

	Tuesday October 6, 2020 at 9:00 A.M.	<h1>MINUTES</h1>
	Commission Room 1 st Floor ~City Hall 224 W. Ninth Street Sioux Falls, SD 57104	<h2>Board of Ethics Meeting</h2>

BOARD MEMBERS PRESENT: Jack Marsh, Sue Roust, Greg LaFollette, Wanda Harris, Dan Fritz.

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Bonnie Woolam, Recording Clerk

CITY ATTORNEY: Stacy Kooistra

CALL TO ORDER

Chairman Jack Marsh called the meeting to order at 9:00 AM. The clerk called the roll and all members of the Board of Ethics were present. The Chair noted a quorum was present and the Board would proceed.

Chairman Marsh noted that there were 2 items for the Board’s consideration on the Agenda

1. Request for Advisory Opinion 20-3 submitted by Councilor Janet Brekke
2. Request for Investigation submitted by David Zokaites

The Chair discussed the order of the proceeding, and stated that public testimony would be taken on the agenda items and public input would be reserved for other matters anyone wished to bring before the Board. The Chair asked that comments related to the advisory opinion and the request for investigation be held until they are addressed on the agenda.

Chairman Marsh invited a motion to approve the minutes of the August 26, 2020 meeting. The motion was made by Dan Fritz, seconded by Greg LaFollette. No discussion. Vote to approve: 5 Yeses. 0 Noes. Motion approved.

PUBLIC INPUT WAS CALLED WITH A 5 MINUTE TIME LIMIT PER PERSON

David Zokaites addressed the Board
 Bruce Danielson addressed the Board

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

1. REQUEST FOR ADVISORY OPINION 20-3 FILED 09/08/2020

Chair Jack Marsh introduced the Request for Advisory Opinion 20-3 submitted by City Council member Janet Brekke and entered it into the record.

City Attorney Stacy Kooistra advised the Board that it had jurisdiction to hear request 20-3 citing City Ordinances 35.010(m), 35.053, and 35.057. Attorney Kooistra stated that at the time Councilor Brekke's request was filed it was a prospective request however, due to the passage of time, it has now become retroactive. § 35.057 allows the board to address the issue in spite of precedent set by the board in past rulings.

Councilor Brekke was invited to come forward for swearing in before the Board. Councilor Brekke outlined her request and supportive documentation and addressed the Board and expounded on her submissions to the Board with her testimony. Councilor Brekke stated that she spoke with the Complainant in Ethics Complaint 20-B approximately 4 times. Councilor Brekke acknowledged that her communications with the Complainant included sufficiency, jurisdiction, probable cause, burden of proof, subpoena of witnesses, and supplemental filings. Councilor Brekke stated that the conversations took place at points during the various stages of the complaint process. Councilor Brekke stated that on the evening of August 11, John Cunningham sent a text message requesting that she and "Pat" meet with him at which time Councilor Brekke informed Mr. Cunningham that she could no longer answer his questions in the matter now that City Council had retained jurisdiction. Councilor Brekke stated that she feels that as a City council member that she should help people in how to address matters with city government pursuant to § 34.009, Cannon 7B and presented the ordinance as her justification, responsibility and obligation as a City Councilor.

Chair Jack Marsh thanked Councilor Brekke for her testimony and requested that the City Attorney advise the Board as to the options available in the matter.

Attorney Kooistra cited 35.053 as the authority of the Board to render a decision on the Advisory Opinion as well as other ordinances such as the Cannon of Ethics in Chapter 34 and Standards of conduct under 35.054. Attorney Kooistra advised that the Board could rule based on the scope of the request and the evidence and testimony presented or expand on the request and conduct an investigation.

Chair Jack Marsh asked Councilor Brekke to clarify if she would like the Board to make a ruling based on the submissions in front of the Board or if she would like to expand this to further investigation. Councilor Brekke stated that she would like a ruling based on what she has presented.

Attorney Kooistra stated based on Councilor Brekke's request, it is reasonable for the Board to make a ruling within the scope provided in 35.053 and encouraged clarification that the Board is not broadening the scope of the request.

Chair Jack Marsh recommended that the Board take further discussion with Councilor Brekke and provide opportunity for public testimony followed by deliberations.

Questions from the Ethics Board to Councilor Brekke:

Greg LaFollette offered that while he accepts Councilor Brekke's statements and her intent, he felt that perception and what a reasonable person fully advised of the facts might infer should be considered. Mr. LaFollette stated that the Board's purpose is not to determine a line so that a party can act right up to the line. Mr. LaFollette contended that true ethics would require a person to stay as far away from the line as possible as not to risk a possibility of a reasonable person inferring that something unethical had occurred.

Councilor Brekke offered follow-up comments.

Dan Fritz stated that he does not see a violation of 35.053. Fritz stated that the Board must be cognizant of complainant and rights of the accused and the Board of Ethics is unable to advise one party or another. Fritz stated that his opinion would change if Ms. Brekke advised on the substance of the matter rather than the procedure.

Chair Jack Marsh commented on the difficulty in navigating the balance between open meetings laws, the rights of an accused in a confidential matter, and the Board's obligation to remain objective. Chairman Marsh stated that the Board is comprised of mostly lay people trying to do the best that they can.

Sue Roust commented on the Minutes from 20-A concerning legal advice. She further stated that the board should do better to explain their rulings and asked Attorney Kooistra if explaining what is wrong with a complaint constitutes legal advice. Wanda Harris agreed.

Attorney Kooistra stated the Board could in certain circumstances assist with procedural questions but not within a filed complaint. Kooistra advised that the Board cannot cure a complaint or tell how to cure because that is giving legal advice.

Further discussion ensued concerning the role of the Board concerning the ability to recommend changes to ordinances.

The Chair offered the public the opportunity to make public testimony.

Bruce Danielson was sworn in and addressed the Board.
Councilor Pat Starr was sworn in and addressed the Board.

The Board moved into deliberations.

The chair invited a motion from the Board.

Dan Fritz moved that the Board issue an opinion that based on the evidence presented by Councilor Brekke, through her written submissions, oral testimony, and the language of 35.053, that there has been no violation of the ordinance and would not be going forward under the same.

Sue Roust seconded the motion.
No Discussion

The Chair called for a roll call Vote:

Dan Fritz-yes
Sue Roust yes
Greg LaFollette-no
Jack Marsh-yes
Wanda Harris-yes

Motion passed 4-1.

Sue Roust moved to authorize the Board's legal advisor, Stacy Kooistra to draft an Advisory Opinion consistent with the discussions and motion for the Board and to authorize the Board Chair to both approve and sign the opinion as drafted on behalf of the Board.

Motion seconded by Wanda Harris

No discussion. Vote to approve: 5 Yeses. 0 Noes. Motion approved.
Motion passes 5-0.

The Chair announced that this concluded the matter of 20-3 and at 10:27 am called for a 5-minute recess.

The meeting resumed at 10:37 am.

2. Request for Investigation-David Zokaites

Chair Jack Marsh clarified with Mr. Zokaites that rather than submitting a complaint he has submitted a request for an investigation. Mr. Zokaites agreed that was correct.

The Chair asked the City Attorney if the Board had jurisdiction on the matter. The City Attorney cited 35.010(c) as the Board's authority to hear the request and under state law provides an opportunity for public input. Because there was not an individual named, Mr. Zokaites request is being treated as a question submitted during public input.

Mr. Zokaites agreed and was sworn in and addressed the Board. The Board did not have any questions after Mr. Zokaites' address. Chair Jack Marsh called for any public testimony on Mr. Zokaites' request.

Bruce Danielson provided testimony to the Board.
Janet Brekke provided testimony to the Board.

Dan Fritz offered comments and discussion.
Sue Roust offered comments and discussion.

Greg LaFollette offered comments and discussion.

The Chair called for a motion to adjourn.

Greg LaFollette made a motion for Adjournment, Motion was seconded by Sue Roust
Vote to Approve 5 Yeses. 0 Noes. Motion Approved. Meeting Adjourned at 10:59 a.m.

NEXT MEETING

Not Set.

Respectfully submitted,

Bonnie Woolam
Recording Clerk