



MINUTES OF THE ETHICS BOARD

WEDNESDAY, JANUARY 6, 2021, 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; Cheryl Renier-Wigg; Aaron Weinschenk

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

C. APPROVAL OF THE AGENDA.

I.

Approval of the Agenda for the January 06, 2021 Ethics Board meeting.

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 December 10, 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 a second Ethics Complaint against Alder John Vander Leest, filed by Mr. Tarl Knight, received on December 04, 2020, under the City of Green Bay Code of Conduct for Elected Officials.

Moved by Ald. Bill Galvin, seconded by Staff Cheryl Renier-Wigg to open the floor for discussion.
Motion carried.

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

Moved by Ald. Bill Galvin, seconded by Aaron Weinschenk to close the floor for discussion. Motion carried.

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

Moved by Chair Vande Castle, seconded by Ald. Galvin to dismiss the Complaint for lack of jurisdiction. Motion carried.

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

Moved by Ald. Bill Galvin, seconded by Staff Cheryl Renier-Wigg to have the law department continue current process for initial review of sufficiency of complaints, and to provide the Board with a report concerning an additional, jurisdictional review of the complaint at the first meeting at which it is discussed. Motion carried.

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

2. Deliberations and action on the second Ethics Complaint against Alder John Vander Leest, filed by Mr. Tarl Knight, received on December 04, 2020, 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.

3. Consideration with possible action on a request for a confidential advisory opinion from an official pursuant to Wis. Stat. s. 19.59(5) and Green Bay Municipal Code 1.90(9).

The Board may convene in closed session pursuant to Wis. Stat. s. 19.85(1)(h) for purposes of considering a request for confidential written advice. The Board may thereafter reconvene in open session pursuant to Wis. Stat. s. 19.85(2) to report the results of the closed session and consider the balance of the agenda.

Moved by Board Member William VandeCastle, seconded by Staff Cheryl Renier-Wigg to refer to the law department to provide guidance to Alder Vander Leest. Motion carried.

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

F. ADJOURNMENT.

Moved by Aaron Weinschenk, seconded by Board Member William VandeCastle to adjourn. Motion carried.

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

VERBATIM MINUTES

- Let's call the meeting to order. We have a quorum. So this is the meeting of the City of Green Bay Ethics Board for Wednesday, January 6th, 2021 at 5:00 p.m.. We've got roll call, and Lindsay are you gonna take roll call or do we just do it by the Zoom?

- I certainly can. Sorry, I'm just making sure we are recording. Oops, okay sorry. Here we go, I apologize.

- No problem.

- Little rusty. Actually, all right, I'll just do it. Oh, I know why. Okay, sorry. Figured it out guys, don't worry.

- Alder Galvin

- It's good.

- All right, it's a new year, new you.

- Right. Alder Galvin is here. Attorney Vande Castle.

- Here.

- Interim Director Renier-Wigg.

- Present.

- Mr Weinschenk.

- Present.

- We have a quorum.

- All right, very good and welcome to the other participating alders as well. So next item on the agenda is to approve the agenda for this January 6th, 2021 Ethics Board meeting. Is there a motion to, well let me ask this. Any additions or corrections or modifications to that agenda? None, so is there a motion to approve?

- Motion to approve. We have a motion and I will second.

- Second.

- A motion and a second. Again, any modifications, otherwise all in favor signify by saying aye.

- [All] Aye.

- It looks like motion carries. Item D approval of a minutes from the December 10, 2020 Ethics Board meeting. And you should have all received those minutes this afternoon. Are there any additions or corrections to that document? And is there a motion to approve?

- Motion to, go ahead.

- We have a motion by, second. All in favor, signify by saying aye.

- Aye.

- Aye. Any opposed? Motion carries. Under regular business, item number one is hearing on second ethics complaint against Alder John Vander Leest filed by Mr. Tarl Knight received on December 4, 2020 under the City of Green Bay Code of Conduct for Elected Officials. And I would note in connection with this, it's in your packet, that there was also a motion filed by Attorney Miller on behalf of, on behalf of Alder Vander Leest that was also in your packet.

- Just a clarification, that actually was not in the packet. We just received that a couple of days ago. So that was emailed to you.

- Yes.

- I think might've just been yesterday, or yes, I was gonna say or Tuesday, which was also yesterday, so.

- Yes, very good.

- All right, so that is on the agenda and I think, Lindsay, at this point, I would turn this over to you to give us an explanation as to where we are with this.

- Sure, just give me one second. Joanne's in the waiting room. Here we go. So our office reviewed the complaint, the second complaint from Mr. Knight, and presumably you all read it. It concerns allegations that Alder Vander Leest committed an ethical violation when he did not recuse himself from a procedural vote at council concerning the disposition of Mr. Knight's first complaint against him. Our office's role is, in this process, at least initially, is to check the complaints for sufficiency based on the requirements that are found in the Code of Conduct. So there are certain requirements that every complaint has to have, and we really just do a baseline analysis to make sure that those those requirements are met. A review does not extend to an analysis of whether the allegations in the complaint, if true, would constitute a violation of the Ethics Code that would be within the jurisdiction of the Ethics Board. In this situation, Mr. Knight's complaint, second complaint does meet the minimum requirements for complaints under the code of conduct, but the conduct complained of does not fall within the Ethics Board's jurisdiction. Mr. Knight's allegations do not raise an issue of ethical propriety, but rather a procedural question and procedural questions and actions of governing bodies are within the purview of the courts for review and not within the jurisdiction of the Ethics Board under the Code of Conduct. So staff's recommendation would be that this get dismissed.

- Any questions from any of the board members of Attorney Mather on the issue she presented? Okay. I think what was just addressed really goes to the heart of the complaint, and it does not really get to the motion that was filed by Attorney Miller, but maybe dispositive of that motion based on recommendations from the Law Department. Attorney Mather and I discussed this, I'll be clear about this. We discussed this this afternoon and went through exactly what she just reiterated about the jurisdiction of this board. And I would say from my point, putting on my lawyer hat that I've been down this path before in other situations that I've represented municipalities and I would fully agree. And I also had some concerns as to the scope of a issue concerning recusal when it comes to procedural matters, rather than substantive matters. That that's really an issue that I don't have an answer to. I did deal with it some years ago and I could not find my earlier opinion and my review of this, but from what Attorney Mathers said, I guess I would say that I wholeheartedly agree based on my understanding of the law and the reading of our Code of Conduct. So I see that Mr. Knight had raised his hand. We don't have open discussion at this point but we could entertain a motion to open the floor and allow him to address the board if you would like.

- Motion to open the floor.

- Alright, we have a motion. Is there a second? And we have a second. All in favor of opening the floor, signify by saying aye.

- Aye.

- Aye. Floor is open. Mr. Knight, what was your question?

- Can you hear me all right?

- Yes we can, I can.

- Great, thank you. You know, and this, this might be a question for Ms. Mather or anyone who might be able to answer it but when you say this is a matter that might be best addressed in court or through the courts, what exactly can you refer to what exactly you're talking about there?

- Sure, so, excuse me. If somebody wants to, for example, if you wanted to challenge the propriety of a vote or of the action taken by council you can do that in circuit court. And that would just be an action, like a civil action through the courts, rather than what would be a quasi-judicial action here in front of the Ethics Board. So that's a mechanism that already exists in the courts. And so we wouldn't, they would have that jurisdiction, the Ethics Board would not.

- Okay, well, thanks for clarifying, obviously no, you know, to having experienced, you know, firsthand something like this in a matter that I was directly involved with so it wasn't exactly sure how to, you know, how to go about holding this sort of thing accountable. So thank you.

- Any other questions while the floor is open from anybody else, any of the other alders? Any comments? All right.

- I would make a comment to Mr. Knight. I know some alders, and not alders plural, but an alder and a Brown County supervisor that actually faced charges, and this is several years in the past for not recusing themselves on a vote that benefited them. And it doesn't matter what the outcome was but they did have charges that were filed through the District Attorney's office. So anyone can file that complaint if they so choose.

- Yes. And unfortunately I have represented municipalities where they're, where I was involved, the Village President was charged criminally for violating a similar rule. So, but that's the jurisdiction of the courts. So, all right, hearing nothing further or no further questions, I would entertain a motion to close the floor.

- Motion.

- It looks like a motion by Alder Galvin. Was there a second?

- I'll second, Aaron.

- Okay, we have a motion and second. All in favor of closing the floor, signify by saying aye.

- Aye.

- Aye, any opposed? Bearing none motion carries, floor is closed. So we've got the recommendation for item number one on this complaint by Mr. Knight, that the complaint be dismissed for a lack of jurisdiction. I would make that motion that we dismiss that complaint on those grounds. Is there a second?

- I'll second that.

- We have a motion and a second, any further discussion or questions for attorney Mather before we vote?

- Oh, I'm sorry, Alder, Attorney Vande Castle, it was bound to happen. Can I raise that other issue that I had broached with you about our review of the,

- Yes, go ahead.

- just before we dispose of this item entirely. I also wanted to, wanted to ask the board for input regarding whether it would be appropriate to broaden the authority of the City Attorney's Office with respect to doing that initial review of complaints. So rather than just looking for, does it meet those basic requirements of the Code of Conduct, which is just the complainants information, the name and position of the official, who is the subject of the complaint, the nature of the alleged violation including the specific code provision, allegedly

violated a statement of facts of the alleged violation, including the specific dates on which the violations allegedly occurred. So right now we just do, you know, those five things, tick off those four boxes, but as I mentioned previously, we don't go further than that and look at, would those allegations, if true, constitute something that would be, that would fall within the Ethics Boards jurisdiction. And so our office would request that the board grant us the authority to review the complaint for the adequacy of the claimed violation in addition to those base requirements that are in the code of conduct. And the understanding of course would be that we will liberally construe complaints in favor of the complainant. And the complaints would simply be returned to the complainant to correct any errors prior to them reaching the board, so that we can sort of streamline this process going forward. And also just as a side note, we do anticipate that our office's role will be spelled out more directly in the Ethics Code revisions when they come around. But we're asking for this as kind of a stop gap for the interim to kind of, like I said, just kind of make sure that the ethics complaints that we're bringing before you are ones that have merit and that will not just need to be dismissed for a lack of jurisdiction.

- Okay, what we'll do is we'll take a separate vote on that after this, but while we're on the topic and before I lose my train of thought, what I'd like to suggest is, I mean, I have no problem with that, but to be honest, I kind of like the process we've gone through tonight, where so you've gone through and you've made the initial determination that the complaint that was filed meets those basic requirements to get it in front of this board. But once it got in front of the board there was that second review that determined that there was a jurisdictional issue. I, from my perspective, I would like the ability to do what we've done tonight, is to have this meeting and then for your office to explain to us, to all of us, why there is the jurisdictional issue and give complainants like Mr. Knight, the opportunity to inquire why we made that deterrent, why your office has made that jurisdictional determination. I think that provides a more open and transparent view of what's going on here so that it doesn't just get run through your office and then it never gets to the board. So again, I have no problem with that review, but I just think that it should come to this board when it comes to actually dismissing the complaint. Because as it develops there may be an opportunity for a further discussion that may change some of that. Maybe not likely to do that, but it might. But I like the opportunity for all the parties to have a chance to weigh in on the secondary jurisdictional issue. So that's my two cents. So we, yes Alder Galvin.

- I'm gonna agree with the Chair wholeheartedly. I think the transparency and the ability for the common person who maybe doesn't have the benefit, that of lease or the ability to afford legal expertise can have the situation explained to 'em. And also the complainants, whether they may realize that there's more information or something that didn't quite come across in the complaint, and like the Chair said, it gives an opportunity for them to address some of their questions and concerns. And I think for both sides, I think that's important because now this is public, it's transparent, it's recorded. And anyone that thinks, or, you know someone's getting favoritism on one end or the other it's right out in the open for everyone to see exactly what happened here. Thank you.

- All right. So we are back to the question on the motion to dismiss. We had a motion and a second, so I believe we're ready to take a vote on that motion unless there's any further discussion particularly to that motion. Hearing nobody raising their hand or waving around. All in favor of the motion to dismiss Mr. Knight's complaint on the grounds set forth by Attorney Mather signify by saying aye.

- [All] Aye. Any opposed? Motion carries. So now based on what was also raised by attorney Mather is there a motion to provide the law department with that additional authority to review the jurisdictional aspects of a complaint that meets the, that meets the interim requirements to sort of get in the door?

- With the caveat that it still would be presented to the committee?

- Yes.

- Yes, I would make a motion to have that happen.

- All right.

- Second.

- We have a motion and a second. Any further discussion or questions?

- So I just wanna clarify for the minutes. So the initial review would remain the same. It would get, the complaint would get on the agenda. And then prior to that first meeting our office would conduct the jurisdictional review and then present our findings on that front at the first or at the meeting on the, that the complaint is on the agenda.

- Absolutely, and again, I think that makes sense in terms of how this all unfolds because usually this first meeting tends to be more of a scheduling meeting to set a time for the actual full-blown hearing and any procedural things that need to be done beforehand like motions and those sorts of things. So if we can get to that jurisdictional issue right at the front end of this we can expedite the matter that way. So that makes sense. So we have a motion and a second any further discussion or questions? Hearing none, all in favor signify by saying aye.

- [All] Aye.

- Any opposed? Hearing none, the motion carries. Very well. So item two on the regular business for the agenda was deliberations on the complaint that's already been taken care of by these motions, and the motion to dismiss. Item three is consideration of possible action on a request for confidential advisory opinion from an official pursuant to Wisconsin Statute, Section 19, 59. So five, in the Green Bay Municipal Code, Section 1.90. Attorney Mather, I guess I would turn this over to you, again, to deal with this issue because there's been some developments.

- Sure, so very first of all these requests for advisory opinions per statute are to be kept confidential. We have received, unless that confidentiality is waived by the person requesting the advisory opinion. We have received a waiver from Alder Vander Leest, well from Attorney Miller on behalf of Alder Vander Leest signed by Alder Vander Leest, I emailed that to the board this afternoon, that states that he is waiving confidentiality with respect to this request for the advisory opinion and that we may therefore discuss it in open session and that it can be discussed on the video recordings of the meeting and that sort of thing. So to kind of, you know, as a starting point, I just wanted to get that procedural issue out of the way, that we have in fact received a waiver and we can proceed with discussing it in open session even though typically these would be discussed entirely in closed session. Just for those who, the questions that were asked were only sent to the board members again because it was going to be confidential. So just to kind of fill in the gaps the questions pertained largely to what the proper actions, I guess, are for Alder Vander Leest with respect to votes on the disposition of the first complaint by Mr. Knight against him. And so when, under the state statutes whenever somebody asks for an advisory opinion there really isn't a mechanism for our office to be a gatekeeper, they just, the questions automatically go to the board. So that's why it automatically ended up on the agenda. But reviewing this one also, these questions about an Alder's obligations on future votes and those sorts of things, these are not appropriate subjects for advisory opinions from the Ethics Board. Such questions should actually be directed to the City Attorney's office as we serve as counsel for all of the Alders rather than being the subject of advisory opinions. The propriety of voting on an issue will depend on the individual circumstances of the alder. And it is for the alder, not the City Attorney or the Ethics Board, to determine whether they are, the alder themselves is biased in a given situation and therefore needs to recuse themselves. So typically what we do when we get questions about potential conflicts, or whether there's a need to recuse oneself we provide the alders with the legal standards and the alders then have to make the decision as to whether there's bias or conflict of interest for themselves. And that's not something that we, as an attorney's office would be dictating to them. And certainly not something we would expect the ethics board to be issuing an advisory opinion on.

- All right, so interpreting that my understanding is that we would be in a position to move to refer this matter to the Law Department for further processing.

- Yes, and just to clarify, our office will not be able to provide, essentially, yes or no answers to the questions that were asked. We will be able to provide the standards for when it is appropriate to recuse oneself. And then it will be up to Alder Vander Leest, in this situation, or any other alder in any other situation to apply those standards to themselves and decide whether they need to recuse themselves.

- Right, all right. So I, yes, Alder Galvin.

- I guess I was kind of surprised that this question was being brought before this committee. I mean, when I started as an alder I knew nothing about being an alder, per se, there was no training or anything like that, but that was one thing I knew about that, that had to check. And I have availed, I mean, the City Attorney's office has been very helpful on many occasions when I've had questions about whether I should be recusing myself or not. So I'm kind of surprised that, that we're even considering this at this time, but I agree with Attorney Mather that they've always been very helpful and they've always been very available, so.

- All right.

- Well, and I'd like to just add that we just voted that the Ethics Committee does not handle these complaints, they go to a different portion, right, the Circuit Court. So I don't know how we'd answer these questions as an ethics committee and then not be able to act on the prior. Right, didn't we just vote to say that we don't handle these? But this is like, we're asking you to handle them.

- Yeah. All right, so I will.

- These two matters are undeniably connected. I think that's made clear in the request for the advisory opinion that this request is connected to the second complaint. So I think you're absolutely correct.

- And I think they're great questions. I would hope that they'd get some guidance with regards to these things, you know, they're good questions to ask I think.

- All right, any further questions for Attorney Mather? Otherwise I will make a motion that we refer the request for this confidential advisory opinion from Attorney Miller on behalf of Alder Vander Leest to the Law Department for a review and a response.

- Second.

- We have a second. Any further discussion or questions? Hearing none, all in favor, signify by saying aye.

- [All] Aye

- Any opposed? Hearing none, the matter is approved and will be referred to the Law Department for further processing. And because of that, I guess I would just note from my understanding procedurally this matter would not come back to this board in any time in the future for any report or update or anything like that, it would be handled entirely in the Law Department between that department and Mr. Miller and Vander Leest.

- That's correct. Although I would clarify that it really would be between our office and Alder Vander Leest, and not involve Attorney Miller because this is our office giving direct advice to our client with respect to their professional duties as an alder.

- Okay, very good point, well taken. All right. Then it looks like we are right. Is there a motion to adjourn?

- Motion

- A motion.

- Second. I will second, a motion and second. All in favor of adjournment signify by saying aye.

- [All] Aye.

- Okay, any opposed? We are adjourned. Thank you all for your time tonight. And happy New Year. Stay safe on this very unfortunately sad day for our country, but let's all hope things can rectify themselves shortly here.

- Buh-bye.

- Thank you all.

- Have a good night.