

**SANDERS, HAUGEN, & SEARS, P.C.  
ATTORNEYS AT LAW  
11 PERRY STREET  
P. O. BOX 1177  
NEWNAN, GEORGIA 30264-1177  
(770) 253-3880  
FAX (770) 254-0093**

**C. BRADFORD SEARS, JR.**  
**E-MAIL: bsears@sandershaugen.com**

**WALTER D. SANDERS**  
**(1909 - 1989)**  
**WILLIS G. HAUGEN**  
**(1929 - 2014)**

September 29, 2022

**VIA EMAILand UPS**

yjulio@peachtree-city.org

Yasmin Julio, City Clerk/Administrative Coordinator  
City of Peachtree City  
151 Willowbend Road  
Peachtree City, GA 30269

RE: Ethics Complaint filed by Suzanne Brown on August 19,  
2022  
Report of Hearing Officer

Dear Ms. Julio:

The undersigned was appointed Hearing Officer for purposes of the Complaint referenced above in compliance with the Peachtree City Code of Ethics Ordinance, Sec. 62-74, on August 22, 2022. Thereafter, the undersigned reviewed the following documents:

- A. The Complaint by Suzanne Brown dated August 19, 2022 with attachments
- B. The Response by Mayor Kim Learnard dated September 1, 2022 with attachments
- C. The Peachtree City Code of Ethics Ordinance

The Complaint was filed on August 19, 2022. The Response was filed on September 1, 2022. The Complaint appears to allege that now Mayor Kim Learnard, during her campaign for Mayor in 2021, did not disclose certain inkind contributions related to a "meet and greet" which was held at Partners II Pizza on two separate occasions during the campaign prior to her election in 2021 and prior to a hearing held on a rezoning application on June 16, 2022 and that she failed to file correct Campaign Disclosure Reports with the State reporting the inkind contributions. Further, the

Complaint appears to allege that Mayor Learnard failed to disclose prior to the rezoning hearing held on June 16, 2022 that she received a \$1,000 campaign contribution from Rising Star Ranch, LLC, whose registered agent is a local attorney, Richard Lindsey, who happened to be the same attorney who presented the rezoning application filed by Aberdeen Village Associates, Inc. of which members of the Royal family, owners of Partner's II Pizza, are officers before the Peachtree City Council on June 16, 2022. The campaign contribution from Rising Star Ranch, LLC, made in 2021, was reported in her Campaign Disclosure Reports filed with the State. The Complainant appears to allege that these contributions to Mayor Learnard's campaign, constitute a violation of Ordinance §62-72(4)(a) and (b) because they may have impermissibly influenced her vote on the rezoning application before the City Council. The Mayor voted in the affirmative on the rezoning application.

It is noted that the Complaint makes reference to 28 USCA & 455-Disqualification of Justice, Judge or Magistrate Court, in support of some of the allegations set out in the Complaint. 28USCA & 455 is not the applicable standard for determining whether or not a potential or actual conflict of interest exists in a zoning case in the State of Georgia. Notwithstanding any advice from the City Attorney to the City Council regarding their service in either a legislative capacity or quasi-judicial capacity on matters before them and on which they are required to take action, the standards to be used in zoning cases in determining whether or not a potential or actual conflict of interest exist are specifically set out in O.C.G.A. §36-67A-1 et seq and generally set out in the Peachtree City Code of Ordinances Chapter 62 Article III Code of Ethics, Sec. 62-71 et seq.

As required by Sec. 62-73 (d), the Complaint does not exactly specifically set out what the Complaint's allegations are with regard to the alleged violation(s) of O.C.G.A. §36-67A-1 et seq or the City's Code of Ethics which would constitute a conflict of interest as determined in either O.C.G.A. §36-67A-1 et seq or Sec. 62-72 (5) of the City's Code of Ethics which would necessitate Mayor Learnard's recusal on the vote in favor or against with regard to the rezoning application before the City Council on June 16, 2022 after she took office in January 2022.

However, it does appear that the Complaint attempts to allege campaign disclosure violations allege to have occurred both before and after Mayor Learnard was sworn into office in January 2022.

The Hearing Officer in complaints like the present one is charged with reviewing the relevant documents and conducting an investigation, and making a determination as to whether the Complaint is in conformity with Sec. 62-73, or whether the Complaint is unjustified, frivolous, or patently unfounded, or whether the Complaint demonstrates facts sufficient to invoke disciplinary jurisdiction. (See Sec. 62-75(b)(3).

Thereafter, the Hearing Officer is charged with making a written report to be transmitted to the Clerk, within 45 days of the filing of the Complaint, and within seven days of the completion of the investigation. (See Sec. 62-75(e)). The Complaint reveals on its face that it was filed on August 19, 2022, and therefore, this report is filed within 45 days of the filing of the Complaint. The investigation of the undersigned was completed on Tuesday, September 27, 2022, and this report is forwarded to the Clerk within seven days of that date. (See Sec. 62-75(e)) (On September 29, 2022).

The recommendation in this report is that the Complaint be dismissed on two grounds. The first is that Complaint was not filed in accordance with the requirements of Sec. 62-75 (b)(1) [See Secs. 62-73(d) and 62-73(e)] . The second, and independent ground, is that the Complaint is found to be unjustified and frivolous within the meaning of Sec. 62.75(b) (2).

NOTE: It is not necessary for the Hearing Officer in this case to address the issue of the propriety or inpropriety of any ramifications of the filing of an amended Campaign Disclosure with the State. A procedure for determining that issue exists, and it is apparent from Mayor Learnard's response that that process is being pursued contemporaneous with this decision on the Complaint under the Code of Ethics.

#### BASIS FOR RECOMMENDATIONS OF HEARING OFFICER

(a) The Complaint was not filed in accordance with the requirements of Sec. 6-73 (d) and (e).

Sec. 62-73(d) provides that each complaint shall state: (1) a separate count for each alleged violation; (2) the specific section of state law, the city charter, or this ethics article alleged to be violated for each count; (3) with specificity, the facts which are alleged to constitute the violation; and (4) the documentary evidence which the charging party possesses. The Complaint fails to meet these requirements. The Complaint consists of a general resertation discussion of alleged facts not relevant to a valid allegation (Complaint) against, Mayor Learnard, for a violation of the City's Code of Ethics. As stated above, it is difficult to determine what specific alleged violations were committed by Mayor Learnard and the presentation of facts and evidence actually supporting each specific violation.

It is noted that the Complainant states in the Complaint that:

"The specific reason Mayor Learnard needed to recuse herself is because:

-Kim Learnard was elected Mayor on November 3, 2021.

-She held two campaign events at Partner's II Pizza.

-Her campaign financial reports show no donation "in kind" from Partner's II Pizza, nor a payment for food and beverages served at the two events.

-Her campaign financial reports show a \$1,000.00 donation from Rising Star Ranch, LLC was received on December 1, 2022 [SIC], one day after the "run-off" election, so the results were known that she would be the Mayor beginning in January 2022.

-Richard P. Lindsay is the "agent" for Rising Star Ranch, LLC.

-Thus, Mayor Learnard received a \$1,000.00 donation from an LLC controlled by Richard P. Lindsay, who is also the legal counsel of James Royal in the rezoning request on June 16, 2022."

In addition, Sec. 62-73 (e) requires that complaints shall contain an oath that the facts set forth are true and correct to the best of the complainant's knowledge and shall be in substantially the form prescribed in the ordinance. The Complaint is not under oath and does not conform to the form required by the ordinance.

However, for the reasons set out herein, the unsworn statements and incorrect assumptions in support of Complainant's argument that Mayor Learnard should have recused herself from the vote on the rezoning application fail as a matter of fact and law to establish the existence of a potential or actual conflict of interest by Mayor Learnard in voting on the rezoning application filed by Aberdeen Village Associates, Inc.

(b) The Complaint is not justified.

Further, as stated above, although the allegations are not specific and are somewhat difficult to ascertain, it appears that the campaign events complained of in the Complaint all take place prior to Mayor Learnard becoming a "member" of the City Council. The references in the Complaint to Sec. 62- 72(4)(a), (b) and (c) are references to the conduct and actions on the part of its "members" subject to certain exceptions to outlined conduct and acts defined in the Ordinance. Pursuant to the definitions contained in Sec. 62-71, member is defined as follows: "*Member* shall include any member of the city council, staff and any appointee." The allegations contained in the Complaint seem to all be tied to alleged donations made to Mayor Learnard's campaign prior to Mayor Learnard winning the election and taking office. Accordingly, the ethics ordinance would not apply to Mayor Learnard's actions or inactions during the campaign.

Mayor Learnard's response with regard to the Partner's II Pizza inkind contribution acknowledges that on two separate occasions, once during the campaign and once during the run-off campaign, Mayor Learnard, then candidate Learnard, held two "meet and greets" at Partners II Pizza, which is owned by the Royal family. One event was held on October 5, 2021 and the other on November 20, 2021. The response states that the events were common knowledge evidenced by photographs of the events which were placed on Mayor Learnard's political Facebook page. It is showing that Partner II Pizza does not charge any fee for the use of its dining rooms for political gatherings, class reunions, athletic team parties, literary events and other similar gatherings. Enclosed with the response was correspondence from Marilyn Royal, Co-Owner of Partners II Pizza, confirming this fact. Enclosed with the response was an email exchange between Mayor Learnard and Ms. Royal which shows that at the October 5 event, four (4) large pizzas were provided at no charge to Mayor Learnard for a total of \$54.00. There was a receipt attached to Ms. Royal's email showing that the pizzas that were provided at no charge to Mayor Learnard at the November 20 event totaled \$61.40. Those who attended the meet and greet purchased their own beverages.

As stated hereinabove the Legislature has specifically enacted legislation that addresses campaign contributions in the context of rezoning application. Pursuant to O.C.G.A. §36-67A-3, applicants for rezoning, as well as and opponents to that rezoning, must disclose campaign contributions aggregating \$250.00 or more made within the two-year period preceding the rezoning application. This statute does not prohibit any elected official from voting on such a matter when the donation threshold has been met, rather it simply sets forth the disclosure requirements. Assuming that the two to four pizzas which were donated at each of the two meet and greets were donated by Partners II Pizza or a member of the Royal family and not by others, as opposed to one or more persons, their total value would fall well below the \$250.00 threshold set forth by the Legislature.

With regard to the campaign contribution from Rising Star Ranch, LLC and the fact that Richard Lindsey, the rezoning applicant's attorney, who is listed as the registered agent for Rising Star Ranch, LLC, the undersigned has confirmed with Mr. Lindsey that he was the organizer and is now only the registered agent for Rising Star Ranch, LLC and he has no financial interest in Rising Star Ranch, LLC or control of the management of Rising Star Ranch, LLC nor in the applicant, Aberdeen Village Associates, Inc. for the rezoning.

The Secretary of State's website shows that while members of the Royal family are officers of Aberdeen Village Associates, Inc., the original incorporator was Roy Huff, Jr. and the current registered agent for the corporation is Dale Geeslin, an accountant. The undersigned has likewise been shown as the incorporator and organizer of numerous corporations and limited liability companies over the past 40 plus years and continues to serve as registered agent for many of these entities, only a very small number of which the undersigned has any financial interest or control over the entities' management.

The Complainant provides no evidence that Mayor Learnard's acceptance of any of these campaign contributions was conditioned on any promise, express or implied, for a favorable discretionary vote by her on any future action which she may be required to vote on involving the Royal family.

Generally all candidates running for office raises money in form of campaign contributions. It would be impractical to suggest that an elected official must recuse themselves from every vote involving a person or entity in a matter before them as the elected official simply because a legal campaign contribution was involved..

Sec. 62-72(4)(c) sets out certain exceptions to the prohibitions contained in subsections (a) and (b) discussed above. It provides:

c. The above prohibitions shall not apply in the case of:

1. Occasional nonpecuniary gift of insignificant trinkets or gifts such as a calendar, memento or pen received in the normal course of business with a value of less than \$100.00 and admission to and or consumption of food and beverages at a breakfast, lunch, dinner, function or event;
2. Award publicly presented in recognition of public service;
3. Transaction authorized by and performed in accordance with O.C.G.A> §16-10-6 as now or hereafter amended.
4. A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such loan or financial transaction;
5. Campaign contributions made and reported in accordance with Georgia laws; or
6. Any gift, loan, favor, promise or thing of value from a family member.

In Mayor Learnard's response, it is shown that there was no charge for the use of the dining room at Partners II Pizza. So the inkind donation from Partners II (or others) would be limited to the cost of the pizzas. Sec 62-72 (4)(c) provides two exceptions which are applicable here. As stated in Mayor Learnard's response, Subsection (c) (1) would apply in that the pizza donation would amount to the consumption of food and beverage at an event. Subsection (c)(5) exempts campaign contributions made and reported in accordance with Georgia laws. As stated, the donation of pizzas would not constitute a contribution of over \$100.00 at each of the events combined in the reporting year which Mayor Learnard now acknowledges that the combined donation would have exceeded \$100.00. Donations of under \$100.00 are not required to be disclosed pursuant to State Disclosure Requirements. In her response, Mayor Learnard states that she will amend her disclosure report once she is able to determine if the pizzas were donated by Partners II Pizza, Ms. Royal or others. It is a possibility from a reading of Mayor Learnard's response, that the pizzas were

purchased by two different individuals or entities and therefore an amendment to Mayor Learnard's Campaign Disclosure Reports may not be necessary.

To assign any validity to the allegation in the Complaint that a failure to include two separate contributions of inkind donations of pizza at the two separate campaign events totaling just over \$100.00 would be a stretch to indicate that a conflict of interest was created to require Mayor Learnard to recuse herself from voting on the rezoning application after she was sworn in as Mayor. As pointed out hereinabove, the inkind contributions totaling just over \$100.00 is and was not required to be disclosed prior to the hearing on the rezoning application on June 16, 2022 as the value of total donations were less than \$250.00 pursuant to O.C.G.A. §36-67A-1. It is clear from Mayor Learnard's response that there was no intent by the Mayor in this case to violate the State Rules with regard to the filing of reports. The Complainant herself concedes that the Mayor filed reports in her Mayoral Campaign. The Mayor's explanation for the failure to list the inkind contributions of pizzas at two campaign events is a logical one. It would not be illogical for the Mayor or any other candidate similarly situated to assume that the requirement to total and list two similar inkind contributions totaling slightly over \$100.00 during the campaign period is reasonable under the circumstances. Sec. 62-74(c) places the burden of proof on the complaining party to establish the violation under the Code of Ethics by "clear and convincing evidence." The Complaint provides no clear and convincing evidence of any intent on the part of Mayor Learnard to circumvent the Campaign Finance Reporting laws. On the contrary, the evidence shows that Mayor Learnard was filed in her Campaign Disclosure Reports as she understood the requirements to be.

### CONCLUSION

Based on the foregoing and an analysis of the controlling provisions of the Code of Ethics for Peachtree City, the determination of the undersigned is that this Complaint was not filed in conformity with the requirements of Sec. 62-75 (b)(1) [See Sec. 62-73(d) and (e)] and that the Complaint is unjustified pursuant to Sec. 62-75 (b)(2). For these reasons, the Complaint should be dismissed.

Respectfully submitted this 29<sup>th</sup> day of September, 2022.

Sincerely,

SANDERS, HAUGEN & SEARS, P.C.

By: 

C. Bradford Sears, Jr.

Georgia State Bar No. 633450

CBSjr/ph