



## **Ethics Commission Minutes Informal Hearing, July 14, 2021**

Members Present: Trey Connors, Ben Goggins, James McNaughton, Michael Pappas, Mark Reed, Marie Rodriguez

Members Absent: Nancy Frankenhauser

Ex-Officios Present: Michelle Owens, Recording Clerk; Charlie Barrow, Ethics Commission Attorney

City Council Members Present: Barry Brown, Spec Hosti, Monty Parks

### **Roll:**

Chairman Michael Pappas called the meeting to order at 1:00 PM and conducted roll call. Members present: Trey Connors, Ben Goggins, James McNaughton, Michael Pappas, Mark Reed, Marie Rodriguez

### **Approval of Minutes:**

Marie Rodriguez motioned to approve the minutes from May 27, 2021. Ben Goggins seconded the motion. Motion passed unanimously. Minutes approved

### **New Business:**

Chairman Pappas announced that the ethics commission meeting served as an informal hearing during which both parties to the ethics complaint would have 10 minutes to make comments.

### **Informal Hearing:**

#### Statement by Jan Will

Jan Will read a statement summarizing her complaint against city council member Jay Burke. Ms. Will stated that Councilman Burke violated sections of the city ethics code at the March 11, 2021 council meeting. She stated that a movie production representative was giving a progress report in an open council meeting Mr. Burke remarked that closing the beaches would cause great financial distress for his family's beach equipment rental business. Ms. Will further stated that the movie production representative offered to meet with Mr. Burke and was instructed to meet with his sister. Mr. Burke refused to leave the meeting or recuse himself. Ms. Will stated She stated Mr. Burke's actions violated the Code of Ethics Section 23-2: Acceptance of Gifts; Section 23-3: Intent; and Section 23-7: Coercion by a City Official.

#### Statement by Jay Burke

Mr. Burke's attorney Tom Mahoney announced he would speak on behalf of Mr. Burke. Mr. Mahoney said from his review of the case, it was apparent this case is the result of a misunderstanding. He stated Mr. Burke did not violate the ethics code, did not solicit or receive money, didn't use his office for public gain or coerce anyone. He stated Mr. Burke raised a potential conflict and recused himself from the vote and any further discussion on the advice of the city attorney. Mr. Burke acted in accordance with the ethics code and not in violation, he stated. Mr. Mahoney further stated the movie production representative told council she had been



in touch with businesses and residents about the production, yet Mr. Burke believed that was not true because his family business had not been contacted. His concern was for all the businesses impacted by closing the beach, and not just his family business, Mr. Mahoney stated. Mr. Burke was also the first to raise the question of whether he could vote on the issue, after which the city attorney recommended recusal. Mr. Burke recused himself and did not vote. Therefore, The Code of Ethics Section 23-14 raises a presumption in favor of Mr. Burke that he was in compliance, Mr. Mahoney stated.

Mr. Burke acknowledges that he did misspeak, which led to a misunderstanding, he said. Mr. Burke did not mean to say that his family business was being impacted. He was speaking to all residents and businesses being impacted, Mr. Mahoney stated. He also stated that Mr. Burke was not notified of the previous ethics commission meeting but would have attended had he known.

Mr. Pappas announced that each party would have the opportunity to question the other.

Ms. Will asked Mr. Burke if he attended a workshop shortly after the council meeting in question and whether he arrived on time and found it beneficial.

Mr. Burke stated he arrived 10 minutes late but stayed for the rest of the meeting. Ms. Will responded she thought he was 30 minutes late. Ms. Will stated she did not have any more questions.

Mr. Mahoney asked Ms. Will if she acknowledged that Mr. Burke recused himself from the March 11 meeting.

Ms. Will acknowledged that Mr. Burke did recuse himself.

Mr. Mahoney asked Ms. Will whether she knew if Mr. Burke had received any payments. Ms. Will responded that she is only aware of what occurred on the meeting recording.

Mr. Mahoney had no further questions.

Ms. Will had no further questions but asked to make another statement. Mr. Pappas consented to the statement.

Mr. Mahoney questioned if the statement contained new evidence not in the original complaint and stated that he thought the informal hearing was an opportunity to resolve the complaint.

Ethics Commission Attorney Charlie Barrow stated that the goal of the informal hearing was to find middle ground, but that had not happened yet. Mr. Barrow said it was permissible for both parties to make additional statements as long as it was not new evidence.

Ms. Will stated that there was an "egregious violation" the city's ethics code at the March 11 city council meeting and that the public's trust had been damaged. She stated that city council and the ethics commission should follow their rules to ensure the "very highest standards of ethical conduct" for Tybee Island. Ms. Will said she expected censure, public reprimand, an apology to the citizens and affirmation that it will not happen again.



Mr. Pappas advised Ms. Will that the ethics commission could only determine if a violation occurred and that only city council could issue consequences.

Mr. Mahoney responded to Ms. Will's statement. He stated the situation was a misunderstanding and not an "egregious violation."

Mr. Pappas opened the floor to comments from the Ethics Commission members.

Trey Connors asked Mr. Burke if he felt his comments swayed the vote of other council members. Mr. Burke responded that he did not.

Ben Goggins asked Mr. Burke if he emerged from the city's recent ethics training with a different sense of how he would have brought up the topic at the March 11 meeting. Mr. Burke responded that he learned he should not have mentioned his family business, but that he was concerned about miscommunications. Mr. Burke stated he realized he should have addressed his concerns through the city manager and city attorney.

Mr. Goggins asked Mr. Burke if he felt he should apologize publicly and face censure. Mr. Mahoney answered on Mr. Burke's behalf, saying Mr. Burke would apologize and that he wanted to resolve the matter at the informal hearing.

Mr. Connors asked Mr. Burke if he spoke to the movie production representative after the meeting in person or electronically. Mr. Burke responded that he had not.

Marie Rodriguez asked Ms. Will if she would be willing to accept an apology from Mr. Burke.

Ms. Will stated that it was not a personal issue. She stated she wanted the city council and the ethics commission to ensure the highest ethical standards for Tybee Island. She restated that she wanted censure, public reprimand, an apology to the citizens and affirmation that it would not happen again.

Mr. Pappas asked Ms. Will who she wanted to issue the censure and public reprimand. Ms. Will replied city council and ethics commission. Mr. Pappas reminded her that only city council and not the ethics commission, has authority to take those actions. Mr. Barrow informed her that only city council could do so by ordinance.

Mr. Barrow asked Ms. Will if she was willing to accept Mr. Burke's apology on behalf of herself and the citizens of Tybee and not proceed further.

Ms. Will stated that the apology should be at a televised city council meeting and not at the hearing with a few people viewing.

Mr. Barrow asked Ms. Will if she would be satisfied resolving the case at the informal hearing if Mr. Burke agreed to apologize publicly at a city council meeting. Mr. Barrow stated the informal hearing was an opportunity to resolve the grievance without the ethics commission making a decision.



Ms. Will stated she wanted the commission to make the decision.

Mr. Barrow clarified again that city council, not the ethics commission, would not make a decision on a censure or reprimand.

Mr. Goggins asked Mr. Burke if he would be willing to apologize to the citizens publicly at a city council meeting, including sharing what he has learned and assuring it would not happen again.

Mr. Mahoney stated that Mr. Burke would apologize if it would resolve the case at the informal hearing.

Ms. Will stated she wanted the ethics commission and city council to make the decision on the outcome.

Ms. Rodriguez clarified that ethics commission could not determine the outcome and could only decide if a violation occurred and forward the case to city council for action.

Mr. Barrow stated that once the case goes to city council there is no guaranteed outcome. The council could decide to do nothing or it could censure and reprimand, he said.

Mr. Barrow asked if there was new evidence either side would produce if the matter proceeded to a formal hearing. Mr. Mahoney said he would present new evidence.

**Call for Motion to go into executive session:**

Mark Reed motioned to adjourn to executive session to discuss the pending ethics case. Chairman Pappas seconded the motion. Motion carried unanimously. The board adjourned to executive session at 1:33 PM.

Marie Rodriguez made a motion to reconvene the open meeting. Ben Goggins seconded. Motion carried. Board reconvened open meeting at 1:54 PM.

**Reconvening of Regular Meeting**

Mark Reed motioned to proceed with a formal hearing with new evidence presented. Trey Connors seconded the motion. The motion carried unanimously.

Mr. Pappas stated the formal hearing would be scheduled around the week of July 26.

**Old Business**

None.

**Adjournment:**

Mark Reed motioned to adjourn the meeting. Ben Goggins seconded the motion. The motion passed unanimously. Meeting adjourned at 1:58 PM