

MINUTES

City of Milton Board of Ethics Regular Meeting December 21, 2007 7:00 PM

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Board Members Present:

All Board Members Present:

Clint Johnson, Todd Ashley, John McCrory,
Joe Whitley, Susan Campbell, Carol Lane and
John McMillan

City Staff:

Mark Scott, City Attorney

AGENDA:

- I. Call to Order – Chairman Clint Johnson
- II. Approval of the Meeting Agenda
- III. Hearing on ethics complaint filed by John McMillan.
- IV. Old Business
- V. New Business
- VI. Adjourn

MEETING CALLED TO ORDER

Chair Clint Johnson:

- Called the Board of Ethics meeting to order for December 21, 2007 at 7:00 PM.
- Stated Agenda needed to be amended.

APPROVAL OF THE MEETING AGENDA

Chair Clint Johnson:

- Stated that Roman numeral III will be changed to *Approval of the December 17, 2007 Minutes*.
- Other Roman Numerals will be IV, V, VI, and VII.
- Called for a motion to approve the Agenda.

MOTION AND VOTE: Board Member Carol Lane moved to approve the meeting agenda. Board Member John McCrory seconded the motion. VOTE: 7-0. Motion carried unanimously to approve the agenda as modified.

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Chair Clint Johnson:

- Asked for copies of the December 17, 2007 meeting minutes for Board Members.
- City Clerk staff left meeting to make copies for Board Members.
- Stated there was a change to the minutes on page 8.
- Under Motion and Vote at top of page. Deleted "unanimously" where it stated *motion carried unanimously*.
- Page 4 of 8 under Board Member John McCrory, 4th bullet down, when changed unanimously, took word "*many*" out, so the word "*many*" will be put back in.

MOTION AND VOTE: Board Member John McCrory moved to approve the December 17, 2007 meeting minutes as corrected. Board Member Susan Campbell seconded the motion. VOTE: 7-0. Motion carried unanimously.

Chair Clint Johnson:

- Recused the complainant, John McMillan at 7:25 p.m.
- Recused the defendant, Carol Lane at 7:25 p.m.

Chair Clint Johnson:

- City Clerk Staff returned with copies of December 17, 2007 meeting minutes.
- Called the next agenda item, IV. Hearing on Ethics Complaint filed by John McMillan.
- Reviewed status of case.
- July 13, 2007, complaint was filed by John McMillan against Carol Lane.
- Complaint forwarded to Board of Ethics on July 16, 2007.
- Amended speaker card filed by Carol Lane on Tuesday, July 17, 2007.
- August 13, 2007 investigation was completed by the City Attorney, Mark Scott.
- Supplemental investigation was filed on August 16, 2007.
- Attorney Myles Eastwood filed a response on behalf of Carol Lane on September 26, 2007.
- Attorney Myles Eastwood filed a motion to dismiss the complaint for untimely hearing on or about Monday, December 17, 2007.
- There was an agreement in October at a meeting that Board would extend this as late as December 31, 2007 if necessary to get all 7 Board Members present for hearing.
- Currently, we have 5 members present: Joe Whitley, Todd Ashley, Clint Johnson, John McCrory and Susan Campbell. John McMillan and Carol Lane are recused as they are parties to this matter.
- Called up the complainant, John McMillan.

DISCUSSION AS TO WHETHER JOHN MCMILLAN WAS GOING TO BE MAKING STATEMENT OR WAS GOING TO ACTUALLY TESTIFY OR PROVIDE EVIDENCE.

CITY ATTORNEY MARK SCOTT:

- Swore in the complainant, John McMillan.

COMPLAINANT JOHN MCMILLAN:

- Stated basis for his complaint.
- He had another commitment he had to go attend as soon as he testified.
- Offered to drop ethics complaint against Ms. Lane in return for her resignation from Ethics Board.
- Surprised by disproportionate share of BHA board members and supporters appointed to the various boards within the city.
- Checked the campaign contribution disclosures of Councilmember Zahner-Bailey and Mayor Joe Lockwood.
- Recent discussion about filling out public comment cards correctly.
- Decided to check cards from prior night and noticed Ms. Lane had check she had not made a political contribution to Councilmember Zahner-Bailey.
- Her disclosure said that she had.
- Ms. Lane had a long history of speaking against zonings.
- Regularly expressed her opinions at City Council meetings and at Fulton County.
- Had been part of audience that had been repeatedly warned by the City Clerk and the City Attorney about the importance of these public comment cards.
- Mr. Eastwood pointed out that Ms. Campbell had not filled out a card properly.
- Ms. Campbell had not been a seasoned person in this type of arena.
- Did not believe that was a good comparison.
- Ms. Lane had shown an above average knowledge in the ethics board discussions.
- Part of the oath of office for all elected and appointed officials is to uphold the Charter and ordinance of City Council, irrespective of our political allegiances.
- There appeared to be a complete disconnect of her knowledge regarding this incident.
- Believes Ms. Lane's defense has been an abuse of our process.
- She and all other elected or appointed need to be held to a higher standard.
- Thanked Board for serving and stated whatever the decision was he hoped would be the best for the city.

Chair Clint Johnson:

- Asked John McMillan if he had any witnesses to call and he responded he did not.
- Asked Attorney Myles Eastwood if he had any questions for Mr. McMillan.

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Attorney Myles Eastwood:

- Questioned when he reviewed public comment cards.
- Asked if the date was on July 13th of this year.

John McMillan:

- Not certain.
- The Thursday before that Friday, whatever date that was.

Attorney Myles Eastwood:

- Passed out Exhibits 2-A (email) and 3 (complaint of John McMillan) to Board and City Attorney.
- Discussion about July 13th complaint and email from City Clerk.

John McMillan:

- Stated he was shown as an addressee.

Myles Eastwood:

- Asked Mr. McMillan if he filed his complaint with City Clerk's Office on July 13th.

John McMillan:

- Assuming those dates are correct.

Attorney Myles Eastwood:

- Asked Mr. McMillan if he completed an Open Records Request to get copies of the public comment cards.

John McMillan:

- He responded that he must have.

Attorney Myles Eastwood:

- Showed Mr. McMillan their Exhibit 1, City Clerk log.

City Attorney Mark Scott:

- Stated an objection based on relevance.

Attorney Myles Eastwood:

- Stated he would show there was no Open Records Request.
- Referred Board to page 2 of their Exhibit 1 and date of 5/21/07 in name of John McMillan.

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- Asked if Mr. McMillan had submitted one or more Open Records Request to the City Clerk.

John McMillan:

- Stated he did not remember.
- Had done it more than once.
- Filled out some paperwork when he requested records.

CONTINUED DISCUSSION ABOUT OPEN RECORDS REQUEST AND THE LOG.

Attorney Myles Eastwood:

- Asked Mr. McMillan if he got a copy of the cards from any City Council member or the City Attorney.

John McMillan:

- Stated no, he got it from the City Clerk's Office in the proper way.

Attorney Myles Eastwood:

- Asked Mr. McMillan what time of day did he submit complaint on July 13th.
- Was it late in the afternoon?
- Did anyone review it before it was submitted?

John McMillan:

- In the afternoon.
- Late in the afternoon.
- Not aware of anyone reviewing it before it was submitted.

Attorney Myles Eastwood:

- Referenced their Exhibit 4 and the highlighted area regarding the City Attorney.
- Read statement from City Attorney from exhibit.
- Asked if Mr. McMillan called City Attorney for his opinion before filing complaint.
- Did the City Attorney get a copy of the complaint before it was filed?

John McMillan:

- Stated that he did.
- Believe it was on July 13th or the day before.
- Stated he did send a copy to the City Attorney before filed.
- Actually believe it was read to him over the telephone.

Attorney Myles Eastwood:

- Referenced their Exhibit 5, billing records of the City Attorney.
- Page 6, item 5/25/07
- Handwritten entry at the bottom of the page that is highlighted.

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- Asked if that was Mr. McMillan back in May inquiring about filing ethics complaint.

John McMillan:

- Stated he did not recall.

Attorney Myles Eastwood:

- Referenced their Exhibit 6, City Attorney's billing for month of July.
- Highlighted all entries for July 13th starting on page 2.
- Any entry relating to you for that date?
- Going on to page 10, highlighted entry for 7/13/07.
- Does that entry pertain to you?

John McMillan:

- Responded not that he could see.
- No idea.

City Attorney Mark Scott:

- Stipulated that Mr. McMillan spoke to him on July 13, 2007.
- Did not have an explanation on why it did not go on the bill that day.

Attorney Myles Eastwood:

- On page 14, the time entry for 7/13/07.
- Asked Mr. McMillan if that time entry related to him.

John McMillan:

- Responded he had no idea.
- Asked Mr. Eastwood where he was going with this.

Chair Clint Johnson:

- I know where he is going with this.
- Let us just keep going.

Attorney Myles Eastwood:

- Referenced page 17, entry for 7/12/07.
- Read entry aloud.
- Asked if Councilmember O'Brien gave him a copy of the section regarding fraudulent concealment.

John McMillan:

- Responded he never heard of that before.
- Never discussed anything with Councilmember O'Brien regarding that.

Attorney Myles Eastwood:

- Page 18, 7/13/07, asked if that entry reflected his name.

John McMillan:

- Responded that was correct.

Myles Eastwood:

- Said as a member of the ethics board, you were aware that this case was the only one involving an allegation of concealment.
- Have there been other cases heard by the ethics board regarding concealment?

John McMillan:

- Not aware of that.
- That that I recall.

Attorney Myles Eastwood:

- Referenced their Exhibit 7.
- Asked if he remembered first meeting ended in 3-3 tie to have a formal hearing.

John McMillan:

- Stated he did not recall that but it was possible.

Attorney Myles Eastwood:

- Asked if Mr. McMillan recalled Ms. Lane voted to have a formal hearing.
- Asked if Mr. McMillan recalled a second hearing was scheduled for Monday, July 16, 2007.

John McMillan:

- Stated he did not recall that.

Attorney Myles Eastwood:

- Referenced their Exhibit 7, article from Atlanta Journal Constitution of July 16, 2007.
- Read article aloud.
- Asked Mr. McMillan if filing of his complaint was intended to knock Ms. Lane off of that hearing against Lusk and O'Brien so she could not participate in that hearing.

John McMillan:

- He responded certainly not.
- If you look at what I filed, you will see she (Ms. Lane) has broken the law here.

Attorney Myles Eastwood:

- Referenced their Exhibit 8, article in Milton Herald.
- Contributes quote to you (John McMillan).
- Read statement quoted in Milton Herald by John McMillan aloud.
- Asked if he recalled making these statements to Jason Wright at the Herald.

John McMillan:

- Remembered discussion with Jason Wright.
- He did not say exactly what I said.
- In future need to make sure get written approval before allow a paper to publish on my behalf.

Attorney Myles Eastwood:

- Referenced their Exhibit 3, complaint of John McMillan.

John McMillan:

- Stated he got campaign contribution report and public comment card on same day, July 13th.

DISCUSSION ABOUT WHO TYPED THE COMPLAINT WITH MR. EASTWOOD AND JOHN MCMILLAN.

Attorney Myles Eastwood:

- How was the complaint prepared (written out longhand, given to typist)?
- Did you call the City Attorney before or after the complaint was typed up?
- How many drafts were there?

John McMillan:

- Responded he did not know for certain.
- Typically would write it out and have typed.
- Stated he talked with the City Attorney after to make certain language was correct.
- Why is this material?

Attorney Myles Eastwood:

- Referenced their Exhibits 9, 22, 11 and 12.

DISCUSSION WITH JOHN MCMILLAN EXPLAINING EACH REFERENCED EXHIBIT.

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Attorney Myles Eastwood:

- Referenced Exhibit 9.
- Asked if Mr. McMillan attended the Planning Commission meeting 3/22/07.
- Case RZ07-022.

John McMillan:

- I attend a lot of meetings.
- If you show I attended, then I probably did.

Attorney Myles Eastwood:

- Referenced Exhibit 10.
- Asked if it was Mr. McMillan's signature on the public comment card.

John McMillan:

- Stated it was.

Attorney Myles Eastwood:

- Stated the "yes" or "no" on the pc card was not checked.

City Attorney Mark Scott:

- Objected again as to relevance.
- Under the specific state statute O.C.G.A. 36-67 (a)(3), did not have to check is when it is a rezoning application, not a change to a zoning ordinance.

Attorney Myles Eastwood:

- Stated Mr. Tom Wilson told people if it is an RZ case check "yes" or "no."

City Attorney Mark Scott:

- Objected on grounds of hearsay.

Chair Clint Eastwood:

- Stated Board would consider the objection in a minute.

Attorney Myles Eastwood:

- Referenced Exhibit 22.
- On page two, it shows on April 11, 2007 Mr. McMillan made a political contribution of \$1,000 to a candidate.

John McMillan:

- Stated he did not know what the document was.

Attorney Myles Eastwood:

- Asked Mr. McMillan if he recognized the contribution form.

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John McMillan:

- Stated Mr. Eastwood had the second page open.
- Everything blacked out on it and then my name on it.
- I do not know what this goes to.
- What is this about?

Attorney Myles Eastwood:

- Responded it was about their Exhibits 11 and 12.
- At next meeting of the Planning Commission on the same RZ, Mr. McMillan did not check "yes" or "no" and was a contributor.
- Asked if that was correct.

John McMillan:

- Stated it was not a zoning case so it did not have to be checked.
- Only in zonings do you have to check the box.

Chair Clint Johnson:

- Asked Mr. Eastwood where he was going with this questioning?

Attorney Myles Eastwood:

- That he was required to check on the RZ and did the same thing Carol Lane did.
- Righteously protested that she broke the law and he did not.

Chair Clint Johnson:

- Accepted the line of reasoning.
- Will not accept the line of reasoning that accuses him of having done something wrong.
- Not in our scope to look at tonight.
- Accepted the fact that people have made mistakes and form is probably misleading.
- Form was somewhat confusing and has been changed since then.

John McMillan:

- City Attorney and the Clerk made multiple references about when the box was or was not to be checked.
- This clearly was not a zoning case.
- Now put n/a.
- Stated he had a prior commitment and would come back if Board had questions.
- Board could call his cell phone.

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Attorney Myles Eastwood:

- Wanted exhibits tendered entered into the record.
- Stated that concluded his questions for Mr. McMillan.

Chair Clint Johnson:

- Excused the complainant, John McMillan.
- Called the defendant, Carol Lane.
- Asked the City Attorney to swear in Mrs. Lane.

City Attorney Mark Scott:

- Swore the defendant, Carol Lane, in.

Attorney Myles Eastwood:

- Referenced Exhibit 13.
- Copy of ordinance.
- Talked about the word "because" in middle of the ordinance.
- Asked Ms. Lane about the July 12th council meeting and the card submitted.
- Asked when that public comment card was turned in.

Carol Lane:

- Card was turned in during the work session around 5:00 p.m. during the break.

Attorney Myles Eastwood:

- Time of council meeting?

Carol Lane:

- Council meeting started at 7:30 p.m. that night.

Attorney Myles Eastwood:

- Referenced Exhibits 26, 27 and 28.

BOARD REVIEWED EXHIBITS

Attorney Myles Eastwood:

- Asked Ms. Lane about the corrected comment card she turned in on Tuesday, July 17th and why she turned that in.

Carol Lane:

- At 5:40 p.m. on Friday the 13th, the complaint was filed.
- Stated card was completed incorrectly.
- Wanted to amend it, so I did.

Attorney Myles Eastwood:

- Asked Ms. Lane if she was trying to hide anything with the first card.
- Did she understand the difference between yes and no when she checked it.

Carol Lane:

- Stated she was not trying to hide anything.
- Did not understand yes and no at the time she checked the card.

Attorney Myles Eastwood:

- Referenced Exhibit 26, Zoning Rules.
- Asked if she received those from the City Clerk.
- Did she sign it when you got it?

Carol Lane:

- Responded yes.

Attorney Myles Eastwood:

- Referenced Exhibit 27, new public comment card.
- That card started being used late September or October?

Carol Lane:

- Responded yes.

DISCUSSION ABOUT THE CITY CLERK SCRIPT

Attorney Myles Eastwood:

- Asked if City Clerk gave her a copy of the script she used before September 20, 2007.
- Asked if that was Exhibit 28.

Carol Lane:

- Responded yes.

Attorney Myles Eastwood:

- In script was there any discussion of checking the "yes" or "no" box if somebody had given \$250 or more to a political candidate?

Carol Lane:

- Responded no.

Attorney Myles Eastwood:

- Asked Ms. Lane if the City Clerk ever told her she was not allowed to speak because you had not submitted a card 5 days in advance.

Carol Lane:

- Responded no.
- I called to ask if I could speak and got a voice mail message from the City Clerk that said I was not allowed to speak.
- The City Attorney said because of the law I was not allowed to speak.
- Had not submitted a disclosure 5 days before.

Attorney Myles Eastwood:

- Referenced Exhibit 23.
- Email forwarded to Ms. Lane from Leon Cole.
- On August 15, 2007 did the City Attorney tell Mr. Cole all he had to do was sign the card and check "yes" or "no" correctly and he could speak on the following day, Thursday?

Carol Lane:

- It was after August 15th I was told I had to get the card in 5 days in advance.

CONTINUED DISCUSSION ABOUT 5-DAY REQUIREMENT.

Attorney Myles Eastwood:

- No consistency in the 5-day requirement in your experience?

Carol Lane:

- That is correct.

Attorney Myles Eastwood:

- Did you have opportunity to review the large number of public comment cards and how many provided by the City Clerk's office?
- Were there a number filled out incorrectly?

Carol Lane:

- Yes. There were around 215 cards.
- Yes, many filled out incorrectly.

Attorney Myles Eastwood:

- Referenced Lane Exhibits 24 and 25.

Chair Clint Johnson:

- Asked Myles Eastwood if the purpose of this was to prove the cards are confusing.
- We have already established this.

City Attorney Mark Scott:

- Objected to these exhibits.
- These are cases that went to the Design Review Board.
- May have been referenced as zoning reapplication because concurrent.
- Statute does not apply to the Design Review Board because they have no decision-making power on rezoning.

Board Member Todd Ashley:

- I would sustain that objection.

Attorney Myles Eastwood:

- Referenced Exhibits 15 and 16.
- These exhibits finished out set of examples.

Chair Clint Johnson:

- Objected to these submissions.
- Already accepted those as fact.
- We have them, but are not going to accept them.

Board Member Todd Ashley:

- Agreed with Chair.

DISCUSSION ABOUT THE PUBLIC COMMENT CARDS WITH MYLES EASTWOOD AND BOARD.

Attorney Myles Eastwood:

- Asked Ms. Lane about John McMillan's reference to BHA.

Carol Lane:

- Stands for the Birmingham Hopewell Alliance.
- Citizens concerned with upholding the Comprehensive Land Plan.

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Attorney Myles Eastwood:

- On July 12, 2007 when you spoke at City Council meeting did you speak individually or a represent of the BHA?

Carol Lane:

- Spoke on behalf of myself.

Attorney Myles Eastwood:

- Concluded his questioning.

Chair Clint Johnson:

- Asked Ms. Lane if when she spoke on July 12th was she a dues-paying member of BHA or an officer.

Carol Lane:

- Was a member, but not an officer.

Chair Clint Johnson:

- Asked Ms. Lane why she filed modified comment card.
- Did you get advice from anyone about amending the card?

Carol Lane:

- Gave some money to someone who ran for office.
- That is in the public records.
- I got advice from the City Attorney about how to amend the card.
- Ms. Marchiafava said she did not think I was allowed to do that.
- She called Mark Scott and he said that I could so I did it.

Chair Clint Johnson:

- Was the filing of the modified card of your own volition?
- Nobody convinced you to file it?

Carol Lane:

- I filed it on my own.

Chair Clint Johnson:

- Reminded her of a telephone call she made to him after the complaint was filed.
- You asked me what I could do.
- What did I answer?
- She wanted to know what she could do to alleviate the situation.
- I told her it would show good faith to file an amended card.

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Carol Lane:

- I do not remember that call, but I was upset.
- I did not know that I did anything incorrect until the ethics violation was filed against me.
- Instead of it being pointed out to an ethics complaint was filed against me.
- I was not hiding anything.
- I was not trying to mislead, but made a mistake and corrected it.

Board Member Todd Ashley:

- Alleged by John McMillan that you violated Section 11(f), your Exhibit 13.
- Did you have any private financial gain did you hope to accrue as a result of checking the incorrect box?

Carol Lane:

- Nothing.

Board Member Todd Ashley:

- Any private political interest did you hope to serve by not checking the box?

Carol Lane:

- Nothing.

Board Member Todd Ashley:

- Any other personal interest?

Carol Lane:

- No reason for me to suppress anything.
- I gave a donation and it was in the public records.
- It was not hidden.
- There for anyone to see.
- I handed in the card at the work session.
- It was not even filled out. It only has my name and nothing else.

Board Member Todd Ashley:

- Asked if she recalled what case RZS07-03 was about?

Carol Lane:

- At the time I did this, I was not aware that it was a zoning.
- It was confusing.
- I was in a hurry when I filled it out and did not complete it properly.

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Attorney Myles Eastwood:

- Do you recall what piece of land was involved in that case?

Carol Lane:

- The land was in Crabapple.
- Trinity.

Board Member Todd Ashley:

- Asked if she was aware of any connection Trinity might have to any other City Council member or board member or anyone else in the City of Milton?

Carol Lane:

- Responded no.

Board Member Joe Whitley:

- Referenced minutes of October 1, 2007 board meeting.
- Read from page 4 of 14 pages at the top.
- Asked Ms. Lane if she agreed she was careless in filling out the card and that it was not deliberate or intentional.

Carol Lane:

- Stated it was careless.
- No intention of hiding or suppressing anything.
- It was an error and I rectified it.
- No reason for me to do what I have been accused of doing.
- The staff stating they were denying that zoning.
- The Planning Commission suggested denial.
- City Council denied the case 7-0.
- No reason for me to suppress the fact that I gave a donation to one of the councilmembers.

Board Member John McCrory:

- I have been involved in other organizations regarding ethics matters.
- Bothers me that as a member of the Board of Ethics, we should be held to the highest standard of ethical conduct.
- Just saying I made a mistake or an error in judgment is not enough.
- Stated Ms. Lane had filled out 13 cards to speak.
- Cannot say you did not know what you were doing.
- Whether required or not, you should have said "yes" I contributed.
- Explained the Greek meaning of word "ethics" and it means "character."
- Violating a Code of Ethics is a character flaw.
- Astounded that this was done by you 13 times and not state you contributed to a political campaign.

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- It would not have changed the outcome.
- Would not have changed anything.
- It would have put you at the highest standard that we as ethics board members should live by.
- This is an important board.
- You cannot say because someone else did it, I did it or visa versa.
- You are a member of the ethics board and should be held to a higher standard of conduct.
- Stated he was very disappointed.

Carol Lane:

- Agreed ethics board members need to be held to a higher standard.
- Also I am a citizen of the City of Milton.
- I am not a builder or a developer or as seasoned as Mr. McMillan.
- I have not spoken at a lot of zoning cases.
- When I did speak there were not instructions on how to fill the card out.
- There was a time I did check no because it did not relate to a zoning.
- The only zoning that came up was that night and I was not there for the instructions.

Board Member John McCrory:

- Reiterated his position.
- We need to be held to the highest standard of character and conduct.
- Always should disclose anything we have done.

Board Member Todd Ashley:

- In the 13 opportunities you had to speak during public comment, how many dealt with zoning applications?

Carol Lane:

- I believe one.

Board Member Todd Ashley:

- Checking "yes" 12 times on a box, which would have been an incorrect answer on that question anyway, because on 12 of the 13 they did not deal with zoning.

Chair Clint Johnson:

- Take Exhibit 7-the highlighted area and point out for the record that is reportorial conjecture and nothing more.
- No basis in this case and strictly conjecture on the part of the reporter.
- Take Exhibit 8. Highlighted Mr. McMillan's comments but left out the portion "*I hope my motivation is pure.*"
- Fairly important comment.
- Also left out in same interview the reporter stated that the antics he mentions included "*vocal BHA affiliated members outburst at city hall that led to the current ban on public displays in council chambers.*"
- Believe there should be accountability.

Carol Lane:

- The outburst was not from members of the Birmingham Hopewell Alliance.

Chair Clint Johnson:

- Well, whatever.

Board Member Todd Ashley:

- Took exception to the comment, "well, whatever."
- Stated the Chair brought it up that she was somehow responsible or accountable.

Chair Clint Johnson:

- I was saying that Mr. McMillan stated BHA members should be accountable at council meetings.
- Sometimes when things are highlighted, important parts are left out.

City Attorney Mark Scott:

- Asked Ms. Lane about her Exhibit 3, the comment card in question.
- You did not check what may apply portion at bottom of card, correct?
- Your intent was to speak at the Crabapple rezoning application, correct?

Carol Lane:

- As stated in my testimony, I was in a hurry and did not complete card.
- I wanted to speak that night and on that particular case.
- Where zoning is written on card, that is not my handwriting.

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City Attorney Mark Scott:

- Showed Ms. Lane her comment card from June 14, 2007.
- Referenced City's Exhibit 3.
- Asked if she understood she did not have to check either way on an ethics question.

Carol Lane:

- Stated that was correct.

City Attorney Mark Scott:

- Asked if she understood that on June 14th.
- Would you agree that you checked "no" that you did not make that contribution on June 14th.

Carol Lane:

- I guess not. I do not recall.
- Regarding June 14th, I would agree.
- Added that Ms. Campbell did the same exact thing I did.

City Attorney Mark Scott:

- Ms. Campbell had made no contribution.

Carol Lane:

- That was not relevant.
- You told me when you interviewed me that you would advise me not to check a box unless it was a zoning.

City Attorney Mark Scott:

- Referenced City's Exhibit 4 from May 3, 2007.
- Asked Ms. Lane if she checked "no" on that card as well.
- Do you recall if you read that paragraph on May 3rd?

Carol Lane:

- Stated she did check "no" but it was not a zoning case.
- Do not recall if I read it on May 3rd.

Chair Clint Johnson:

- Referenced original zoning card on July 13th.
- Referenced corrected card submitted July 17th.
- Card of May 3rd and June 14th.
- Stated section on card that stated "group affiliation, if any."
- Blank on all of these cards.

Carol Lane:

- Stated that only needed to be checked if you were speaking on behalf of a group or affiliation.
- I was not speaking on behalf of a group, but for myself.

Chair Clint Johnson:

- That is also not clear on the card so that may be another problem with it.
- Asked if board members had any other questions.
- Asked if City Attorney had any other questions.
- Asked Mr. Eastwood if he had further questions or further presentation.
- Asked Ms. Lane if she had further questions.

NO FURTHER QUESTIONS.

Chair Clint Johnson:

- Stated board was ready to consider the case.
- Will discuss among ourselves.

Attorney Myles Eastwood:

GAVE A SHORT SUMMARY OF CASE TO BOARD.

- Word *because* says somebody did something.
- Concealed or suppressed *because* of x, y or z.
- Really for motivation is important.
- No intent that fits with the words following *because*.
- There is no violation.
- This ordinance does not mean that someone who fills out a public comment card has violated the ordinance simply by being careless.
- Maybe it should, but it is not written this way.
- This is the ordinance under which she was charged.
- There was a lot of confusion with the cards.
- Lack of intent.
- No deliberate effort to conceal or suppress something.
- A corrected card was filed.
- Believe Mr. McMillan was retaliating because of Ms. Lane's BHA membership.
- It is a violation of her free speech rights under the Georgia and Federal Constitution.
- Urged Board not to sustain this or they would be participating in the same reprisal.
- Number of inconsistencies and procedural errors in the case.
- Procedural errors in how public comment cards are handled, distributed and the instructions.

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- This was not a willful concealment or willful suppression of the information.
- Requested Board find no violation and dismiss the complaint.

Chair Clint Johnson:

READ FROM SECTION 17 ON PAGE 19 OF THE ORDINANCE REGARDING WHAT CHOICES BOARD HAD IN DETERMINING THE OUTCOME CASE.

- Chair narrowed choices down to: (1) the complaint does not allege facts sufficient to constitute a violation of this ordinance; (2) determine that no violation of this ordinance has occurred; (3) determine that the complaint facts sufficient to constitute a violation of this ordinance; (4) determine that further information is required; (5) refer the complaint with board's findings and conclusions to any appropriate administrative authority for disciplinary action or other suitable remedial action.
- Stated the governing body of the ethics board is the City Council of the City of Milton.
- Report has to be made to the governing body, City Council.
- City Council can make decisions as specified in the ordinance.
- Read remedies of administrative authority from ordinance.

City Attorney Mark Scott:

- To make the record clear, really going under the ordinance that existed prior to the August amendments as that was in existence when violation was made.
- Everything you read is correct, but in the previous ordinance it was Section 17(l).
- Only one substantiate and nothing to do with what was just read.

Chair Clint Johnson:

- Board has to decide what route they are going to take and vote on that decision.
- Called for a motion on one of the options.

Board Member Todd Ashley

- Read from 17(n)(1), *Dismiss the Complaint on any of the following grounds.*
- The *because* language stated by Mr. Eastwood is important because the complaint does not allege fact sufficient to show how Ms. Lane's private, financial or personal or political interest was affected.
- She was speaking as an individual on a particular rezoning and was not a party to that rezoning and not a representative of BHA or DRB or another group.
- Believe complaint does not allege facts sufficient to constitute a violation.

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Chair Clint Johnson:

- Disagreed.
- Did not think necessary that you had to have an actual financial interest when you file a statement that is not accurate on a city form.
- Feel anyone who marks the card wrong and has given to a political candidate would be subject to the ordinance of the city.

Board Member Joe Whitley:

- Believe the facts here to not support conduct violating this particular ordinance.
- This would be the legal reason for dismissal of this complaint.
- Could be a legal argument, but no facts to support it.
- Therefore, the complaint should be dismissed.

Board Member Susan Campbell:

- This was a 7-0 vote.
- Does not seem that Ms. Lane by virtue of any public comment that she made that night swayed the board one way or another.
- Appears everyone at the council meeting that night was on the same page.
- Yes, she filled out form wrong.
- I filled out the form wrong along with other people.
- Did make a contribution in excess of \$250.
- All of us are in a learning curve here in 2007.
- Everyone in the city is learning.
- Believe we all learned a lot about this.
- Card has been changed.
- Now have 5 days if going to oppose a rezoning.
- It is clear to everyone now whereas it was not before.
- The zoning rules were not read that night.
- A lot of mistakes have been made.
- If I felt by Ms. Lane's contribution it affected the vote that night on the Trinity case, the case may be stronger.
- Do not believe that we do.
- She did fill card out incorrectly and I understand that.
- Whatever she had to say that night really did not matter.
- There was a 7-0 vote.
- I believe it was just a mistake.

Chair Clint Johnson:

- From listening to other board members, it appears we have 3 ways to go.
- Dismiss the complaint because not sufficient facts to constitute a violation of the ordinance.
- Dismiss it because the complaint is defective.

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- Determine that no violation of the ordinance has occurred.
- Asked for a motion.

Board Member Susan Campbell:

- Stated she would like to make a motion.

MOTION AND SECOND: Susan Campbell made a motion to dismiss the complaint based on the following grounds: That the complaint does not allege facts sufficient to constitute a violation of this ordinance. Todd Ashley seconded the motion.

Chair Clint Johnson:

- Asked if there was any further discussion.
- There was none.
- Called for a vote.

VOTE: 5-0. Motion unanimously carried to dismiss the complaint based on the fact that the complaint does not allege facts sufficient to constitute a violation of this ordinance.

Chair Clint Johnson:

- Report will be made by the Board and signed by all the members to this effect.
- Thanked all the board members for attending.

OLD AND NEW BUSINESS:

Board Member Susan Campbell:

- Would like to have an ethics board meeting soon to wrap up the year for the report for the City Council.
- Would request a review of the Ordinance once again to give recommendations to the City Council based on what we have experienced this year.
- Will be new board members in January.
- Then would like to proceed with the By-laws.
- Need to establish some rules.

Chair Clint Johnson:

- Will try to set a date for the meeting and get everyone here.
- Probably will be after holidays.
- Hopefully sometime in January.
- Need to make an annual report to council and the mayor on the past year.

City Attorney Mark Scott:

- Annual report does not have to be done by December 31st, just annually.

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Board Member Joe Whitley:

- This has been a year of growth for us as a board and wanted to commend the chair for his leadership of this board.
- We have had challenging and difficult times.
- Continues to be an educational experience for me.
- Hope this board continues to set the right tone for this community that all Milton citizens will be proud to live in.

City Attorney Mark Scott:

- Want the record to reflect that Ms. Lane can rejoin the board and is no longer recused.

Chair Clint Johnson:

- Ms. Lane is back on the board and can participate in final vote.

City Attorney Mark Scott:

- There was discussion in both the context of the hearing and in the general evolution in the situation we have gone through with the comment cards.
- Want to reflect that had been a learning process for all of us.
- Card came from Fulton County and Sandy Springs was using the identical one.
- Was not until approximately August 16th that I realized that the statute was actually even in existence.
- We just assumed that everyone else was following it properly.
- We have learned that nobody else has been following it properly.
- The 5-day requirement is not being upheld by any other city in Georgia that I am aware of.
- Since our city has become the city of ethics complaints, we want to make sure it was understood what the law says and what needs to be done.
- Did not want anybody to knowingly go out and violate that statute.
- The card has been improved.
- Part of ethics process is to provide education.
- One good thing that came of this is the changes have been made.

Board Member Carol Lane:

- Part of what the Ethics Board is supposed to do is to educate.
- We are not a judge and jury.
- Only way to educate is to do it.
- We need to make sure everyone is educated as relates to the public comment cards.

Board Member John McCrory:

- Any reason why the comment card cannot have the yes or no for anybody speaking to the council for any reason state they had contributed to a political campaign?

City Attorney Mark Scott:

- Not required under the state law, but no reason why we could not require that.
- Not sure if council would want to require that degree of disclosure for everybody.
- You cannot contradict a state statute.
- Can see that point.
- Clerk's Office has used a form that is part of the rezoning application which allows people to make a one time blanket disclosure about contributions over \$250 in the last two years for all zoning applications.
- Still need to check yes on comment card.
- Believe the 5-day requirement is onerous and may actually be designed to cut down on speech.

DISCUSSION WITH BOARD AND CITY ATTORNEY ABOUT DOING WHAT WE CAN AS A CITY TO HAVE AS MUCH DISCLOSURE AS POSSIBLE TO ELIMINATE PROBLEMS.

Board Member Carol Lane:

- When you fill out the disclosure, the only people who have to fill that out are the applicant and the opposition.
- Anyone supporting does not.

ADJOURNMENT

Chair Clint Johnson:

- Made a motion to adjourn.

MOTION AND VOTE: Board Member Clint Johnson moved to adjourn the meeting. Board Member Todd Ashley seconded the motion. VOTE: 6-0. Motion carried to adjourn meeting.

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The meeting adjourned at 9:00 p.m.

Date Approved: _____

Francesca Ivie
City Clerk's office

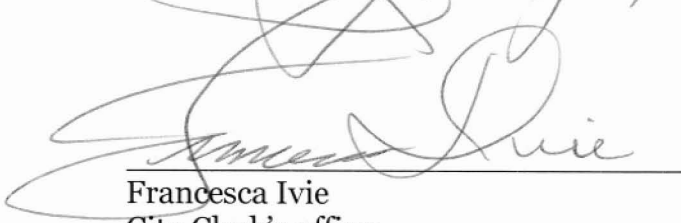
Clint Johnson, Chairman
Board of Ethics

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The meeting adjourned at 9:00 p.m.

Date Approved:

February 25, 2008



Francesca Ivie
City Clerk's office



Clint Johnson, Chairman
Board of Ethics