

**City of Birmingham  
Board of Ethics Minutes  
December 19, 2023  
151 Martin, Birmingham**

**I. CALL TO ORDER**

Chair Robb called the meeting to order at 2:40 p.m.

**II. ROLL CALL**

Present: Chair James Robb; Board Members Michael Coakley (arrived 2:44 p.m.), John Schrot; Alternate Board Member Judy Doyle (non-voting after 2:44 p.m.)

Absent: None

Staff: City Manager Ecker; City Clerk Bingham, City Attorney Kucharek

The Board welcomed Ms. Doyle.

**III. APPROVAL OF MINUTES**

A. Approval of minutes of September 26, 2023

**MOTION:** Motion by Chair Robb, seconded by Mr. Schrot:  
To approve the minutes of September 26, 2023 as amended.

VOICE VOTE: Ayes, Chair Robb  
Ms. Doyle  
Mr. Schrot

Nays, None

The Chair thanked the Clerk and her Staff.

**IV. UNFINISHED BUSINESS**

**V. NEW BUSINESS**

A. Case 2023-04 (Canvasser advisory opinion)

The Chair introduced the case and swore in CM Ecker and Jason Canvasser at 2:46 p.m.

CM Ecker summarized the case. CM Ecker and CA Kucharek answered informational questions from the Board.

Mr. Canvasser then spoke and answered informational questions from the Board.

Board members made the following comments in the course of discussion:

- This case was regarding Mr. Canvasser's status, and not his conduct;

- The questions of the case were whether Mr. Canvasser could be reappointed now, and if not, whether Mr. Canvasser could be reappointed after the litigation resolved;
- Mr. Canvasser has a history in serving on the Board of Zoning Appeals (BZA) and his service benefits the BZA;
- If the initiation of litigation had occurred after Mr. Canvasser's reappointment, Mr. Canvasser likely would have continued serving on the BZA and would have been required to follow the requirements of the Ethics Ordinance (Ordinance). He would have been required to recuse himself from any discussions regarding the subject issue, and would have been required to recuse himself from any vote on the same;
- Regarding whether Mr. Canvasser was a fiduciary for Clark Hill, it was more important what the public would perceive than the legal term that may be most accurate;
- For the purposes of the Ordinance, it would be most appropriate to view Mr. Canvasser as a representative or agent of the 'competing body'. Mr. Canvasser would at least appear to have loyalty to his employer, and would also be expected to have a loyalty to the City in terms of his service on the BZA, the combination of which represents either a conflict-of-interest or the potential impression of one;
- Mr. Canvasser has conducted himself appropriately vis-a-vis this potential conflict-of-interest by recusing himself from both the discussion of, and the voting on, the topic;
- In contrast, in case 2004-02, referenced in the advisory opinion request, it was Mr. Seeger's conduct that caused him to be violative of the Ordinance;
- Section 2.321 would not be relevant in this particular case;
- Section 2.323(5) represented more of a concern. The City had to determine whether it was willing to risk an inadvertent, adverse appearance of a conflict-of-interest;
- There is a balance to be had between the concerns raised by Section 2.323(5) and the value Mr. Canvasser's service on the BZA brings to the City, given Mr. Canvasser's appropriate conduct;
- The City may be willing to assume the risk of an adverse appearance of a conflict-of-interest given the facts of this case, which includes Mr. Canvasser's mitigation of the risk via his appropriate recusals;
- In regards to Section 2.324(a)(6), Mr. Canvasser's testimony is that he would derive no benefit, private or public, with respect to the outcome of the litigation. His recusal on deliberations related to the litigation would amount to a discharging of his official obligations;
- The Ordinance informs an official of her or his ~~their~~<sup>1</sup> obligations regarding particular matters, and does not address an official's qualification to serve on a Board. The Ordinance references recusals from discussion, deliberation, action, or voting from matters that pose a conflict-of-interest for an official;
- In a somewhat similar past case, it was determined that the firm of a lawyer/City official could continue to represent clients in matters adverse to the City, but the individual lawyer/City official in question could not;
- In both that case and in Mr. Canvasser's testimony, the officials' firms established an ethical wall in order to prevent interaction between the lawyer/City official in question and the cases adverse to the City;
- In that previous case, the ethical wall was found to have cured the conflict-of-interest concern;
- All conflicts require disclosure, and Mr. Canvasser's approach to his disclosure and recusal regarding this matter was to be commended;

---

<sup>1</sup>As amended at the January 19, 2024 meeting.

- Case 2004-02 was distinct from this case because Mr. Seeger started a group for the sole purpose of fundraising for litigation against the City. In addition, Mr. Seeger was a fiduciary in that matter, for that action that was adverse to the City;
- Mr. Canvasser was likely a fiduciary for his firm, but was not participating in the litigation against the City. Mr. Seeger’s organization existed for the sole purpose of suing the City. In contrast, Mr. Canvasser’s employer exists to serve its clients; and,
- It was appropriate that the City Manager sought the advisory opinion on behalf of the Commission.

It was Board consensus that there was no disqualifying conflict in this case, no prohibition against Mr. Canvasser’s reappointment stemming from the Ordinance, and that the Commission would have the discretion to proceed with the reappointment.

The City Attorney said she had been apprised of third-party concerns, and asked Mr. Canvasser to state affirmatively on the record that he would not harbor resentments against the City, Staff, or BZA members for this case, for the denied variance, and/or if the Circuit Court were to uphold the denied variance.

Mr. Canvasser ~~asserted~~ ~~observed~~ that the City Attorney’s<sup>2</sup> questions were inappropriate in the present venue, since this was the Board of Ethics. He stated that he has always carried himself professionally, and that he would continue to do so. He said that if the Commission wanted to address the concerns raised by the City Attorney as a condition of his reappointment, he would be happy to participate.

The City Attorney provided comment on Mr. Canvasser’s reply.

Mr. Schrot indicated that it may be notable to the Commission and the public that Mr. Canvasser was demurring from presently answering the City Attorney’s questions.

Mr. Canvasser reiterated that he would participate in a discussion of those questions with the Commission.

In reply to Mr. Coakley, Mr. Canvasser clarified that he did not hold any animosity towards BZA members who voted adversely to the Clark Hill variance. He also stated that if the decision at the Circuit Court were to go against Clark Hill, he would not bear any animosity towards BZA members who voted adversely to the Clark Hill variance.

The Chair closed the record at 3:27 p.m.

**MOTION:** Motion by Chair Robb, seconded by Mr. Schrot:  
To advise the City Manager and the City Commission that the facts presented to the Board of Ethics did not prohibit Mr. Canvasser’s reappointment to the BZA.

VOICE VOTE:           Ayes,   Chair Robb  
                                                          Mr. Coakley  
                                                          Mr. Schrot

                                                          Nays,   None

---

<sup>2</sup>As amended at the January 19, 2024 meeting.



Mr. Schrot

Nays, None

Mr. Bolton asked that a note be added to the record that he was present and prepared to present, that the Board made a decision not to permit him to do so, and not to permit Mr. Reagan to do so.

The Chair said that was fine, and the Chair and Mr. Schrot thanked Mr. Bolton.

The Chair said he would write the opinion for this case.

C. Consideration of organizing and producing an ethics workshop for city officials in early 2024

The Chair introduced the item.

Staff summarized the relevant questions or concerns that had been raised by the Commission. Staff also answered informational questions from the Board.

There was a broad discussion of potential topics to address within the workshop.

It was decided that the workshop would be planned during the Board of Ethics' next meeting.

**VI. PUBLIC COMMENT**

David Bloom made comments about Case 2023-03 and about Commissioner advocacy in light of the Ordinance.

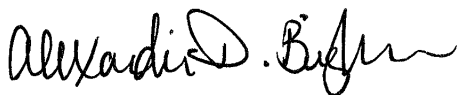
**VII. BOARD COMMENT**

The next meeting was scheduled for January 10, 2024 at 9 a.m.

The Chair and Mr. Schrot answered an informational question about the Board's process for Ms. Doyle.

**VIII. ADJOURN**

No further business being evident, the Board adjourned the meeting at 4:58 p.m.



Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist