



CITY OF
BAINBRIDGE ISLAND

ETHICS BOARD
Regular Meeting
Monday, April 17, 2023
6:30 PM

THE ETHICS BOARD WILL HOLD THIS MEETING
IN PERSON AND USING A VIRTUAL, ZOOM WEBINAR PLATFORM

MEMBERS OF THE PUBLIC WILL BE ABLE TO ATTEND AT
CITY HALL OR CALL IN TO THE ZOOM WEBINAR

PLEASE CLICK THE LINK BELOW TO JOIN THE WEBINAR:

<https://bainbridgewa.zoom.us/j/86365762700>

OR TELEPHONE: 1-253-205-0468

WEBINAR ID: 863 6576 2700

AGENDA

- 1) CALL TO ORDER – 6:30 PM
- 2) DISCLOSURE OF CONFLICTS OF INTEREST
- 3) APPROVAL OF THE AGENDA
- 4) MEETING MINUTES –March 20, 2023, Regular Meeting
- 5) REVIEW STATUS OF PENDING COMPLAINTS
 - a) Notice of Dismissal EB2023-01
- 6) PUBLIC COMMENT (Please limit comments to items other than those under consideration and under 2 minutes. Board Members may elect to refrain from responding.)
 - a) Public Comment Received by Email
- 7) TRAINING SUB-COMMITTEE
 - a) Record Training Discussion
 - b) Training Schedule Recommendations
- 8) NEW BUSINESS
- 9) AGENDA FOR NEXT MEETING
- 10) NEXT MEETING DATE: May 15, 2023 (6:30 – 8:00 PM)
- 11) ADJOURNMENT

COBI ETHICS BOARD

Regular Meeting

Monday, March 20, 2023

6:30 PM – 7:54 PM

In-person and Via Zoom

Minutes

1. Call to Order - Meeting was called to order at 6:31 pm. Present were: Jim Cash (Chair), Rafael Escandon (Deputy Chair), Donna Davison, Rosemary Hollinger, Doña Keating, Ben Woodruff, Andrew Tsoming (legal counsel to Ethics Board), David Mallon and Peggy Nimb (City Staff).

2. Disclosures of Conflict of Interest – None.

3. Approval of the 03/20/2023 Meeting Agenda – Jim Cash called for a motion to approve the agenda; Suggestion was made to move an element of new business to the Training Subcommittee section. Doña Keating moved to approve as edited, Jim cash seconded and the motion to approve the 3/20/2023 meeting agenda passed unanimously.

4. Acceptance of two (2) sets of prior meeting minutes – Minutes of 1/23/2023 and 2/13/2023 Ethics Board meeting minutes were discussed. Edits were suggested to the 1/23/2023 and motion to approve as edited was made by Doña Keating, seconded by David Mallon and passed unanimously. Motion to approve the 2/13/2023 meeting minutes was made by David Mallon, seconded by Jim Cash and approved unanimously.

5. Review Status of Pending Complaints – Andrew Tsoming confirmed (later in the meeting) that there was no change in the status of the two (2) previously referenced complaints that were pending litigation since the prior (2/13/2023) Ethics Board meeting.

6. Public Comment – Jim Cash gave instructions to the public to please limit comments to two (2) minutes and advised that the Ethics Board members may refrain from responding. Jim also advised that, pertaining to Complaint EB 2023-01, on the agenda for discussion at tonight's meeting that only the evidence contained in the complaint and response to the complaint would be considered.

Six (6) individuals made public comments either in person or virtually. All comments pertained to Complaint EB 2023-01 and/or the process(es) for review and deliberation of ethics complaints. In addition, one (1) comment was made about the frequency of ethics training among members of city committees and/or advisory boards and one (1) comment was made with respect to completeness of redaction/anonymization of background materials accompanying ethics complaints and their public release.

7. Training Sub-Committee Report

Doña Keating and David Mallon presented that the first of 2 training sessions had been completed and that the second session was to be scheduled, which would include one or both of them attending in person or virtually, and that this second session would be recorded and therefore directed to/available to all appropriate individuals (Council Members, Committee Members, Advisory Board Members and others). The Training Sub-Committee is awaiting available times from City Council to complete the second training session and recording. In reference to creating a recorded version of the Ethics training, City Staff shared a suggestion that, rather than recording a live presentation from a City Council meeting, that Training Subcommittee members make the recording in Council Chambers independently.

David Mallon also made the recommendation that in the upcoming training that additional orientation be added to address questions/comments relating to process(es);

1. Between the Ethics Board and City Council, eg; Initiation of any changes/clarification of policies/rules
2. Determining mandatory versus recommended training and placement on the agenda of various committees to allow completion in parallel.
3. The processing of ethics complaints

David Mallon moved that other city committees and advisory boards make space on their agendas at their July or August 2023 meetings to view/complete the ethics training. Seconded by Doña Keating and passed unanimously.

8. New Business:

Item 8 (a) Ethics Complaint EB 2023-01

Andrew Tsoming (legal counsel to Ethics Board) advised on points of order, since this was the first complaint in some time, and there are new members of the board have been added since last complaint(s) were reviewed by the Ethics Board. Andrew reminded/requested that the Board, during discussions:

1. To not name individuals, rather, referring to them as complainant or respondent, etc.
2. To review the (complaint and response) materials provided, and to not engage in further fact-finding
3. Recall the categories of actions (eg; dismissal or finding/passing to hearing examiner for further adjudication) that the Ethics Board can recommend at the conclusion of deliberations

Jim Cash then opened the discussion of Complaint EB 2023-01 to the Ethics Board for discussion and comments. Several members of the Ethics Board offered comments. Doña Keating offered 2 process oriented recommendations to the Board:

1. Completeness of Redaction of complaint and response materials
2. Recommended not including correspondence between the complainant and the Ethics Board chair in the future unless those communications are material to the Ethics Board's review of the complaint.

Donna Davison moved that the Ethics Board, for future complaints, ensure a complete redaction of materials for personally identifiable information (personal ID, names/titles, address(es) etc). Rosemary Hollinger seconded. Motion passed unanimously.

Donna Davison moved that Complaint EB 2023-01 be dismissed under Article III, B., 8 (c) of the Code of Conduct and Ethics Program. Ben Woodruff seconded. Jim Cash, Rafael Escandon (Donna Davison and Ben Woodruff) voted in favor; David Mallon, Doña Keating and Rosemary Hollinger opposed. Motion carried.

Motion presented by David Mallon to approve the Sub-Committee of Ben Woodruff, Donna Davison and Rafael Escandon to draft the Letter of Dismissal for Complaint EB 2023-01 was seconded by Rosemary Hollinger and approved unanimously.

Item 8 (b): Jim Cash referenced an incomplete complaint that has been submitted. Efforts by the City clerk to have the complainant follow-up (eg; to provide referenced attachment(s)) have, as yet, not been completed.

9. New Business

1. David Mallon suggested a conversation to create a template to be used by the Ethics Board chair when corresponding with complainants (details TBD).
2. Doña Keating suggested that the Ethics Board approach City Council to re-visit the topic of annual ethics policy training, and additionally making such training mandatory for appropriate individuals.

Agenda for next Meeting –

1. Letter of Dismissal Complaint EB 2023-01
2. Recommendation to other City Committees/Boards that the Ethics Training be added to their July or August 2023 agendas.

10. Next Meeting Date: April 17, 2023

12. Adjournment – Motion to adjourn by Donna Davison, Seconded by Ben Woodruff, and passed unanimously.

Adjournment at 7:54 p.m.

April 17, 2023

DETERMINATION LETTER: EB 2023-01

Complaint Submitted to City Clerk: January 30, 2023

Response Received: February 15, 2023

Initial Consideration by Ethics Board: March 20, 2023

Final Consideration by Ethics Board: April 17, 2023

DETERMINATION: Dismissed

I. BRIEF Summary of Complaint

This complaint alleges a violation of Article II, Section F (**Conflict of Interest – Members of City Committees or Commissions and Employment**) of the City of Bainbridge Island Code of Conduct and Ethics Program, revised May 10, 2022.

This complaint includes reference to material previously submitted to the Ethics Board (EB) on October 20, 2022 by City Manager Blair King in an effort to obtain the EB's advisory opinion. The EB previously declined to offer an advisory opinion to the City Manager on this matter.

This January 30, 2023 complaint references Article II, Section F, which regulates members of City Committees or Commissions and Employment. The complaint alleges that the City of Bainbridge Island entered into a contract with a vendor after input from the Climate Change Advisory Committee (CCAC). [Redacted]¹ was a CCAC member and a principal at the contracted vendor at the same time. The complaint alleges that [redacted] resigned from the CCAC on April 28, 2022, and the City executed a contract with the vendor on September 21, 2022, while they were still a principal at the vendor. The complaint alleges that [redacted]'s support for the contract influenced the City Council's support, leading to the City Manager entering into the contract. It also alleges that Article II, Section F specifies a 2-year prohibition related to employment and contracts. It is in this context that the complainant claims a violation of the Article II, Section F Conflict of Interest guidance occurred.

Article II Section F (**Conflict of Interest – Members of City Committees or Commissions and Employment**) of the Bainbridge Island Code of Ethics states the following:

While serving on a City Committee or Commission, and for two (2) years after leaving such position, no member of a City Committee or Commission shall obtain employment in which they

¹ The name of the subject of this complaint has been redacted throughout this Determination Letter. Article III, Section B.3.b.1 requires that "[a]t the conclusion of the Ethics Board's process any notice of dismissal... shall have the names of the parties redacted before publication."

will take direct or indirect advantage of matters which they, as a member of a City Committee or Commission, recommended to the City Council. This includes applying for positions or contracts with the City when the City Committee or Commission on which the member served recommended funding such position or contract.

II. Summary of Response

A summary of the responses to the complaint by the former CCAC member, [redacted], are included here for the purposes of brevity:

- 1) [Redacted] **did not apply for** the September 2022 training contract. Thus, the complaint fails to identify a violation of Article II, Section F.
- 2) The CCAC cannot enter into contracts or make funding decisions. Thus, the former committee member had **no ability to “recommend funding”** or direct a contract to the vendor. The City made that training contracting decision independently.

Point 3 in the response to the complaint (below) relates to a different aspect of the complaint, with the complainant alleging the possibility that the CCAC member held influence and/or decision making authority in the City’s decision to use an assessment tool developed by the CCAC member’s company. This facet of the complaint is not directly related to the 2 year period referenced in Article II Section F of the Ethics Policy.

- 3) Even if adoption of the free Certification Tool somehow “influenced” later decisions to contract with the vendor for training, those were decisions made by the City. The City could have engaged other organizations. [Redacted] reasonably assumed that the City would not propose a contract to vendor in violation of its Code of Ethics. If it did, that is an internal City matter that does not support a complaint against [redacted].

- 4) Any alleged violation of the Code of Ethics has been cured by [redacted]’s resignation from the CCAC.

III. Compliance with Article III, § B.9

Article III, Section B.9 of the City of Bainbridge Island Code of Conduct and Ethics Program states: “The Ethics Board shall strive to complete its review within 45 business days from the date that the City Clerk forwarded the complaint to the Ethics Board. If review takes longer than 45 business days, the Ethics Board in its determination shall specify the reasons why additional time was needed.”

This Determination Letter is being issued on April 17, 2023; approximately 53 business days after the Complaint was received by the City Clerk (Jan 30, 2023). Additional time was needed to review this case and issue this Determination Letter because:

- 1) The EB could not have considered the Complaint within 45 days given the importance of the response to the complaint submitted February 15, 2023, and

- 2) The EB only meets regularly once a month.

IV. Analysis of Complaint

The EB has reviewed the complaint and all accompanying materials.

While the complaint includes elements that may warrant consideration if the Code of Ethics is amended in the future, the EB finds that the substance of this conflicts of interest claim does not rise to the level of a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured for the following reasons:

- 1) Awareness of ethics policies and transparently seeking advice on appropriate actions is a reasonable surrogate for good faith/good intentions, and there is significant evidence that advice was proactively sought, provided and acted upon with expediency. , This includes that [redacted] sought, received, and followed a recommended course of action from the Bainbridge Island City Attorney's Office.
- 2) Recusal is also a vital action in which to mitigate the impact of conflicts of interest. The complaint itself contains clear evidence of recusal.
- 3) Conflicts of interest, in and of themselves, occur frequently in many areas of civil society. Be they in the private, public, medical, educational or other contexts. The mere occurrence of a conflict of interest (or the perception thereof) does not independently constitute a violation of ethics or violation of a well-considered ethics policy. Policies designed to prevent and mitigate potential conflicts of interest can coexist, and are not mutually exclusive.
- 4) Disclosure and transparency are two of the most important elements to remedy conflicts of interest, most especially in the context of public/government activities and transactions. In the case of this complaint, there is significant evidence of both (disclosure and transparency) throughout the timeline of activities which the complaint references.
- 5) The facts of the complaint do not appear to violate Article II Section F, which contemplates a two-year prohibition on "obtain[ing]" employment.² As the complaint specifies, [redacted] was associated with the vendor during the entirety of their time on the CCAC.
- 6) There is no evidence of resultant harm.
- 7) If infractions did occur in this circumstance, they are minor, not material, incidental and inadvertent.

Article III, Section B.8.d states: *If the Ethics Board, after review of the complaint and any response, determines that that the facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the*

² The final sentence of Article II Section F further emphasizes that its focus is on seeking out new employment, by discussing "applying for positions."

complaint would not serve the purposes of the Code of Ethics (Article II), then the Ethics Board shall dismiss the complaint and, after legal review, provide a notice of dismissal, to include a brief statement regarding the basis for the dismissal, to the City Clerk. The City Clerk shall provide the notice of dismissal to the complainant and respondent.

Consequently, this case is dismissed on the basis of Article III, Section B.8.d.

V. Determination

After review, the EB dismisses the complaint based on Article III, Section B.8.d.

From: Ron Peltier <[REDACTED]>
Sent: Friday, March 24, 2023 12:56 PM
To: Christine Brown <cbrown@bainbridgewa.gov>
Subject: Please forward to Ethic Board Chair

CAUTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF BAINBRIDGE ISLAND EMAIL SYSTEM -Take caution NOT to open attachments or links unless you know the sender AND you were expecting the attachment or the link.

Hi Christine,
Please forward the following message to Ethics Board Chair Jim Cash.
Thanks,
Ron Peltier

Jim,

It's my recollection that in 2021 the Ethics Board did not allow public comment on complaints being reviewed by the Ethics Board. It was my impression that this policy was enforced to help the Ethics Board focus solely on complaints and responses without public comments that could be seen as testimony related to the complaints. The following is from Article III.B.6. of the Ethics Program:

B. Submission and Review of Ethics Complaints

6. The Ethics Board shall review any complaint forwarded to it by the City Clerk and any response submitted by the respondent. The Ethics Board shall not engage in other fact- finding. However, in the course of reviewing a complaint, the Ethics Board may request clarification of the complaint by the complainant or of the response by the respondent.

Am I correct that in 2021 the Ethics Board was not allowing public comments related to complaints pending before the Board?

Thanks,
Ron Peltier

From: Ron Peltier <[REDACTED]>
Sent: Friday, March 24, 2023 1:02 PM
To: Christine Brown <cbrown@bainbridgewa.gov>
Subject: Please forward to Andrew Tsoming

CAUTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF BAINBRIDGE ISLAND EMAIL SYSTEM -Take caution NOT to open attachments or links unless you know the sender AND you were expecting the attachment or the link.

Hi Christine,
Please forward the following message to Andrew Tsoming, the attorney who attends Ethics Board meetings.
Thanks,
Ron Peltier

Hi Andrew,

It's my recollection that in 2021 the Ethics Board did not allow public comment on complaints being reviewed by the Ethics Board. It was my impression that this policy was enforced to help the Ethics Board focus solely on complaints and responses without public comments that could be seen as testimony related to the complaints. The following is from Article III.B.6. of the Ethics Program:

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Am I correct that in 2021 the Ethics Board was not allowing public comments related to complaints pending before the Board?

Thanks,

Ron Peltier

From: Ron Peltier <[REDACTED]>
Sent: Monday, March 27, 2023 1:07 PM
To: Christine Brown <cbrown@bainbridgewa.gov>
Subject: Why did you allow public comment on EB2023-01?

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Hi Christine,
Please forward this message to Ethics Board Chair Jim Cash.
Thanks,
Ron Peltier

Mr. Cash,
As Chair of the Ethics Board it's your responsibility to conduct meetings in accordance with Roberts Rule of Order, the Ethics Board's Operating Rules, and with the Ethics Program. Just before accepting public comment during the 3/20/23 Ethics Board meeting you asked members of the public in attendance to limit their comment on matters not being considered by the Board. You then allowed significant public comment directly related to complaint EB2023-01. One of the commenters spoke twice, reading from the complaint to make her points in defense of the respondent. The meeting recording shows that at no time did you remind those commenting on the complaint pending before you to not do so. While this was happening one Ethics Board member shook her head in disapproval, obviously concerned by what was happening.

One of the comments was from a member of the Climate Change Committee regarding Ethics training. You followed up after that comment by yourself commenting on the lack of training of advisory committee members by the Ethics Board, an issue you later cited as a reason for dismissing the complaint. This was clearly you, the Chair of the Ethics Board, accepting comment related to the complaint, comment that provided additional information, then using your position to amplify the points made by the commenter for Ethics Board members to consider in regards to EB2023-01.

Further public comment occurred during the Ethics Board's discussion of EB2023-01 the Board in the form of highly emotional outbursts in support of the respondent that included obscenities, including by the respondent herself. You made no attempt to prevent the comments and instead engaged with one commenter to offer reassurance, saying "we haven't made a decision yet". Only after these outbursts occurred did you appear to meekly discourage further outbursts and interruptions from the public.

As a member of the public who is concerned about how the Ethics Board conducts its business I would like to ask for an explanation regarding what I saw at the March 20, 2023 Ethics Board Meeting. How was the manner in which you conducted the meeting consistent with the Ethics Program's stipulation that the Ethics Board shall not engage in further fact finding?

Thanks,
Ron Peltier

From: Ron Peltier <[REDACTED]>
Sent: Thursday, March 30, 2023 12:01 PM
To: Andrew D. Tsoming <atsoming@omwlaw.com>
Cc: Christine Brown <cbrown@bainbridgewa.gov>; Jim Cash <jim.cash@cobicommittee.email>
Subject: Re: Please forward to Andrew Tsoming

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Andrew,
Two points in response:

1. The unofficial rule has its basis in the Ethics Program, which prohibits "further fact finding" by the Ethics Board. Testimony in the form of public comments constitutes "further fact finding".
2. Chair Cash stated the unofficial prohibition on comments related to a pending issue prior to public comments on 3.20.23, along with a rationale referencing the Ethics Program's prohibition of further fact finding. He then proceeded to allow extensive public comment related to the complaint being taken up by the Ethics Board. This included emotional outbursts during discussion of the complaint during which Chair Cash appeared sympathetic to the public comments, even following up those comments by introducing specific points into the Ethics Boards consideration of EB2023-01.

Chair Cash clearly compromised the Ethics Board's ability to fairly and impartially review complaint EB2023. I also believe that you were remiss in not reminding the Board of the prohibition related to "further fact finding" contained in the Ethics Program.

Thanks,
Ron Peltier