



## **CITY of PORTSMOUTH BOARD of ETHICS**

### **Minutes of the September 23, 2020 Meeting**

Access: Via Zoom

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

**The Portsmouth Board of Ethics (BoE) hearing commenced at 6:03 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 2020-18, 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 who identified their locations and who was present physically at their location.

**Board Member Walker made a motion to move into nonpublic session, seconded by Commissioner Gamester, pursuant to RSA 91-A:3II(c).**

**On a 4-0 roll call vote, the meeting was moved to nonpublic session at 6:08 p.m.**

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**The public session of the meeting resumed at 7:02 p.m.**

Chair Tabor summarized the proceedings and said that the evidence portion was complete however, the Board would still give a chance for three minute statements from Ms. Pearson and Councilor Kennedy.

**Commissioner Gamester made a motion to dismiss the affidavit of Kathleen Cavalaro and not use it in this hearing. This was seconded by Commissioner Hart.**

Discussion: Commissioner Gamester believed Mrs. Cavalaro's affidavit sent by her attorney should be disregarded because neither were able to be present.

**On a 4-0 roll call vote, the motion to dismiss the affidavit of Kathleen Cavalaro and not use it in this hearing passed.**

The Chair wanted to take a moment to thank the Board, and Commissioner Gamester took opportunity to thank Chair Tabor.

Chair Tabor asked if Ms. Pearson wanted to make an additional statement. She joined the meeting at 7:10 p.m. [She stated her location and who was present with her later in the meeting]. She thanked the Board for taking the complaint seriously and for following a logical and methodical process. She said it was important to stick to the narrow scope of the complaint. She reiterated her findings and thanked the Board for their time, patience and professionalism.

Chair Tabor gave Councilor Kennedy a chance for a final statement, and she joined at 7:13 p.m., identified her location and said her attorney was present with her. She thanked everyone for their time and effort. She said she felt heard. She said she believes that by her actions the PopUp made sure that Portsmouth businesses were prioritized. She said she thinks she helped. She reiterated that she did communicate to the City Manager and Mayor. Chair Tabor thanked Councilor Kennedy. [1:15:25]

Chair Tabor referenced the September 3, 2020 letter from Assistant Mayor Splaine and City Attorney Sullivan. He summarized the charge of the Board who was asked to determine if a conflict of interest existed and if Councilor Kennedy violated the Code of Ethics.

Attorney Sullivan described the process. He said the Board took no action during the nonpublic session, but at this time the Board would take action. If the Board finds that the Code of Ethics has not been violated, then no further action is required. However, if the Board determines that a violation occurred, then the Board refers the matter to the City Council for further action. The ordinance identifies the steps the Council could take.

**Commissioner Hart made a motion that the Board of Ethics find that Councilor Kennedy was in violation of the Conflict of Interest Section 1.802A of the Code of Ethics, and this determination be forwarded to the City Council for further action. Board Member Walker seconded the motion.**

*[Post meeting note: the motion, deliberations and the vote are transcribed in their entirety in a separate document].*

Discussion / deliberations: Commissioner Hart explained his process in shaping his conclusion, drawing from his experience as a law enforcement officer, and looking at this openly from both sides. [1:23:46]

Commissioner Gamester discussed his approach in determining his conclusion. He found the Councilor to be very honest in her answers to his questions which he summarized: Prior to purchasing the PopUp name, had she ever tried to contact or discuss her concerns with the City Legal Department, she answered "No". With the City Manager: she said "Yes", but he said she did not like the response. Had she ever tried to contact or discuss her concerns with the Task Force, the PopUp Chairman, the entire Council, the Attorney General or Secretary of State – the answers to those were "No". She also did not tell Council members about her intent to register the trade name. She was never asked to intervene, he added. Commissioner Gamester continued: at the moment she registered the trade name was the moment she was in a conflict of interest. She purchased something - this is when she fell into conflict. She did not tell any of the parties that she had taken the name. He believed that she violated the Code of Ethics. [1:27:45]

Board Member Walker discussed her finding. She said when Councilor Kennedy registered the name PopUp Portsmouth before the Task Force was able to complete the registration process, it slowed down the efforts in trying to help the Portsmouth businesses. When she conducted her transaction, she was in conflict with her official duties as a City Councilor

Chair Tabor said he wanted to give the benefit of the doubt to the Councilor. He quoted language of the ordinance: "shall not engage in a transaction". From her own testimony, he said, we know she bought the tradename with her own money. She had a direct private interest in this. Was the \$50 purchase in conflict with her duties, he asked. The Council voted 9-0 to get the popup going. That was the policy, part of which included getting it running as fast as possible. Chair Tabor said the phone call of July 20<sup>th</sup> and the Councilor's three demands concerned him the most. He summarized these: changing the bylaws was not a Council or Task Force determination; and insisting they apologize to their donors. He discussed the impact on the project. Those actions were not supportive of the Council vote and undermined the legislative intent. The Chair said he did not believe the donors' money was collected illegally and believes it was safely kept. He also believed this was a violation of the Code of Ethics.

**On a roll call vote 4-0, the motion that the Board of Ethics find that Councilor Kennedy was in violation of the Conflict of Interest Section 1.802A of the Code of Ethics, and this determination be forwarded to the City Council for further action passed.**

[1:35:50]

**Commissioner Gamester made a motion to store the documentation related to their deliberations into a database accessible to the public, and Commissioner Hart seconded the motion.**

Attorney Sullivan said if this motion passed, he would take all correspondence that has come in from any party and post it online.

Chair Tabor added that everything sent to the Board of Ethics is a public record and can be requested at any time. He also stated the Board had previously decided that some material would not be part of their deliberations, specifically, an affidavit sent from Gerald Zelin as it was not relevant. The Chair asked Commissioner Gamester to consider excluding that knowing that it is public record and subject to request at any point. Commissioner Gamester, Board Member Walker and Commissioner Hart all agreed

**On a roll call vote, the motion to put all the documents received in this matter into a database accessible to the public except the affidavit sent by Attorney Zelin as it was not relevant passed 4-0.**

**Commissioner Gamester made a motion to adjourn and Board Member Walker seconded.**

**On a roll call vote, the motion to adjourn passed 4-0.**

The meeting of the Board of Ethics adjourned at 7:40 p.m.

Dated: 10-7-20

John Tabor  
John Tabor, Chair  
Board of Ethics Chair

Respectfully Submitted,  
By Marian Steimke