

**City of Birmingham  
Board of Ethics Minutes  
March 7, 2023  
151 Martin, Birmingham**

**I. CALL TO ORDER**

Chair Robb called the meeting to order at 1:00 p.m.

**II. ROLL CALL**

Present: James Robb, Chair  
John Schrot, Board Member  
Sophie Fierro-Share, Board Member

Absent: None

Staff: City Manager Markus; City Clerk Bingham, Assistant City Manager Ecker, City Attorney Kucharek, Deputy City Clerk Woods

**III. APPROVAL OF MINUTES**

**MOTION:** Motion by Mr. Schrot, seconded by Chair Robb:  
To approve the minutes of January 30, 2023 as submitted.

VOICE VOTE: Ayes, Chair Robb  
Mr. Schrot  
Ms. Fierro-Share

Nays, None

The Chair thanked the City Clerk and City Transcriptionist for the minutes.

**IV. UNFINISHED BUSINESS**

A. To acknowledge the receipt of the proposed Ethics Ordinance amendments from City Attorney Mary Kucharek. Further discussion and consideration of recommending the proposed ordinance amendments will take place at a future Ethics Board meeting.

The Board agreed to discuss the item at a future meeting.

**V. NEW BUSINESS**

A. Hearing and Consideration of Advisory Opinion Request 2023-01 – Requested by City Manager Thomas M. Markus Re. City Commissioner Brad Host.

The Chair outlined how the hearing would proceed, explained the purpose of an advisory opinion, and explained the difference between an advisory opinion and a complaint.

At 1:12 p.m., the Chair opened the hearing. He noted there were eight attachments, with the eighth having been distributed to the Board, Commissioner Host, and Commissioner Host's attorney - Jordan Bolton - earlier on March 7, 2023.

Mr. Bolton then briefly reviewed Commissioner Host's response his request<sup>1</sup>, submitted as part of Attachment Eight, that the Board reject the request for advisory opinion 2023-01 (Request 2023-01).

Mr. Schrot said that while there was a prior Ethics advisory opinion regarding Commissioner Baller, he did not believe the subject matter was sufficiently similar to use Procedural Rule 2-202(b)(ii) to dismiss Request 2023-01. He added that the reasons contained in Attachment Eight were insufficient to result in a dismissal or a summary opinion as there appeared to be genuine issues of material fact.

Ms. Fierro-Share noted that Commissioner Host was obligated to state that his personal views were his alone and not representative of the Commission.

Chair Robb stated his concurrence with Mr. Schrot. He added that he was satisfied that Request 2023-01 provided the relevant facts and met the legal standards, which would enable the Board to render advice to Commissioner Host.

The Chair stated that Mr. Bolton's request to reject Request 2023-01 was denied.

At the Chair's invitation, CM Markus swore or affirmed that his testimony would be true to the best of his information or belief.

CM Markus presented Request 2023-01.

In reply to Mr. Bolton, CM Markus explained that Commissioner Host discusses the draft 2040 Plan's proposals for the area of Oakland and Park, which is in the vicinity of one of the Commissioner's properties.

In reply to Mr. Bolton, the Chair said that one of the concerns being raised by the City Manager was the Commissioner's possible pecuniary interest in the 2040 Plan's proposal for the Oakland and Park area.

Mr. Bolton stated he found it difficult to surmise CM Markus' concern from the text of Request 2023-01 and said the Board might be able to provide guidance on what should be included in future requests for advisory opinions<sup>2</sup>.

Mr. Bolton then presented the remainder of Attachment Eight, which included a response to the concerns outlined in Request 2023-01.

The Chair invited Commissioner Host to answer Board questions.

Commissioner Host stated that the last time he was 'here' was July 8, 2019, when the Mayor at the time ended a Commission meeting early.

In reply to Board inquiry, the Commissioner stated:

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<sup>1</sup> As amended at the April 18, 2023 meeting.

<sup>2</sup> As amended at the April 18, 2023 meeting.

- Yes, his understanding was that the draft 2040 Plan would necessitate rezoning of the specific areas he discussed;
- The initial draft of the 2040 Plan proposed many more 'seam' areas, and many members of the public spoke against those proposals;
- When he was informed that his videos offered incorrect information, he pulled four of the five videos and only left the fifth video up inadvertently. When he became aware that the fifth video remained live, he removed that video as well, a little more than two weeks later;
- He then uploaded three more videos which, to his understanding, avoided the previous incorrect information. Those three videos were still described as misleading by the City Administration;
- He was unsure what more he could have done beyond removing the first five videos;
- The mistake in the first five videos was his stating that the 2040 Plan would rezone the areas in question;
- A Birmingham resident who shared the Commissioner's concerns filmed the videos;
- He chose to appear in the videos because he was elected to report to Birmingham residents;
- He wanted to continue doing the videos to demonstrate his awareness of residents' discussions;
- He did not believe his fellow Commissioners were aware of the content of residents' discussions;
- When he said 'lot line to lot line', despite its not being factually true, he was aware of zoning setbacks but was trying to illustrate his concerns;
- He did not identify himself as a member of the City Commission because he does not think about it;
- Regarding Attachment Five, his intent was to agree that the City was becoming less 'family friendly', and not that the 'Planning group has gone Rogue again' [sic];
- He did not believe that the Planning Board had gone rogue, and he called Ms. Orlans to inform her of that;
- It was possible that someone could have seen his 'Agree' in response to Ms. Orlans' statement as saying that he agreed that the Planning Board had gone rogue, though only the City Manager had described<sup>3</sup> describing perceiving it that way;
- He would not have spoken ill of the Planning Board because they are volunteers;
- He was only made aware of the request for a Police presence at the Planning Board by the City Manager, City Attorney, and newspapers. He did not hear about it from other people;
- He 'happen[s] to know everybody', and he assumes someone would have said something to him if they had a concern about his actions;
- The joint Commission-Planning Board review of<sup>4</sup> the second draft of the 2040 Plan was a 'sham' meeting where there was a 'magic wand on the second draft' because he felt there was limited discussion by either the Planning Board or the Commission on the draft;
- He thinks he has an open mind, and is someone who can change his mind, because the only other place he has lived is Ann Arbor, Michigan;
- He is cognizant of his appearance to the public, the integrity of City government, and the public trust;
- His intent was to generate more public comment regarding the draft 2040 Plan;

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<sup>3</sup> As amended at the April 18, 2023 meeting.

<sup>4</sup> As amended at the April 18, 2023 meeting.

- He is more comfortable with the draft 2040 Plan as it stands now than he was with its first iteration;
- The other Commissioners, as a generalization, are not open-minded people because they represent the downtown and he represents the neighborhoods;
- It is possible that both he and his fellow Commissioners could change their minds about some aspects of the draft 2040 Plan;
- It is possible that some people would see him as being petulant or disrespectful to the City. He does not see himself as being disrespectful because the homeowners deserve someone who represents their point of view, which he sees as his function;
- He could state that his perspectives are his own moving forward, and would do so if asked to by the Board; and,
- Page 36 in the draft 2040 Plan contained an incorrect map showing commercial destinations up until December 23, 2022, and the inaccuracy of the map was raised as an issue because of Commissioner Host's commentary.

Mr. Bolton said:

- The Board should distinguish between previous Ethics Board matters where there was a refusal to correct the record and this case, where Commissioner Host removed the incorrect videos;
- The Commissioner's use of the word 'gonna' was likely accurate given the 2040 Plan's strategic intent to encourage rezoning in the areas in question; and,
- Requiring the Commissioner to state that his opinion is his own could conflict with the Board's advice in Request 2020-01. That advisory opinion recommended the City develop a social media policy and said that only when someone is identified as a public official are they required to qualify their statements as being their own opinions;

During the hearing, Board members' comments were:

- There was less concern about whether there was a conflict-of-interest in terms of pecuniary interest, personal interest, or personal gain, since this was not an Ethics complaint;
- There was also less concern about the Commissioner's motivation or intent for the same reasons;
- A larger concern would be the appearance of a conflict-of-interest;
- The potential spread of misinformation was also a concern;
- The Commissioner only identified himself in one of the videos, and did not identify himself as a member of the City Commission;
- There were statements in the first five videos that were hyperbolic and untrue;
- The lack of disclosure was a concern;
- The Commissioner has a fiduciary duty to all of Birmingham's citizens, to come to a meeting with an open mind, and to come to a Commission meeting and to debate at that time the issue at hand, which is why the appearance of impartiality on the part of the Commissioner is important;
- Public officials are an integral part of City government, and it is very important that public officials foster the public trust;
- Commissioner Host must be cognizant of his appearance to the public, the integrity of City government, and the public trust;
- Commissioner Host's statements seemed more targeted than just a general solicitation of commentary on the draft 2040 Plan. His choice to do so may be acceptable because he is a politician, in addition to being a civilian and a public official, but political speech is also limited by certain exceptions;

- One of those exceptions is when the speech in question [risks] undermining the public's confidence in the City's government or the public trust;
- Proliferating misinformation to the public knowingly would serve to undermine the public trust;
- The Commissioner will hopefully understand that he cannot state that properties will be rezoned by the 2040 Plan;
- The Commissioner has shown some recognition and appreciation of that fact during today's proceedings;
- CM Markus seeking an advisory opinion benefits the aims of good governance;
- It is careless on Commissioner Host's part that he 'does not think of himself as a Commissioner', because he is. When he does not keep in mind his position and its obligations, it causes problems for his constituents and in general;
- It would be incumbent upon Commissioner Host to qualify his opinions as being his own in certain circumstances;
- The Commissioner could participate in developing a social media policy as a Commissioner if he feels it would be beneficial; and,
- The City may also want to consider a policy regarding when a Commissioner is representing personal, City, or other organizational interests.

In reply to Mr. Bolton, Commissioner Host said all the facts contained in Mr. Bolton's review of Attachment Eight were correct.

CM Markus noted:

- The draft 2040 Plan is a constantly changing document, and mistakes get made as part of that process. The Planning Board, Staff, and consultants were aware of aspects of the document needed to be updated;
- The Commissioner's engagement without an understanding that the document is a work in progress is why the Commissioner may have a different interpretation of the document;
- The draft 2040 Plan remains a work in progress until it is recommended to the City Commission;
- Commissioners are elected to represent everyone in the community. Even within the Commissioner's goal of representing just the residents, there is a diversity of opinions among the residents regarding all aspects of development; and,
- Residents also do not only occupy single-family homes in the City, and so residents of the more commercial areas, multi-family homes, and seams should also be a part of those the Commissioner feels he represents.

Mr. Bolton replied that CM Markus' closing comments were pertinent to political conversations but not to the present Ethics consideration.

Seeing no further comment, the Board motioned to close the record at 4:01 p.m. and to briefly recess.

When the Board returned from recess, the Chair described how the Board's discussion would proceed and stated that it was his turn to write the advisory opinion. He noted that the Ethics Ordinance certainly applied to the Commissioner as a public official.

The Chair recommended that discussion focus on four topics: the issue of misinformation, the issue of advocacy, the affirmation of the 'Rogue' comment on social media, and the Commissioner's attendance at volunteer board meetings. The Chair noted that the latter two

topics were less pressing issues, but noted that since this was an advisory opinion the Board could provide guidance on those matters as well.

During discussion, Board members' comments were:

- Sections 2-320, 2-321, the definition of 'Official duties or official action' in 2-322, 2-323(1), 2-323(3), 2-323(4), 2-323(5), 2-324(a)(2), 2-324(a)(8), and 2-324(a)(10) would be relevant to the advisory opinion;
- The Commissioner owns properties in an area that could be impacted by the 2040 Plan. The Board may want to address in its advisory opinion that the Commissioner may have to address or disclose his ownership at some point in the future;
- Section 2-323(5) contains no exception for political speech;
- The advisory opinion should include some consideration of when recusal is appropriate and when it might be inappropriate. On occasion, a recusal might deprive the City of the benefit of the board member's or Commissioner's needed expertise. This might be relevant in this situation since the draft 2040 Plan is not yet before the Commission;
- If this were an Ethics complaint, it would have been relevant to see Commissioner Host's disclosure as required by Sec. 2-324(b). It would be relevant to discuss that section in the advisory opinion to advise Commissioner Host and other public officials that should their situation change, their disclosure should be revised as well;
- Disclosure does not necessarily mean there is a disqualifying conflict;
- The guidance provided in an advisory opinion is for future conduct and other public officials as well;
- Other Commissioners in the past have also attended advisory board meetings and questions have been raised about their attendance, so this advisory opinion can opine on that question;
- In order to provide advice, the Board should discuss the communications and their appropriateness in terms of: truthfulness, being outside of official channels, possibly having adversely affected or undermined public confidence in the City government, possibly having jeopardized impartiality in terms of future deliberation by an arbiter, and possibly spreading misinformation to the public;
- While political speech is permitted a politician, misrepresentations of the facts or truth are not protected as part of political speech, nor is undermining public confidence;
- Ethics enforcement may not be better done at the polls because citizens cannot act on what they do not know, they may be unlikely to remember, and ethical misconduct may not be a determining factor in a voting decision, and voting someone out of office is a harsh remedy for someone who has integrity but lacks good judgment or access to ethics advice;
- Commissioner Host should be especially sensitive to the requirements of Section 2-324(5), irrespective of the fact that he is an elected official;
- Commissioner Host should be commended for his stated intent ~~commitment~~ to adhere ~~adhering~~<sup>5</sup> to the Ethics ordinance and for his welcoming of professional advice;
- Appearance matters most in this situation, as opposed to character, feelings, or motivation. Any city official will only be judged or held accountable for their actions and relationships based on how they appear on their face;
- City officials see their decision making from an internal perspective, while the public experiences city officials' decisions from an external perspective. Being a city official creates obligations towards the community, and requires that a city official look at facts, life, and reality from the perspective of the public;

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<sup>5</sup> As amended at the April 18, 2023 meeting.

- The public elects a Commissioner, and expects a Commissioner to not misuse their office for their own benefit or in ways that conflict with their obligations to the community;
- Residents receive benefit from the existence of Birmingham's commercial community, and it is not inherently an adversarial relationship;
- Being respectful and civil in discourse is important at the Commission level, even and especially when there are disagreements;
- This matter raises the issue of questionable means, including the videos and letters, being used to justify certain ends. It would be best to eliminate the use of questionable means;
- Fairness and impartiality are essential to government ethics, and Commissioner Host should recognize their importance when he debates these issues with his fellow Commissioners;
- Being able to talk to constituents is important for elected officials and an important part of the democratic process;
- Commissioner Host seems not to have sought to use his office for private gain. He seemed to genuinely be concerned about the issues he raised, and when he was informed he was incorrect about some of his concerns he changed his behavior;
- Commissioner Host's behavior may have been somewhat careless, but not malicious;
- All the City's public officials should be willing to change ~~changes~~<sup>6</sup> their minds as necessary;
- The City is resilient enough to withstand public debate and disagreement, and being comfortable with it benefits the City. The process can promote more consideration of the issues among residents;
- The Board can advise that public officials should update their perspectives based on new information provided by City Administration or Staff;
- Commissioner Host's report from an prior Michigan Municipal League meeting noted that politicians' lies or misrepresentations can erode the public trust, and this information could be included in the advisory opinion to remind all the Commissioners of that;
- Politicians should be encouraged to be truthful, and the ordinance requires it;
- Misinformation from Commissioner Host could undermine the public's confidence in him, which could in turn undermine public confidence in City government;
- While the 2040 Plan would not directly rezone properties, the intent to rezone is implicit in the Plan and that should be noted in the advisory opinion; and,
- The Board should provide some guidance both to CM Markus and to Commissioner Host regarding their relationships to this issue moving forward, should note there is merit on both sides, and should note that this was an example of good government.

In reply to Mr. Schrot, CA Kucharek stated the Commission was considering adopting the December 13, 2021 policy recommendation that Commissioners not attend advisory boards either in person or remotely as part of broader Commission Code of Conduct discussions.

The Chair said the Board would take administrative notice of that.

Mr. Schrot provided quotes from Martin Luther King, Jr., Jesse Jackson, and Mark Twain that he thought may be relevant to the consideration.

In reply to Mr. Schrot, the Chair said he was prepared to find on the record that some of the content of the Commissioner's nine videos was not true. He said that fact could have the potential to undermine public confidence in City government. He noted the same was true for the 'Rogue' comment on social media.

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<sup>6</sup> As amended at the April 18, 2023 meeting.

In reply to Ms. Fierro-Share, Mr. Schrot emphasized that the Board was not finding that the Commissioner's statements did undermine the public confidence - only that the statements had the potential to do so.

Ms. Fierro-Share asked how the Board could determine, in general, when something rises to the level of undermining the public confidence. After brief discussion with the Board, Ms. Fierro-Share said seeing the draft opinion would likely help her further deliberate on the question.

**MOTION:** Motion by Mr. Schrot, seconded by Ms. Fierro-Share:  
To assign the Chair to draft the advisory opinion in conformity with the discussion, and to bring the advisory opinion to the Board for consideration.

VOICE VOTE:           Ayes,   Chair Robb  
                                  Mr. Schrot  
                                  Ms. Fierro-Share

                              Nays,   None

The Chair thanked all those present for their time.

**VI. INFORMATION ONLY**

A. Update on the City of Detroit Ethics Conference – Spring 2023

The Chair said he would attend.

CC Bingham said the hours would be 9 a.m. to 4 p.m. or 5 p.m.

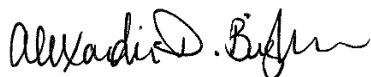
CA Kucharek said Board members could all attend as long as they do not discuss Board business while in attendance.

The Chair provided a brief overview of the Conference for the public.

**VII. PUBLIC COMMENT**

**VIII. ADJOURN**

No further business being evident, the Chair adjourned the meeting at 5:45 p.m.



Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist