



Board of Ethics
Draft Meeting Minutes
Monday, July 29, 2024
Large Second Floor Conference Room
41 Green Street
9:30 AM

1. Call to Order.

Chairperson John Sullivan called the meeting to order at 9:32 AM.

2. Roll Call.

Present: James D. Rosenberg, Stephen J. Shurtleff, Chairperson Sullivan, City Solicitor Danielle Pacik, and Deputy City Clerk Elisabeth Harrington

Present, but remote: Tenley Callaghan

Excused: Marcia Moran

Due to remote participation, Chairperson Sullivan asked Ms. Callaghan, per RSA 91-A, what her reason is for not physically being in attendance, if there is anyone else present with her who can hear or listen, and if she is alone.

Ms. Tenley stated that she is out of state, that nobody is present who can hear her call, and that she is alone in a room.

3. Approval of Draft Meeting Minutes.

Mr. Shurtleff moved approval of the June 24, 2024 meeting minutes. The motion was duly seconded and passed unanimously in a roll call vote.

4. Public Hearing Regarding Complaint Filed Against Transportation Policy Advisory Committee Chair Gregory L. Bakos.

Chairperson Sullivan provided a brief overview of the complaint filed by Allan Herschlag against Transportation Policy Advisory Committee Chair Gregory L. Bakos. In the complaint, Mr. Herschlag alleges that Mr. Bakos violated the City's Code of Ethics 1-6-2 at the Transportation Policy Advisory Committee meeting held on January 25, 2024. The complaint alleges that Mr. Bakos added the I-93 Bridge Deck Park as an item to discuss

at a future meeting and that Mr. Bakos is the project manager for the company Vanasse Hangen Brustlin, Inc. (VHB) which is the company conducting the I-93 Bridge Deck Park feasibility study.

Chairperson Sullivan also reviewed the written response provided by Mr. Bakos which contends that he did not act in violation of the City's Code of Ethics. In his response, Mr. Bakos states that Mr. Herschlag is correct in that Mr. Bakos manages the I-93 Bridge Deck Park feasibility study as an employee of VHB which is one of the City's on-call consulting firms. Mr. Bakos's response letter also states that he provided the project update to the Transportation Policy Advisory Committee in order to share information. He also states that there was no conflict of interest in violation of the Code of Ethics because he did not take any action or make a decision that would affect his financial interest.

After his overview, Chairperson Sullivan opened the hearing.

Allan Herschlag, author of the complaint, provided definitions from the City's Code of Ethics as well as an additional letter. Both of these items are on file in the City Clerk's Office and available [through this link](#). Mr. Herschlag read the letter provided.

Mr. Shurtleff asked about the time period for the Atherton v. Concord case which is referenced by Mr. Herschlag. Mr. Herschlag stated he believed the deciding opinion occurred in 1968. Mr. Shurtleff then asked if the majority opinion of the court was that one "can serve two masters?" Mr. Herschlag stated that the majority discussed that one can not serve two masters and that the opinion of Justice Grimes was regarding the perception of serving two masters.

Chairperson Sullivan noted that in the definitions provided by Mr. Herschlag, the definition describing the interest of an employer does not include the word financial. Chairperson Sullivan asked Mr. Herschlag if the interest of an employer is broader than a financial interest. Mr. Herschlag agreed and described how per City Council rules, a member of City Council recuses when an item affecting the employer of the member of City Council comes before the Council. Mr. Herschlag added that this is regardless of the impact of the item or the member of City Council's position with the employer. Chairperson Sullivan asked Mr. Herschlag whether he is of the opinion that either Mr. Bakos should continue to serve on the board and recuse if there is a project involving his employer, or if Mr. Bakos should not serve on the committee. Mr. Herschlag has no issue with Mr. Bakos serving on the committee but believes Mr. Bakos should recuse when an item comes before the committee involving Mr. Bakos's employer.

Next, Mr. Bakos described the specific Transportation Policy Advisory Committee meetings which was referred to in Mr. Herschlag's complaint. Mr. Bakos described how a section of the Transportation Policy Advisory Committee agenda is reserved for status updates by City staff of important transportation projects. Mr. Bakos noticed at the meeting at hand that the I-93 Bridge Deck Park was not included in this portion of the agenda. Mr. Bakos stated that he also spoke and stated at a meeting that he also is the

project manager and a public meeting was held with abutters. Mr. Bakos told members of the Board of Ethics that this was to provide knowledge that was not otherwise provided at that specific Transportation Advisory Policy Committee meeting. He further stated that no decisions were made and there was no benefit to his employer. Mr. Bakos then stated that had there been a discussion regarding recommendations to Council by the Transportation Policy Advisory Committee, he would leave the room.

Next, Mr. Bakos described some of the responsibilities of the Transportation Policy Advisory Committee and noted that the committee does not make decisions for the City Council and does not have input on the selection of consultants or projects. He then described the selection of VHB as an on-call consultant. Mr. Bakos described how the City solicited proposals from all three on-call consultants. Mr. Bakos noted that the Transportation Policy Advisory Committee does not have a role in the selection of proposals.

Mr. Rosenberg asked Mr. Bakos how long he has served on the committee and who appointed him. Mr. Bakos stated he was appointed in 2018 and that his name was submitted by former City Councilor and Transportation Policy Advisory Committee Chair Dick Lemieux. Mr. Bakos noted that prior to serving on Transportation Policy Advisory Committee, he served on the committee's Bike and Pedestrian Subcommittee. He continued by noting that Mr. Lemieux was seeking engineers at that time due to the benefit of professionals serving on the committee.

Ms. Callaghan asked Mr. Bakos if he has ever recused. Mr. Bakos stated that he has never recused, but that he since has not spoken even at times when he could have provided input. Mr. Bakos noted this is difficult because he feels he is serving as a resource but feels he has to be careful in providing information.

Chairperson Sullivan asked about the nature of the contract between the City and VHB which Mr. Bakos described as time and materials. Chairperson Sullivan asked what occurs if more services are required from VHB. Mr. Bakos stated that an amendment would be needed from the City. Chairperson Sullivan asked more about the I-93 Bridge Deck Park and if there is a later stage where the Transportation Policy Advisory Committee may be asked to make a recommendation or a recommendation about funding to City Council. Mr. Bakos discussed how VHB is preparing alternatives and that it is very conceivable that these alternatives will be presented to the City Council. He also discussed the conceivability that City Council may ask the Transportation Policy Advisory Committee to provide feedback about the alternatives, and Mr. Bakos stated that in this instance he would recuse. Chairperson Sullivan then asked what would occur if the Transportation Policy Advisory Committee met to discuss the alternatives presented by VHB. Mr. Bakos stated that he is the employee of VHB with the most knowledge about the I-93 Bridge Deck Park, so another employee of VHB providing information would not be as effective. Mr. Bakos stated he would make it known in a Transportation Policy Advisory Committee meeting that he is the project manager and would seek advice from the City Solicitor.

At the request of Chairperson Sullivan, a member of City Administration attended to provide more information about the City's relationship with VHB.

Deputy City Manager – Community Development Matt Walsh provided more background information about the City's relationship with VHB. VHB is one of the City's three on-call engineering firms utilized for the assistance with capital projects. Deputy City Manager Walsh noted that approximately every five years, the City solicits such firms and/or refreshes such contracts. The contract with VHB was issued in August 2022. Deputy City Manager Walsh explained the process by which the City requested proposals and how contracts are awarded based on which firm is the most qualified to handle a particular project.

Deputy City Manager Walsh provided more information specific to the I-93 Bridge Deck Park. He noted that the New Hampshire Department of Transportation (NHDOT) reactivated its I-93 Bow – Concord expansion project and visited the City in the summer and fall of 2022. NHDOT met with various stakeholders and members of the public were vocal regarding a bridge deck park. Ultimately, the City Council requested that City staff secure proposals for a feasibility study of a bridge deck park. A bridge deck park is an elevated structure and this one would be elevated above I-93, utilities, and more. In June 2023, City Council appropriated \$200,000 for a study. Of the three engineering firms, only two selected to pursue the project. One proposal was \$575,000 and VHB's proposal was approximately \$160,000. VHB was selected. Deputy City Manager Walsh noted that City Council has no role in determining which contractors work on which City projects. A purchase order was issued in August 2023 and the project has been underway since that time.

Deputy City Manager Walsh described the finished product from VHB to be a report of the review of the feasibility of developing a bridge deck park structure that rises over NHDOT's proposed I-93 expansion, utility lines, and a highspeed rail corridor which all require certain clearances. Deputy City Manager Walsh noted that he and members of City Administration developed the scope of work for the contract.

Mr. Shurtleff asked if the Transportation Policy Advisory Committee has ever made recommendations to City Administration regarding to whom contracts should be awarded. Deputy City Manager Walsh stated that the Transportation Policy Advisory Committee has not.

Mr. Rosenberg asked if VHB may have the opportunity to bid on a future project such as the potential engineering of a future I-93 Bridge Deck Park construction project. Deputy City Manager Walsh noted that if the project is feasible, the City would likely look to NHDOT for the construction.

Ms. Callaghan asked how members of the Transportation Policy Advisory Committee are selected. Deputy City Manager Walsh noted that this committee's members are proposed by the Mayor and City Council. Deputy City Manager Walsh reviewed what type of items the committee reviews and make recommendations on such as sidewalk placement,

public transit, bicycle lanes, and items of that nature. Deputy City Manager Walsh noted that the committee makes suggestions and recommendations but does not have the power to appropriate funds, engage consultants, or make decisions about projects. The committee is strictly advisory.

There being no further testimony, Chairperson Sullivan closed the hearing.

City Solicitor Pacik noted that City staff will provide updates about the I-93 Bridge Deck Park in the future.

Chairperson Sullivan reviewed section 1-6-4 of the City's Code of Ethics and reviewed the seven potential outcomes that can be decided by the Board of Ethics.

Mr. Shurtleff discussed his opinion that Mr. Bakos did not partake in any wrongdoing and recommended that Mr. Bakos be found innocent.

Mr. Rosenberg expressed that he did not hear how any interest of Mr. Bakos's employer was affected. Mr. Rosenberg recommended that Mr. Bakos be found innocent.

Ms. Callaghan agreed with the finding of Mr. Shurtleff and Mr. Rosenberg.

Chairperson Sullivan proposed two findings of fact: Although innocently intended, the introduction of information was an action that raised the possibility of a conflict of interest. However, given the City's understanding of the relationship with VHB, the Board of Ethics concludes that the actions taken at the January 25, 2024 meeting did not affect the interests of Mr. Bakos's employer.

The proposed findings of fact were duly seconded.

Chairperson Sullivan noted that the two findings would result in the determination that Mr. Bakos was innocent of any wrongdoing in this matter.

The proposed findings of fact passed unanimously in a roll call vote.

5. Setting of Future Meeting Dates, if applicable.

6. Adjournment.

At 10:33 AM, there being no additional business, Mr. Rosenberg moved to adjourn. The motion was duly seconded and passed unanimously in a roll call vote.

A true copy, I attest:

*Elisabeth Harrington
Deputy City Clerk*