. So, I think it's almost malicious it's... I think it's being too innocently as these people are being ignored. They do not feel that way and their evidence does not point to that. They're not just being ignored. This is a four year or a five year habitual behavior. Where, these people, over and over are being deleted and removed. And then, when they communicate privately about it, as you'll see in the exhibits, it's almost gloated about. That they were deleted. It's almost bragged about. Back at them. That they have the right to do so and they are happy to do so. And they do not want out to free expression, as long as it's not in line with the form of thinking of the aldermen. I think it's not innocent. And I think it shouldn't be explained way so easily. This is a serious matter. And I think that these constituents and these tax-payers, quite a few of them, feel very strongly about . So, that this isn't just being ignored, as it's being stated. This is malicious behavior. And if it's not Alderman VanderLeest then it's someone else running his page. But no matter who it is, someone is responsible. And Alderman VanderLeest is responsible for allowing that to continue. And, he's known about this page and that these things have been going on or should have known since he's been in office for four years. So, I think that... I wanted to clarify that I think it's more serious than that.

- Any board members have any questions for either, Attorney Miller or Mr. Knight?

- No.

- No? All right. Then, I believe we're ready to move into deliberations. Mr. Knight, Attorney Miller, thank you for your efforts to enlighten our board here on these issues. We are going to go into closed session now and to deliberate on this. Before doing that, Attorney Conley, anything you want to add before we close this open session?

- Well, there's two things I want to observe. First of all, there's been a lot of argument raised and the Ethics Board, with its duty to interpret the code, I think has a lot to consider. And we've been at it for over two hours already. So, it's already been a lot for the board to take in. I think it makes some sense for the board to deliberate tonight, obviously, and at least start deliberations. I think it may be necessary for the board to meet again to deliberate after tonight. We'll see. I could be wrong in that. I also note that we continue to have problems with the transmission and reception. Frankly, I think that doing a hearing and having testimony taken, if we go in that direction. I know there's a motion pending, would be kind of troublesome and might not afford due process. Mr. Miller has previously stated that he doesn't like the idea of having to go to a hearing in this type of forum. And tonight kind of emphasized that again. People were getting knocked off, not being able to hear everything. So, I have two comments in that regard. Number one, we have another meeting scheduled for two weeks from tonight. We have a lot to deliberate about. And, I'm anticipating the board's going to want some feedback before they make their final decision on this. From me. So, I just want to suggest that it is possible and we may want to consider not having the hearing in two weeks. But instead, deliberating and giving our opinion within that period of time. I just want to put that out there as a possibility so that the parties aren't surprised if that winds up happening. I think that's a realistic concern. Certainly, if they have comments regarding that, I think we should invite them to make those comments at this point.

- Attorney Miller... Mr. Knight, go ahead.

- I'm perfectly pleased with any amount of deliberation. I don't think that there's a timeline that I want to see occur. I do want for people to have the opportunity in order to speak to this, because I think that the people in the community want some closure on it. And I think they want to be able to speak toward the things that have occurred here. And, obviously, there's a Motion to Dismiss. But... I would still like for the opportunity for those people to be able to come forward and speak. Or for a number of them, who feel intimidated or feel threatened, to do so. I would like to still subpoena them so they still have the opportunity to do that. Because they have in the past voiced that they want to. And I hope that we deliberate as much as you need to about it. I think it's a very serious matter and I appreciate you guys putting thought into it in order to rectify it. Thank you.

- Mr. Knight, a question. Attorney Miller has brought up the concern about doing this by video and rather, would prefer to do it in person. What's your position on that?

- It's not a very large group of people if it's all done at once. I think that in person, it can be... Whether it's now or later, can be done in a safe way. As long as other meetings are occurring that way. But, I think that no one that I've asked or have presented in the complaint with the list of potential witnesses to be subpoenaed. And half of them have transportation issues and so can't make it in person. But I think all of them, as well, would be fine appearing like this. I certainly don't have any issue appearing virtually like this on the Zoom if it works for everyone. Whatever would work. I'm just trying to give these people the opportunity to get some closure on this. Whatever works.

- Very good. Thank you. Attorney Miller, any comments on your side --

- I did not clear what Mr. Conley wanted me to address some questions No. No, basically, what I was saying is I think it's possible that we're going to be amending our scheduling order as a result after we deliberate, as a part of our deliberation. And that, we might not be having the hearing in two weeks.

- Oh, yeah. That's fine. And, quite honestly, when I made my statement about the in-person hearing, I had no conception that we have such a increase in cases. And, I guess I'm not much of an epidemiologist. But, I'm not trying to endanger anybody's health over a blind insistence on in-person hearing. I mean, we're going to have to figure out how it can be safely done. So, I'm fine. I recognize these are very difficult issues. It took me a long time to attempt to get a handle on these and I expect it's gonna take some time for the Ethics Board to discuss this.

- Very good. Well, again, non-board members, thank you for your time and efforts tonight. We will now be going into closed session. So, next on our agenda is deliberation and possible action on motions filed in the matter of the ethics complaint against Alder John VanderLeest, filed by Mr. Tarl Knight under the City of Green Bay code of conduct for elected officials. And so, it reads "The board may convene in closed session pursuant to sections eight or 19.85 and of the Wisconsin statutes, for the purposes of deliberating concerning a case, which Was the subject of any judicial or quasi-judicial trial or hearing, before that governmental body. The board will thereafter reconvene the open session pursuant to section eight or 19.85 of the Wisconsin statutes to take action on items discussed in closed session, if appropriate. And then, to consider the remainder of the agenda". So, is there a Motion to Adjourn session?

- I'll make that motion.

- And I will second it Lindsay, you want to do a roll call here for the vote?

- [Lindsay] All right. Just bear with me one second, I'm having some technical difficulties.

- Certainly

- [Lindsay] You can go ahead and do the vote. I don't know if you can do it on the board. Otherwise, if you want to just do a voice vote.

- Yeah, let's... Can we do a roll call vote? So, call the roll and each one will vote as you call their name.

- [Lindsay] Alder Galvin.

- Aye.

- [Lindsay] Attorney VandeCastle. Did you say yes? I can't hear anything all of a sudden.

- I can hear you, Lindsay.

- Bill, can you hear?

- I can hear. Yeah.

- All right, cool.

- Okay.

- [Lindsay] I can hear Bill now. I apologize. I just couldn't hear you for a little bit.

- Right, yes. I vote yes.

- [Lindsay] Thank you. Cheryl.
- Aye.
- [Lindsay] Aaron.
- Aye.
- All right.
- [Lindsay] That passes four to zero.
- That's all of us so there was no opposition. So, we are adjourned into closed session and we'll proceed accordingly. So, I think we've got a couple of people that still appear on my screen that probably aren't... They shouldn't be .
- [Lindsay] So... For some reason, I'm not able to create a breakout room like I had intended to do. So, I'm going to have to put people in the waiting room.
- Okay.
- [Lindsay] Unfortunately, as the host I won't be able to put myself in the waiting room. Jim, if I make you a co-host, are you able to put the City of Green Bay in a waiting room?
- I really don't know that.
- [Lindsay] Okay. That's fine. Let me just take care of this
- Lindsay, your concern is that you would move out of the closed session?
- [Lindsay] No, that I would actually be in the closed session and I shouldn't be, since we're conflicted out.
- Oh, okay. Okay, so I'm seeing Alder VanderLeest is not...
- [Lindsay] Okay, so it's just me.
- Can we just trust that Lindsay leaves the room for now? Or is there something we could do? Cross your fingers.
- Recording. Does the recording have to
- [Lindsay] I'm can turn my video on and you can... Oh, I do have to stop recording. I've run into this in other municipalities and we weren't able to get the host out.
- [Lindsay] Okay.
- And we still need the host-- Yes.
- We still need the host around so that when we back to open session.
- What we're gonna do that you're not able to correct it this time. So instead, I'm going to give you the log in and send you a Zoom meeting from the law department's account. So that you can put them into that one.

Into that meeting separately and we'll keep this one open. And then, when they're ready to come back they'll just need to come back to this meeting. That's the only solution I could come up with right now.

- [Lindsay] Thank you, Attorney . Does that make sense to everybody?

- So when we're done, we're gonna close out of this Zoom? When we're done with deliberations and sign back into this Zoom?

- [Lindsay] So, she's gonna send you an invite for a separate Zoom meeting, and you'll do your closed session in there. And then, when you're done with closed session come back to this meeting.

- Okay.

- [Lindsay] So, we're going to leave this one on. The phone will keep going.

- You're anticipating a lot of technical .

- All we need to do, is login to the new Zoom. You're going to send us an email right now, right?

- [Lindsay] Attorney says, "Yes."

- And we just need to log into that email Zoom.

- When we're done with this or right now?

- [Lindsay] I will tell you when to log in to that meeting.

- Right, okay. Let's--

- [Lindsay] this meeting opens. So you'll come back to this one once you guys are done with your post session. And so, that will be a completely separate meeting for you to have your closed session.

- Right. Before you do that, let me just interject and ask a question. Again, we've been at this for... coming up on, well beyond two hours. Do we want to delay the deliberation tonight? And just wait until two weeks from now? And do our deliberation then after we've had a chance to think about this a little bit. And then--

- I'm sorry. Before you guys talk about that, I'm Attorney . I put people in the waiting room but this is still recording. I don't know if they're technically in a closed session right now. So, should I stop the recording? back to where they're aware of what's happening.

- Okay.

- [Lindsay] 'Cause I don't feel that any of this is privileged.

- Okay.

- No.

- We're not deliberating, we're just talking about schedule .

- [Lindsay] So sorry, everyone.

- So, again, from the board's perspective, do we want to go forward with deliberations tonight? Or do we want to adjourn the deliberations for two weeks? I mean, that would be--
- I'd vote to adjourn and deliberate. This is a lot. This is a lot of information.
- Yeah.
- It's a long sit, I think.
- Yes. And then, to duke it out, I wouldn't mind waiting a couple of weeks.
- We'll be back at this in two weeks.
- All right.
- I would concur. So, I'll--
- [Lindsay] Do you want to reconsider the vote to go into closed session maybe?
- Nope. We've this closed session. All we're doing in closed session is agreeing to adjourn the closed session for two weeks. So, I think we can go back out of session and report that to the other parties
- [Lindsay] . I take this has all been not closed session.
- Right. But we did vote to go into closed session so I think we got a --
- Motion. Motion to move into open session.
- Second.
- We have a motion and a second. Again, roll call. If we need it.
- Yeah, you do.
- All right.
- Lindsay, call it off.
- [Lindsay] I'm getting there. I'm sorry. Alder Galvin.
- Aye.
- [Lindsay] Bill.
- Aye.
- [Lindsay] Cheryl.
- Aye.
- [Lindsay] Aaron.
- Aye. That is unanimous.

- All right. So, we are back in open session. So, the results of our very short closed session were that...
- "Closed session." to adjourning deliberations until October...
- Let me look.
- I think it was the 19th.
- I believe I have the scheduling order here. Just a second. It's coming up any minute now.
- October 28th.
- I think you're right.
- 28th?
- Yep.
- Oh, it's... Oh, great. I already had the file open and I didn't know it. Okay. Yep. October 28th at five o'clock -- was the action taken in closed session to the extent that there was a closed session. And so, notice will go out to the parties that we will be having a closed session, on that date beginning at 5:00 p.m. to begin our deliberations. And that, parties will be notified . anything else on the agenda? Anybody have any further comments before we move for adjournment?
- Nope.
- Is there a motion to adjourn?
- Motion.
- We have a motion.
- Second.
- We have a second. All in favor of adjournment signify by saying "Aye".
- Aye.
- Aye.
- Aye. Any opposed? Hearing none. We are adjourned. Thank you all for your time and effort tonight. Again, some issues here that you have to think about. But, I think this is a good step here giving us a chance to think about some of the things that we've heard tonight and review our notes and then we'll come back prepared to deliberate on this in two weeks. Very good. Thank you all.
- All right.
- Thank you.
- Night, everybody.
- Good night.



Report to the
Ethics Board
of the City of Green Bay

MEETING DATE

October 28, 2020

PREPARED BY

AGENDA ITEM # E.1

Deliberations and possible action on the Motions filed in the matter of the Ethics Complaint against Alder John Vander Leest, filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials.

The Board may convene in closed session pursuant to Sections 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governing body. The Board will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None



Report to the
Ethics Board
of the City of Green Bay

MEETING DATE

October 28, 2020

PREPARED BY

AGENDA ITEM # E.2

Scheduling of further proceedings.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None