



CITY of PORTSMOUTH BOARD of ETHICS

Minutes of the September 16, 2020 Meeting

Access: Via Zoom

Present via Zoom: Board of Ethics Chair John Tabor, Board Member Ann Walker, Commissioner Richard Gamester, Commissioner Tom Hart; and City Attorney Robert Sullivan (ex officio).
Also present: Synthia Ravell, moderator and Marian Steimke, both of the City Legal Department.

Panelists: Ms. Nancy Pearson, Attorney Duncan MacCallum

The Portsmouth Board of Ethics hearing commenced at 6:00 p.m.

Chair Tabor read the following from the Governor's Executive order:

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the hearing pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-17, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

Chair Tabor called the roll of Board members.

Chair Tabor stated the purpose of the hearing was to hear testimony from Complainant Nancy Pearson and to allow time for cross examination of Ms. Pearson by Councilor Kennedy or her attorney, and that cross examination will be limited to 30 minutes unless the Board votes to extend the time. The Chair also referenced a timeline that was given as to the Board as an exhibit, which will be discussed later in the meeting.

The Chair recognized Board Member Onosko withdrew from the Board and Police Commissioner Tom Hart took his place.

Ms. Nancy Pearson joined the teleconference at 6:04 p.m. She indicated her location, that her husband was in the house, and that Andrew Bagley, Secretary of the Board of PopUp NH was in the house.

Ms. Pearson referenced the timeline that she submitted and indicated she would speak to the highlights and answer questions. She thanked Assistant Mayor Splaine and Attorney Sullivan for moving this complaint forward to this Board.

Ms. Pearson defined the scope of the hearing as being very narrow and pertaining to one claim. She read Attorney Sullivan's quote *"By registering the trade name, Kennedy engaged in a "transaction" with a "direct interest" in the outcome of Pop Up Portsmouth which is "in conflict with the proper discharge of her official duties."*

Ms. Pearson said this boiled down to 3 things:

- 1) Was there a transaction
- 2) Was there a direct interest
- 3) Was this in conflict with her duties

She addressed these issues one-by-one and answered yes to all three items.

Ms. Pearson reiterated two important points in her timeline:

- 1) A nonprofit's Article of Incorporation officially marks the creation of the organization. PopUp Portsmouth recruited their directors and filed their paperwork to incorporate as a non-profit on July 2, 2020, which marks the official creation of the non-profit.
- 2) Seacoast Reparatory Theatre was, is and always had been the official fiscal sponsor of the project.

Ms. Pearson welcomed questions.

Commissioner Hart asked about the bank account and about communication to the City Council.

Commissioner Gamester asked about official paperwork allowing the fiscal agency to operate.

The goals, Ms. Pearson said, included the City needing to move fast, and there was a written communication from Seacoast Reparatory Theatre agreeing to acting as fiscal sponsor. She referenced SRT Board minutes documenting this arrangement.

She said there is a difference between a nonprofit and a 501c3 status, which is a tax structure. At this time PopUp NH is a non-profit, but they have not filed for 501c3 status.

Commissioner Gamester asked about the funding. Ms. Pearson said total allocated funds by the City Council to the PopUp Task Force was \$100,000, \$50,000 of which were for the PopUp project in the form of staff time, resources, infrastructure and in-kind services, not in the form of a check written.

Board Member Walker asked about the Secretary of State delays and Ms. Pearson discussed delays that were prominent during the pandemic and summer.

Commissioner Hart asked about the effects on the group of not having the PopUp Portsmouth name available. Ms. Pearson spoke about delays impacting the setting up of the bank account, which impacted not being able to get insurance. They had to start the name search and incorporation again, which cost a lot of personal time for the volunteers. The project could have had another \$25,000 earned had they not had to delay that week.

Chair Tabor summarized the sequence of events regarding fiscal sponsorship, the filing of paperwork regarding the non-profit status. Chair Tabor asked if the LegalZoom platform application was complete or if it got kicked back.

Andrew Bagley fielded this question at 6:30 p.m. and he began by saying the Josh Denton had arrived. Mr. Denton had not been present earlier in the meeting but was present at this time.

Mr. Bagley said there was a delay because the PopUp Portsmouth name had been used briefly in 2015 but that had expired. Mr. Bagley said the Secretary of State was extremely helpful in securing the registration for the new name. The 501c3 must be filed with the Federal Government, and at this late time it was not possible to get the status before everything closed for the season.

Donation checks and GoFundMe contributions were made to Seacoast Reparatory Theatre with PopUp NH in the memo line. There was an escrow account set up for PopUp NH.

Commissioner Gamester asked Ms. Pearson to read her timeline which was submitted to the Board via email on September 16, 2020 to provide more transparency and detail.

Ms. Pearson read her timeline details which began March 26, 2020.

Attorney Sullivan said any documents filed with the Board become public record and are available upon request. No further action is required.

Chair Tabor recapped parts of the timeline.

- July 1, 2020: the volunteers learned they needed an entity to buy insurance;
- July 2, 2020: a board is chosen and paperwork submitted with the name
- July 8, 2020: Russ Grazier conveys to the task force that Seacoast Rep is the fiscal agent but a non-profit has been applied for
- July 13, 2020: City Council approves \$100,000, \$50,000 of which goes to PopUp for improvements to the site.

At 7:00 p.m. Chair Tabor asked to have cross examination by Councilor Kennedy and/or Attorney Duncan MacCallum. Attorney MacCallum asked to have Ms. Pearson sworn in.

Attorney Sullivan asked Ms. Pearson to swear that all testimony that she gave was true and if all future testimony will be true. She said yes.

Attorney Sullivan asked Andrew Bagley to swear that all testimony that he gave was true and if all future testimony will be true. He said yes.

Attorney MacCallum commenced the cross-examination of Ms. Pearson.

He asked about the specifics regarding the date of creation of the entity PopUp Portsmouth. Attorney MacCallum asked about LegalZoom not being a governmental agency. He asked about the soliciting and acceptance of donations.

Attorney MacCallum brought up social media and Chair Tabor asked Attorney MacCallum to submit documentation regarding social media posts of interest.

Attorney MacCallum asked if Councilor Kennedy offered to give the business name to their entity. Ms. Pearson answered the offer was there but there were conditions and a name cannot simply be given to another entity. He asked about Ms. Pearson's attendance of a July 21, 2020 meeting and Councilor Kennedy speaking about businesses outside Portsmouth being registered for PopUp, but Ms. Pearson responded that the 21st was after Councilor Kennedy took the name on July 15th. Ms. Pearson stressed that she was not part of the Board of PopUp NH and could not speak to what Councilor Kennedy asked her to do. Ms. Pearson repeated the goals of PopUp NH. Attorney MacCallum asked Ms. Pearson about discussion regarding businesses outside Portsmouth at the meeting July 21st. Attorney MacCallum asked what interest Councilor Kennedy had in the entity. Ms. Pearson answered and quoted Councilor Kennedy saying she wanted control over the entity and quoted from the Portsmouth

Herald of July 21st she “will give registered and domain names if it forms as a legal non-profit and she would like to limit vendors to Portsmouth businesses”.

At 7:40 p.m. Chair Tabor asked the Board if they wanted to make a motion to authorize further time for Attorney MacCallum’s cross examination of Ms. Pearson, but the Board and Attorney MacCallum said that enough time had been allocated.

The Chair wanted to speak about the letter from Attorney Jay Nadeau dated September 16, 2020. Chair Tabor summarized the letter from Attorney Nadeau whose client is Mrs. Kathleen Cavalaro. In his letter, he disputes the details of the timeline submitted by Attorney MacCallum on behalf of Councilor Kennedy.

Chair Tabor suggested getting testimony from Mrs. Cavalaro and Board Member Walker agreed.

Attorney MacCallum requested that Attorney Nadeau submit documentation on what it is he is contesting in the disputed timeline, and the Board agreed.

Board Member Walker requested more civility at next meeting.

Attorney Sullivan said Attorney Nadeau would be contacted by the City Legal Department and to provide any documents by noontime of that day.

Commissioner Gamester made a motion to adjourn until September 21, 2020 at 6:00 p.m. on Zoom. Board Member Walker seconded, and on a roll call vote 4-0, the motion to adjourn passed.

The meeting adjourned at 7:50 p.m.

Dated: 10-7-20

John Tabor
John Tabor, Chair
Board of Ethics Chair

Respectfully Submitted,
By Marian Steimke