

**CITY COUNCIL
CITY OF FORT WORTH, TEXAS
CALLED – SPECIAL MEETING
AUGUST 19, 2010**

Present

Mayor Mike Moncrief
Mayor Pro tem Danny Scarth, District 4
Council Member Salvador Espino, District 2
Council Member W. B. “Zim” Zimmerman, District 3
Council Member Frank Moss, District 5
Council Member Jungus Jordan, District 6
Council Member Carter Burdette, District 7
Council Member Kathleen Hicks, District 8 (left meeting at 11:55 p.m.)
Council Member Joel Burns, District

City staff

Dale Fisseler, City Manager
Fernando Costa, Assistant City Manager
Tom Higgins, Assistant City Manager
David Yett, City Attorney
Sarah Fullenwider, Senior Assistant City Attorney
Peter Vaky, Senior Assistant City Attorney
Marty Hendrix, City Secretary
Susan Alanis, Director of Planning and Development

Ethics Complainant

Jim Ashford, Ethics Complainant

Persons Complained Against

Nina Hutton, XTO Energy
Albon O. Head, Jr., Attorney, with Jackson Walker L.L.P., representing three (3) persons
complained against

Absent

Darren Smith, Devon Energy
John Satterfield, Chesapeake Energy

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With a quorum of the City Council Members present, Mayor Moncrief called the called-special session of the Fort Worth City Council to order at 11:15 a.m., on Thursday, August 19, 2010, in the Pre-Council Chamber, second floor of City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102.

**City Council Hearing on Appeal of Findings
by the City’s Ethics Review Committee in
Cause No. 2010-02, a Complaint Filed
Against Nina Hutton, Darren Smith and
John Satterfield, as Members of the Air
Quality Study Committee, by Fort Worth
Resident Jim Ashford**

(Agenda Item 2)

**Overview of Previous Hearings/Findings –
City Attorney**

(Agenda Item 2-a)

Mayor Moncrief requested City Attorney David Yett provide an overview of how the process today would work including the appropriate motion that would be sought by the members of the City Council depending on the action that they wanted to take on this cause.

City Attorney David Yett advised that this special meeting of the Fort Worth City Council had been called to hear an appeal of the findings by the City’s Ethics Review Committee in Cause No. 2010-02.

Using a PowerPoint Presentation, City Attorney Yett stated that this meeting was to hear an appeal to the findings by the City’s Ethics Review Committee to a complaint filed by Mr. Jim Ashford against three (3) of the City Council’s appointees: Nina Hutton, with XTO Energy, Darren Smith with Devon Energy and John Satterfield, with Chesapeake Energy, as members of the City’s Air Quality Study Committee. He advised that it was to also hold a de novo hearing, which City Attorney Yett explained was a fresh look by the Council at the case. He added that there was no presumption that a violation had occurred simply because the Ethics Review Committee found a violation and the issue before the City Council was to determine whether a violation of Division 1 of the Code of Ethics occurred or not by the three (3) appointees.

City Attorney Yett advised that the City Council had appointed the Air Quality Study Committee on March 9, 2010. He pointed out that it consisted of 10 members, with five (5) citizen members, one (1) from the Environmental Defense Fund, one (1) from the North Central Texas Council of Governments (NCTCOG) and three (3) affiliated with gas companies. He stated that there were also advisory members from the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA). City Attorney Yett clarified

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**Overview of Previous Hearings/Findings –
City Attorney (cont'd)**

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that the subject committee was advisory only, and not of a permanent nature. He explained that the charge of the committee was to recommend a consultant for air quality study and scope of work; review the study results and provide feedback.

City Attorney Yett explained that Mr. Jim Ashford had filed a complaint against the three (3) committee members employed by gas companies: Nina Hutton, Darren Smith and John Satterfield on May 3, 2010, alleging conflict of interest.

City Attorney Yett stated that a preliminary hearing (on May 20, 2010) was held by the Ethics Review Committee. He advised that he had requested dismissal of the complaint for insufficiency. He stated that the Ethics Review Committee did not grant the request and set the cause for a final hearing (June 24, 2010).

City Attorney Yett advised that the Ethics Review Committee heard the testimony and found that a violation of Section 2-238(a)(3) of the City's Ethics Code by the three (3) named individuals occurred in that their employment might have influenced the performance of their duties. He pointed out that a letter of admonition was issued by the Ethics Review Committee to these individuals. City Attorney Yett stated that the violations were found to be "minor and appeared to have been unintentional."

City Attorney Yett advised that the three (3) defendants did not vote on the final recommendation of the air quality study consultant to the City Council. He stated that the three (3) defendants have appealed the Ethics Review Committee's decision to the City Council as provided for in the City's Code.

City Attorney Yett explained that the appeal hearing before the City Council was to hear the argument from the complainant; hear the argument from the defendants, who were being represented by Attorney Albon Head; determine whether or not a violation of the Code of Ethics occurred; and if a violation was found, then to determine the appropriate sanction.

City Attorney Yett completed his comments with the clarification on whether Council Members Scarth and Jordan could be in attendance at this meeting and vote on the Council's decision. He stated that in his opinion there was no conflict of interest as there was no benefit, direct or indirect, that they would receive by doing so.

Council Member Hicks requested a clarification on the City's Ethics Review Committee as to when it was established, who appointed the committee, etc. City Attorney Yett responded

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City Attorney (cont'd)**

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that the committee was created in 1979. He added that the members were Council-appointed and the current members were currently serving in hold-over positions as they had been appointed in the early 1990's. Council Member Hicks pointed out that these individuals had been serving for 20 years. City Attorney Yett stated that there had not been a large number of cases heard by the committee. He indicated that he estimated that there had only been three (3) cases heard since his appointment as City Attorney. Council Member Hicks requested again who had appointed these individuals and City Attorney Yett responded that they were appointed by the City Council.

City Attorney Yett completed his comments.

Argument by Complainant Jim Ashford

(Agenda Item 2-b)

Mayor Moncrief requested Mr. Ashford provide his argument to the City Council.

Mr. Jim Ashford, 6209 Riverview Circle, Fort Worth, Texas, stated that there seemed to be some confusion. He indicated that the last time that he had talked with City Attorney Yett, there was discussion about doing an abbreviated version of his complaint presentation and that the City Council would get a copy of minutes of the previous meetings and he would just give a short presentation. He pointed out that apparently there was some misunderstanding about that process.

City Attorney Yett responded that Mr. Ashford's statement was correct. He had talked with Mr. Ashford and to Counsel, who was defending the members of the gas companies. He indicated that they had a full-on discussion of these issues at both hearings of the Ethics Review Committee meetings and his office had provided relative portions of the transcripts to both sides and to the City Council. He clarified Mr. Ashford was correct and the intent today was to hear the arguments based on the transcripts and not go through in great details the factual issues, which were pretty much not in dispute, but really a legal question.

Mr. Ashford was again recognized by Mayor Moncrief and began his presentation. He stated that the merit and evidence strongly supported the pursuant of this complaint. He read from an article written by Mike Norman, the Editorial Director, written on February 16, 2010, in the *Fort Worth Star Telegram*, titled "Gas industry approach would torpedo Barnett Shale study." He stated the article read: "Natural gas companies are wasting no time before attempting to sway a Fort Worth air quality study in their favor." Mr. Ashford stated that he did

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Argument by Complainant Jim Ashford (cont'd)

(Agenda Item 2-b)

not know any better way to explain why there was an Ethics Code. He stated the Ethics Code was about the process of doing things in a manner that prevented as much as possible bias and conflicts of interest. He added that he had heard the Mayor and other members of the Council doing things in a manner where there should not even be the appearance of a conflict of interest. He pointed out that sometime that was not easy. Mr. Ashford presented his facts in this case that resulted in a finding of the Ethics Review Committee and read from the following Ethics Code: Article 7, Code of Ethics, Section 2-236 in part says that: “no officer, employee, or member of any board, commission or committee should have any interest, financial or otherwise, direct or indirect which is in conflict with the proper discharge of his duties in the public interest.” Mr. Ashford stated that Section 2-237, Code of Ethics, defined an advisory board to include a committee and made no distinctions about committees based on a permanent, non-permanent or ad hoc status. Mr. Ashford stated that there was some concern in a previous hearing shown by Attorney Albon Head about who some of the other members on the Air Quality Study Committee worked for. He stated that these included the Environmental Defense Fund, the NCTCOG, TCEQ and the EPA.

Mr. Ashford pointed out that in Section 2-237 of definitions under “substantial interest” in paragraph 2(d) it stated that: “A person does not have a substantial interest in a business entity if the primary nature of the business entity is charitable, non-profit or governmental.”

Mr. Ashford advised that except for the three (3) gas drilling employees, Nina Hutton, Darren Smith and John Satterfield, that work for a “for profit” industry and the appointed citizens, all others fell into one of those categories. Mr. Ashford stated that Section 2-236 of the City’s Code, Section 2-237 “definitions” and Section 2-238 “standards of conduct” indicated that Article 7 Code of Ethics had been violated. He stated that under Section 2-237 (e), the mere fact that these three (3) individuals have by definition a substantial interest with the company that they worked for and that they participated on a committee that was to make the selection of a firm that would be used to monitor a company that they each worked for as higher level environmental managers was more than adequate to qualify as a conflict of interest. He provided the following information from the State of Texas Government Code, Section 572.005 “Determination of Substantial Interest” paragraph 7, “an employee of a business entity” and the Fort Worth City Code, Section 2-237 “substantial interest” paragraph 1(e), “That person is an employee of the business entity.” Mr. Ashford added that “substantial interest” was further defined in Section 2-237, paragraph 1(b), “funds received by the person from the business entity exceed 10% of the person’s gross income for the previous year.” Mr. Ashford stated that the Fort Worth Code of Ethics, Section 2.238 “standards of conduct” paragraph a(1) stated: “No advisory board member shall knowingly accept or solicit any benefit from any person, group or

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Argument by Complainant Jim Ashford (cont'd)

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business entity that may reasonably gain to influence him in the discharge of his official duties.” He pointed out that it stated “reasonably tend to influence him in the discharge of his official duties.” Mr. Ashford stated that a “pay check” was more than enough to qualify as a benefit that might lead to a bias to protect their company and ensure its financial success. He then referenced Section 2.238 paragraph (a)(3)(b), “No advisory board member shall knowingly accept or solicit any benefit of sufficient economic value that it might reasonably tend to influence him in the discharge of his official duties from any person, group or business entity who have a personal financial interest in any decision upon which the advisory board member may or must act for making recommendations.” He pointed out again “might reasonably tend to influence.”

Mr. Ashford stated that these high level environmental management employees whose efforts for their company would be regulated or monitored by the firm that was selected have a financial reason to want their companies to be successful. He asked the Council to remember that these were the environmental managers in charge. He stated that there could be huge financial repercussions within the energy industry if the air monitoring firm they were helping to select should do too good of a job and find major air contaminations by the energy companies or their companies specifically. He added that it would be more beneficial to them and their company if the firm that they were helping to select did a poor job and found nothing. Mr. Ashford referenced the City Code, Section 2-238, paragraph (c), stated: “No member of an advisory board or commission shall knowingly represent directly or indirectly any person, group or business entity before the board or commission of which he or she is a member.” Mr. Ashford stated that each member introduced himself or herself as representing XTO, Chesapeake, or Devon and even the press release from the City identified them as such. Mr. Ashford stated that the issue remained that they were employed by and represented a business entity and they were a member of a City board or committee that would have a significant influence on how the companies that they worked for would be monitored or regulated by the firm that they helped to select.

Mr. Ashford stated that the Air Quality Committee assignment was to recommend a company or firm that would be hired to monitor the air quality or emissions of the companies these three (3) individuals worked for. He added the company that these representatives would select would not only monitor the air quality of their employers, it would be monitoring the air quality that these high level department managers were responsible for. Mr. Ashford stated that the unethical behavior on their part was not required to violate the Fort Worth Code of Ethics. He stated that the very act of Nina Hutton, Darren Smith and John Satterfield serving on the Air Quality Committee was a violation of the Code of Ethics as it violated numerous rules within the Code. He added just because the Fort Worth City Council asked these three (3) individuals to

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Argument by Complainant Jim Ashford (cont'd)

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serve on the committee was not defense to these violations regarding the Fort Worth Code of Ethics.

Mr. Ashford stated that City Attorney David Yett stated that the City Code of Ethics was an ordinance adopted by the City Council and may be modified, repealed or amended in whole or in part by the City Council's action. He added even if that was totally true, the fact remained; the City Council did not change the rules for the Code of Ethics. He stated that the current code provisions were the ones that must be looked at by all. Mr. Ashford indicated that it was his sincere hope that the Fort Worth City Council desired that lawful rule be followed and if any such rule should be violated, they would want that violation corrected immediately. Mr. Ashford referenced the Code of Ethics, Section 2-236 "declaration of policy" was stated as: "It is the policy of the City that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible only to the people in the City. He stated that it goes on to clarify that "no officer, employee or member of any board, commission or committee should have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or personal activity or incur any obligation of any nature which is in conflict with the proper discharge of his duties in the public interest."

Mr. Ashford stated that in his opinion the key words were "be independent", "be impartial" and "be responsible" only to the people of the City and that "no officer, employee or member of any board, commission or committee should have any interest financial or otherwise, direct or indirect, or engaging in any business, transaction or personal activity or incur any obligation of any nature which is in conflict with the proper discharge of his duties in the public interest."

Mr. Ashford stated that there were many who believed that these gas drilling employees on the Air Quality Task Force were, at least in part, there to protect the interest of their companies who paid them. Mr. Ashford added that if they were his employees, this was what he would think too.

Mr. Ashford stated in conclusion, the Ethics Committee listened to these facts carefully and made the appropriate decision in this Ethics Code matter. He stated that the three (3) members that represented the gas drilling companies on the Air Quality Committee obviously did violate the Fort Worth Ethics Code. He reminded the City Council that the Ethics Committee was intended to consist of five (5) individuals. He stated that in the Ethics Rules it was written that it required a vote of three (3) votes to receive a successful decision or 60% of the votes. He stated that in this case there were only three (3) individuals presently serving, in

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Argument by Complainant Jim Ashford (cont'd)

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other words, this was a unanimous decision of the Ethics Committee that a violation of the rules took place.

Mr. Ashford requested that the City Council uphold the Ethics Committee's ruling as it was both fair and appropriate.

Mr. Ashford completed his comments.

Mayor Moncrief opened the floor for questions and/or comments.

Council Member Espino requested clarification from Mr. Ashford on his complaint so that he could understand the basis. Council Member Espino stated that the appointment of the three (3) individuals, as they were employees of energy companies, that by itself in Mr. Ashford's opinion disqualified them from serving on this committee. Council Members Espino asked if that was pretty much the gist of his argument.

Mr. Ashford stated "actually no". He stated that he knew that Attorney Head brought that out and he did say that was certainly a part of it. He added that he may have even said that was it. He stated that was the basis of it, yes. He added that the fact that they were employees was what lead to the other violations.

Council Member Espino asked Mr. Ashford if in his complaint were there any ethical violations that he had witnessed during the meeting deliberations and discussions of the Air Quality Study Committee as they were moving towards putting together the qualifications for the air quality consultant in that respect. Council Member Espino reiterated to Mr. Ashford whether in his complaint there were any specific ethical violations by the subject individuals.

Mr. Ashford stated that "yes", the violations were the fact that they were on the committee. He stated that violated the Code a number of times.

Mayor Moncrief thanked Mr. Ashford for his presentation.

Argument by Persons Complained Against

(Agenda Item 2-c)

Mayor Moncrief recognized the individual to speak before the Council representing the three (3) energy company employees, Nina Hutton, Darren Smith and John Satterfield.

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Argument by Persons Complained Against (cont'd)

(Agenda Item 2-c)

Attorney Albon O. Head, Jr., Attorney with the Law Firm of Jackson Walker LLP, 717 Main Street, Suite 2100, Fort Worth, Texas 76102, advised that he was representing the three (3) individuals in this action.

Attorney Head addressed the City Council and advised that everyone was here today to hear a matter which was of utmost importance to the subject three (3) individuals, Ms. Hutton, Mr. Smith and Mr. Satterfield. He stated that they had been accused of unethical conduct. He stated that this hearing today was an appeal from the decision of the City's Ethics Review Committee of June 24, 2010, wherein the Ethics Review Committee found those individuals in violation of Section 2-238, paragraph a(3), of the City's Code of Ethics. He referenced the packet of information that had been prepared by the City Attorney's Office. Attorney Head referenced the letter that was dated June 30, 2010, from Attorney Mark G. Daniel, Counsel representing the Ethics Review Committee, on page 3, paragraph 7, a violation of that section alone. He stated that in the spirit of taking this matter very seriously, these three (3) individuals do so and Ms. Hutton was in attendance at the meeting. He advised that Mr. Satterfield and Mr. Smith were on projects out of the state and were not able to attend. He stated that they sent their thanks to the Council for hearing this matter. He clarified that due to the receipt of the meeting notice last Friday, they were unable to rearrange their schedules to be here.

Attorney Head stated that being accused of an ethics violation was in his mind somewhat just below being accused of a criminal violation. He pointed out that it was something that someone had to report on future job applications, civil service exams, security investigations and it was a very, very serious matter. He pointed out that these individuals accepted their appointments to the Air Quality Study Committee and had spent their time voluntarily serving and without compensation on that committee. He stated that it was his understanding of the complaint, as he had read it many times very carefully, by Mr. Ashford was merely a general allegation with out any specific evidence. He has admitted that he has no evidence of any unethical conduct by any of these three (3) individuals other than serving on the committee. He pointed out that the complaint was full of suppositions and assumptions, but nothing more. He stated that in the law courts this matter would be the subject of what was called a summary judgment, for there was no legitimate issue of any material fact in this matter. He stated that it was simply concerning a reading and understanding of the Code of Ethics. He stated that he and his clients believe that the Ethics Review Committee erred and that its decision was a gross misinterpretation of the Code. He stated that the finding by the Ethics Review Committee was that these individuals, merely by serving on the committee, violated Section 2-238(a)(3) of the Code of Ethics and that section stated in relevant part (he stated he was taking out the part that related to the employees and City Council Members and others), Section 2-238(a)(3) stated: "No advisory board member shall knowingly accept or solicit any benefit including a promise of

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future employment of sufficient economic value that it might reasonably tend to influence him in the discharge of his official duties from any business entity:

- a. which is licensed or has a substantial interest in any business entity that is licensed by any board on which the advisory board member serves or
- b. which has a financial interest in any proposed decision upon which the advisory board member may or must act or make a recommendation.”

Attorney Head stated that the purpose of the committee was to make a recommendation to this Council as to choosing one air quality consultant out of the eight (8) outfits that were bidding on the job. He stated those eight (8) companies bidding on that job as third party independent consultants had no relation whatsoever to these three (3) individuals. Attorney Head referenced a handout that he had provided to the City Council Members, which was Resolution 3866-03-2010, adopted by the City Council on March 9, 2010. He referenced the second page of the resolution where the appointments of the committee were set forth; the names of Ms. Hutton, Mr. Smith and Mr. Satterfield were set beside the names of their companies. Attorney Head stated that it was apparent and it was the clear intent in the resolution to appoint these individuals to the Air Quality Study Committee because of their employment and their involvement and experience in the gas industry. Attorney Head stated that in other words, they were appointed to this committee not in spite of their employment but because of it. He stated that Mr. Ashford's complaint should really be directed to the Council for their appointment of these members if there was a question of an actual violation of the Ethics Code. He stated that none the less he and his clients believed that there was no violation. He added it was baseless. He asked how the City Council, which promulgated the Code of Ethics, could violate its own Code by passing a resolution where it appointed these members and with its clear desire to utilize their expertise gained by their affiliation with these three (3) gas companies. He stated that Ms. Nina Hutton, an employee of XTO, was Vice President of Environmental Health and Safety, which includes air quality. He stated Mr. Smith of Devon was the Manager of Environmental Health and Safety for that company, again which includes air quality. Mr. Satterfield with Chesapeake was Director of Regulatory Environmental Affairs, which includes air impact evaluation and he was an educator in that field. He stated that there was a purpose for appointing committees in this manner. He stated it was to have a person educated in the subject matter working together with citizens of diverse interests to make sound decisions. He added any decision by this Council other than to dismiss the complaint would have over arching affects on other commissions and committees of the City.

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Attorney Head stated that he counted at least 18 commissions and committees of the City which had members who were explicitly on those committees for the reason that they had interests in the subject matters of those committees. He stated these included both Boards of Adjustment (commercial and residential), the Board of Directors of the Employees Retirement Fund, where the board members were all vested members in the retirement fund itself. He stated others included the Building Standards Commission, the Capital Improvements Advisory Committee, which had real estate developers and builders on its board. He stated the same was true for the Capital Improvement Plan Advisory Committee, the City's Plan Commission, the Zoning Commission, the Construction and Fire Prevention Board of Appeals, the Downtown Design Review Board and the Urban Design Review Board, all of which had architects, planners, landscape architects and developers. He stated the Landmark Commission also had designated positions and the 911 Emergency Assistant District Board, had a member from AT&T. He stated that the decision here was important not only to these three (3) individuals but to the City itself. Attorney Head stated that the former City Manager Bob Terrell illustrated this point in an editorial that he wrote to the *Star-Telegram* on July 1, 2010, and he stated: "When it comes to public health and safety isn't having the most knowledgeable and experience members available in the best interest of everyone. Not utilizing industry representatives especially when dealing with such an important issue does not make sense. He stated that he was sure that no one would ask their plumber for medical advice or their doctor to fix a leaking faucet because those are diverse areas of expertise. It would be rare to find someone with the knowledge and experience to handle both at an expert level." Attorney Head stated he went on to say that "asking non expert volunteers to perform such a complicated task would compound the level of difficulty."

Attorney Head stated that Mr. Ashford's real complaint, as he admitted in the hearing and had partially admitted here today, was that the three members were employed by the gas companies. He referenced the June 24, 2010, transcript on page 54, lines 17 through 21 under tab 9 in the packet of information as provided by the City Attorney's Office. Attorney Head stated "simply put that was his complaint." He add Mr. Ashford had no complaint of unethical conduct, he had no evidence of unethical conduct and merely that they were employed by the gas companies was his complaint. Attorney Head stated that this was not a violation of the Code of Ethics. He stated again, to find so would require a tortured reading not only of the letter of the Code but of the spirit and intent of the Code. Attorney Head stated again the effect of upholding the decision of the Ethics Review Committee would be to undo the work and sound decisions of this Council and prior Councils. Attorney Head concluded his comments by stating on behalf of Ms. Hutton, Mr. Smith and Mr. Satterfield, they respectfully requested that this appeal be granted and that the decision of the Ethics Review Committee be reversed and that it be

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determined by the City Council that these three (3) individuals have not violated the City's Code of Ethics.

City Council Determinations/Decisions

(Agenda Item 3)

Mayor Moncrief opened the floor for questions and/or comments from the City Council.

Council Member Espino asked Attorney Head if the way he read the Ethics Ordinance, there would be conflict if these folks from the energy companies were voting on selecting an air quality firm in which they were employed or had a substantial interest. Council Member Espino reiterated that would be a conflict in that case.

Attorney Head stated "yes" and added although it was not a finding of the Ethics Review Committee, and not a part of the actual complaint, Mr. Ashford argued and again argued today that it was unethical to represent before the board on which a person serves a company with which that person had an economic interest. Attorney Head reiterated that would be correct, if they owned or were employed by any of those eight (8) companies that were presenting their arguments in this room for their qualifications to head the study, then that would be the violation.

Council Member Espino asked if the records showed that any of these employees or any of these companies had any interest in the air quality firms that were being considered by the committee. Attorney Head stated none whatsoever.

Council Member Espino asked if in the record there were there any allegations, again, of any specific acts of unethical behavior by these individuals with respect to which firm might be selected or recommendation of the Council to actually hire the air quality firm. Council Member Espino clarified that the record did not show where these energy representatives said pick this firm or that firm, where they had an interest.

Attorney Head indicated that there was no such evidence. He stated that the record also showed the meeting in which the finalist was chosen from the three finalists last month; the three (3) individuals had abstained from voting.

Council Member Espino asked Attorney Head whether it made any difference in his opinion because the committee was 10 members, five (5) citizens, one (1) member from the Environmental Defense Fund, another individual from another group, etc. Council Member Espino indicated that he guessed it was seven (7) members, and that the majority of the committee was not related to the industry and did that make a difference one way or the other in the way the Ethics Code was read.

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City Council Determinations/Decisions (cont'd)

(Agenda Item 3)

Attorney Head indicated that he did not feel it made a difference in the way the Code was written, but practically speaking he would agree with that.

Council Member Hicks requested clarification from the City Attorney. She stated that apparently the three (3) gas company members chose not to vote on whoever was going to get the contract. She asked if that was always agreed to or was this decided later or why did they not vote on that issue. City Attorney Yett requested Senior Assistant City Attorney Sarah Fullenwider respond to the question.

Ms. Fullenwider stated that the decision not to vote was made after the decision was made by the Ethics Review Committee.

Council Member Moss asked if the Council was operating under the assumption, which he thought that Attorney Head brought it up that these three (3) individuals along with the other persons on the committee were appointed by the Mayor and City Council, that the responsibility was on the part of the Council to make a decision on whether these appointments had conflict of interests rather than putting that responsibility on the individuals that were appointed.

City Attorney David Yett stated that this appeared to be the crux of the complaint which was that the Council's appointments violated the Code of Ethics. He added that Attorney Head raised a larger point that the concept of appointing stakeholders to committees had been a long standing practice in this City and it had been engaged in a variety of areas and the Code until now had never been interpreted to prohibit that. City Attorney Yett indicated he believed that the crux of the complaint was that the appointment by the Council was a violation of the Code but he added that had not ever been an interpretation of the Code that the City has had generally.

Council Member Moss stated that the real issue right now was the violation was on behalf of the three (3) individuals and who would make the determination as to whether they were serving in violation. He added would that be on the part of the individuals to read and make that determination or was it the Council's decision in making the appointment.

City Attorney Yett stated that the three (3) individuals were the persons charged with an ethics violation by the complainant. He added the three (3) appointees were the ones that had been found in violation, but it was the Council's decision to appoint the committee in this manner and to structure it as it did so. He added that the City Council sitting here as the Appeals Court, will be the body that makes the determination whether or not there was an ethical violation.

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City Council Determinations/Decisions (cont'd)

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Council Member Moss stated that the point that he was making was who made the determination on whether their service on a board or commission was in violation, was it the Council to make that determination in the appointment or the individual who was appointed who needed to do the assessment and determine if they could or could not serve because it was in conflict with the City's Ethics Code.

City Attorney Yett stated he assumed that it would be a shared responsibility. He added that when the issue was raised by some citizens that spoke at the meeting when the resolution was considered by the Council, at that time he gave the City Council the opinion that the committee could be structured that way, so he made that determination and advised the Council accordingly at that meeting that the resolution could be adopted. He added that he did not see a violation at that time and he still did not see a violation of the Ethics Code.

Council Member Moss stated so with the individuals serving, they were serving with the understanding that they were not in violation because of the ruling. City Attorney Yett indicated that he was not their attorney but he did rule as the City Council's Attorney that it was not a violation of the Code to structure the committee that way.

Council Member Jordan requested to follow up on an earlier question with Attorney Head.

Deputy Assistant City Attorney Fullenwider interjected that the three (3) individuals decided not to vote on the recommendation of the consultant.

Council Member Hicks requested to know if that decision was based upon the ethics complaint or were they never going to vote on the recommendation.

Attorney Head responded that they were going to vote but after the Ethics Review Commission issued its ruling that they were in violation, then they voluntarily, at the subsequent meeting in which the consultant was chosen, abstained from voting.

Council Member Jordan requested clarification with Attorney Head that it was not a decision in that he interpreted as their attorney that there would have been a violation had they voted; it was a decision not to further complicate the situation. Attorney Head indicated "yes" and he added because the ethics decision was pending before the Council. He pointed out that it was not to create an additional layer or accusation that even though they had been accused of an ethics violation that they went ahead and voted. He reiterated that they abstained from voting.

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Council Member Jordan asked Attorney Head if in his opinion as their attorney whether he did not believe that there would have been a violation had they voted. Attorney Head answered “exactly” but they never the less did voluntarily abstain.

Council Member Hicks pointed out that these individuals were not in the majority so even if they had voted, she did not see how they could sway the outcome of it, if they were only three (3) people. She pointed out that the Council Members had to abstain when they have conflicts and they received a list on a weekly basis to each of them reminding them to do so. She added for instance she received dollars from United Way for her job so she asked that didn't it work the same way for other appointees. She stated the District 8 representative on the Zoning Commission owned a lot of property in the Poly Neighborhood so he recused from voting on those matters yet he was still a great member of the Zoning Commission. She asked again if that was not correct that when the Council had those issues even the Council had to abstain from voting. City Attorney Yett stated “certainly” that it happened on almost a weekly basis. He added had any of the members of the committee, not just these three (3) members, had a substantial interest in any of the firms appearing before the committee for the contract for the study, they would have been required to recuse as well. He pointed out there was no evidence that any of the committee members had a financial interest in any of the bidders or proposers on this consultant contract.

Council Member Hicks stated finally that she wanted to remind the Council that she voted against this committee and the reason that she did was that she did not think that the City needed that layer in the first place. She clarified that it was not because of the representatives on it and apparently she was not clear on that issue. She added that her concern was that the City needed to go on with the air quality study and she stated she was concerned that she position on this matter was misrepresented. She reiterated that it was not about the makeup of the committee, it was more about the process and the fact that the City was really looking at the months of August to August before the study would begin and it had taken a while to move forward. She clarified that was her concern. She stated that also she had to apologize due to the fact that she was going to have to leave the meeting for another mandatory meeting. Council Member Hicks indicated that her questions had been answered.

Council Member Moss asked, as it related to the service of the three (3) individuals on the committee, whether there was any indication that they shaped or directed the criteria that impacted the selection of the contractor. Susan Alanis, Director of Planning and Committee Development, spoke before the Council in response to the question. Ms. Alanis stated that these individuals were active members of the committee and provided good professional advice about

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their experience and about air quality issues; however, there was no undue influence or really any difference in their participation from the other members. She stated that they certainly were not the key drafters of the scope of work.

Council Member Moss stated that the bottom line was that they did not get involved in the actual shaping of the criteria that was used in the selection of a contractor. Ms. Alanis advised that they offered advice along the way, it was fairly limited and they were not a key drafter in that scope of work.

(Council Member Hicks left the meeting.)

Council Member Burdette stated that having been a practicing lawyer at one time, he viewed this process in a legal context. He guessed that the City Council was sitting here today as a quasi-court of appeals. He added that he thought that there were several things that he heard here that were undisputed. He stated that it was undisputed both by the complainant and everyone else that there was no violation of any code of ethics by these three (3) individuals other than the fact that they sat upon and participated as members of the committee. He pointed out that this had been admitted by Mr. Ashford and he had heard no charges otherwise. He referenced the resolution adopted by the City Council and pointed out, as others had done, the list of names of these three (3) individuals and listed beside their names of their employers. He stated that it seemed to him that it was quite clear that this Council understood and realized at the time of their appointment that they were employees of these three (3) companies. He stated that he also thought it was pretty clear, at least as far as this Council was concerned, that it was because of their employment that they were in fact appointed to serve on this committee. Council Member Burdette stated speaking for himself and, it was true of the Council as a whole, the Council wanted the input from that aspect of the issue before the committee. He stated the Council wanted the other committee members to have the benefit or to the contrary, if that be it, of the input from these other members. He stated that it was common, not uncommon, that these ad hoc committees appointed by the Council were constructed in most cases, if not every case, to have divergent interests represented on those committees. He added that in looking to have that committee take that information into consideration was not, in his mind, raising a conflict with these three (3) people in the discharge of their duties. He added he felt that was what they were mandated to do.

Council Member Burdette referenced Section 2-237 “definitions” of the Code under the definition of “substantial interest.” He stated it started out paragraph 1: “A person has a substantial interest in a business entity if” He stated that it named a number of things and one of them was “if the person was an employee of the business entity.” He pointed out that

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these three (3) people were employees of the business entity. He then referenced paragraph 2 of the definition which stated however: “A person does not have a substantial interest in a business entity if the person has been designated by the City Council to serve on such board.” City Council Member Burdette added that he thought the Code itself recognized the situation that the Council was currently facing here today. He added the Council may in its decision to establish the board to put people on there who were employed by whoever it may be, but that employment did not per say create a substantial conflict of interest or any conflict of interest if those persons had been appointed to those boards by this City Council. Council Member Burdette indicated that he was particularly concerned in this case that the charge of an ethics violation had fallen upon these three (3) individuals. He added he was concerned that if such charge were to be maintained, it would be personally detrimental to these three (3) individuals, when in fact they did not put themselves on this board; they were asked to serve by the Council and they accepted that duty without any enumeration from the Council or anyone else. City Council Member Burdette indicated that in his opinion the complaint in this case really attempted to go too far in interpreting the Code of Ethics as defined in this case a conflict of interest by these three (3) persons under these circumstances. He added that he felt it was quite clear that the selection of a consultant to conduct these tests did not involve any company in which these persons had any interest as employees or otherwise. He stated that he would not deny the fact that the results of the tests may have influence on their employers. He stated that the results of the tests were going to have a great deal of influence on what the Council does. He added that the results of the tests were going to have a great deal of influence on all of the citizens of Fort Worth because this test was pursuing some objective facts on which the Council could reach decisions about the health, safety and welfare of the citizens. He felt the charge of an ethics violation under these circumstances was improper and was not in line with either the letter or the spirit of the Code.

MOTION: A motion was made by Council Member Burdette and seconded by Council Member Espino that the City Council, as the appellate body, determined that no violations had occurred in this case (Cause No. 2010-02) and that the Council directed the City staff to prepare the appropriate order.

Council Member Espino added that he felt the crux of the matter was that Council, itself, made these appointments. He stated that he felt that they were really looking at a larger policy question. He pointed out that the City had boards, commissions and committees that had stakeholders from business all of the time. He reiterated that he felt it was a policy question. Council Member Espino indicated that the spirit and the intent of the Ethics Ordinance was to prevent folks that had a direct interest or substantial interest from voting on firms, businesses or contracts appearing directly before them where they had the direct or substantial interest. He

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indicated that he respected the service of the Ethics Committee Members; however, he added that he did believe that their interpretation was not what prior Councils or this Council had in mind when the Ethics Ordinance was adopted. He stated that in reading the Ethics Ordinance, he read it in the same way as Council Member Burdette and in looking at the way that the committee (air quality) really functioned, there were seven (7) members that were not related to this particular industry and in the end a top quality, top notch air quality consulting firm was selected. He added that if the Council were to adopt the findings of the Ethics Review Committee, every board, commission and committee that this City Council had in place would have to be reconstituted and he added that he did not think that this was what the Council intended or the Ethics Ordinance required it, so this was the reason that he seconded the motion.

Council Member Zimmerman indicated that both Council Members Burdette and Espino had valid arguments that he totally agreed with. He wanted to make sure that everyone understood that an even more subtle issue to this complaint cause was that this would wind up being on these three (3) people's records. He stated this was not about the decisions that were going to be made. He added that the Council put these people in harm's way when they made the appointments. He stated that he felt that the Council did it for all of the right reasons. He stated that he knew that the group in opposition did not want and did not believe that a fair decision could be made with those people sitting on the committee. He added that he felt that set a low standard for what the Council believed were good decent people doing a service for the community. He stated that it did in fact go to the heart of the issue though that not only did it mean that the Council would review every board that was in the City, but the Council would be hard pressed to get anybody to volunteer to sit on any commission from that point forward. Council Member Zimmerman stated that what the Council was talking about today was a very, very serious charge. He added that it was being done for the wrong reason in his opinion. He stated that if in fact there was a problem, the problem should have been addressed with the City Council and the City and not at those individuals.

Council Member Moss stated that was the reason that he had raised the question, from the standpoint who made the decision of whether the individuals had a conflict of interest and if that decision was made with the advice of the City's legal staff and that was basically who they used to determine whether the Council was moving in the right direction and he thought that decision was made and he agreed with Council Member Zimmerman in this situation, the Council was saying that the individual should have known and determined that they had a conflict of interest. He stated that was not how it was handled so he really had concerns with the charge.

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Mayor Moncrief stated that he felt his colleagues had expressed very succulently his feelings. He stated that both attorneys had looked very clearly at what was before the Council legally as well as ethically, and the long term impact of the decision that the Council would make in a moment. He felt it would have an affect on how the City would do business. He felt it would have a chilling affect on the Council's ability to be able to attract the best and the brightest to help this City make some difficult decisions that lie ahead and good sound options from which to choose. He stated that he was going to fully support the motion as presented.

VOTE ON THE MOTION: The Council voted eight (8) "ayes" and zero (0) "nays, with Council Member Hicks absent, in favor of the motion. The motion carried unanimously.

Mayor Moncrief announced that while the Council had determined that there was no violation of the three (3) individuals in question on this issue, he did want to express his sincere appreciation on behalf of everyone for the service of the Ethics Review Committee Members. He stated that they were doing their job in reviewing what came before them based on how they interpreted the City's ordinance. He stated that frankly they had given much more than the City should have ever asked them to, certainly in length of service. He stated that Hortencia Laguna, Reverend W. G. Daniels had served on the Ethics Review Committee for almost 20 years. He stated that was a long time to be serving this City. He pointed out that Rebecca Lucas had been a member for 18 years. He stated that given the decision that the Council had to just make, the Council had found itself in uncharted territory and in a unique position with regards to all of the City's task forces, boards and commissions. He stated as was pointed out by Council Member Burdette earlier, and he thought that everyone was aware, it was a typical and standard operational procedure to ask citizens, who were subject matter experts or industry experts to serve on the City's task forces, commissions, boards, etc. He stated that the City had done this for years. He indicated that most cities follow this practice and the Council certainly did not want to put its task force members in this type of uncomfortable position in the future. He stated that with regard to where the City was currently, he pointed out that there were 32 total boards, commissions and committees and there were 91 positions that were to be filled either by a specific profession, i.e., architect, landscape architect, developer, real estate person, etc. He stated other positions were required from non-profit or community organizations. He stated that there were currently eight (8) active ad hoc committees or task forces and there were 59 members who were from specific industries and businesses or other organizations. He stated that there were 150 appointees or more from specific businesses, industries and organizations.

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Mayor Moncrief requested a complete review of the City's Ethic Ordinance. He stated that this had apparently not been done since 1990 and it was time to take a detailed look at this ordinance and a look at best practices at what other cities were doing. Mayor Moncrief stated that the City certainly wanted to ensure that the citizens had recourse when appropriate and to ensure public officials were independent, impartial and responsible to the citizens of this great City. He added that the City wanted to protect those individuals who volunteer their service and expertise in such an unselfish manner for Fort Worth. He also requested the City Attorney bring to the Council some interim revisions that could be made to the City's Ethic Ordinance to protect task force members as well as any other interim revisions that they believed needed to be made while the process of a more extensive overhaul and review of the ordinance was taking place.

He stated that finally, because it was well past time to do so, none of the current members on the Ethics Review Committee were eligible for reappointment, so it was his intent to move forward with appointing members to the Ethics Committee and he asked his colleagues to join him in making those appointments next Tuesday, August 24, 2010.

Mayor Moncrief expressed great appreciation for the service of the Ethics Review Committee Members and that they had all served with distinction. He stated that unfortunately, they had all served well beyond their term limits and well past what the Council would ask of any citizen who serves on the City's boards and commissions. He pointed out that the fact that they had continued to serve was a testament to their dedication to this City and everyone owed them a debt of thanks. Mayor Moncrief requested that the existing three (3) members remain in place to hear the two (2) complaints that were still pending before them, if they were able to do so. He added that the Council greatly appreciated if they could serve a little while longer to get through their pending dockets. He added that any future complaints would be heard by the new committee members and he would expect and ask that the new committee members be the group assigned to assist the Law Department with revising the ordinance. He stated that the current committee members have served well and if they have any suggestions for what may need to be revised in the ordinance, the Council would certainly like to receive those comments. He added that they have been on the lines and if they have seen changes that need to be made, the Council would certainly value that input. He reiterated the appreciation to the committee for their long and dedicated service. He added that the City wanted an ordinance that reflected the City's democratic government and that ensured that officials were held to the standards of public trust that the citizens expected and deserved. He added that those were the same standards that everyone should expect of themselves.

Mayor Moncrief stated that make no mistake, he was fully committed to having a forum to bring forward legitimate concerns of the citizens just as he did as a State Senator. He stated

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that in 1991, he co-authored legislation creating the Texas Ethics Commission. He stated that he then served on the Senate Committee that debated this legislation and on the conference committee that ultimately approved one of the state's most important pieces of legislation, the creation of the Texas Ethics Commission. He was equally assured that the Council was just as committed as he was in this important process and look forwarding to moving the City in that direction.

Executive Session

(Agenda Item 4)

Mayor Moncrief advised that the Executive Session on the following item would not be necessary: To seek the advice of its attorney, if necessary, concerning the subject Ethics Complaints; such matters are exempt from public disclosure under Article X, Section 9 of the Texas State Bar Rules, and in accordance with Texas Government Code, subchapter D, Section 551.071 (LEGAL).

This agenda item was passed over.

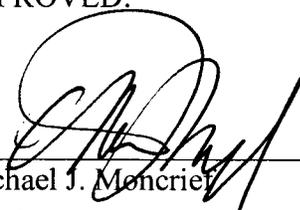
Adjournment

(Agenda Item 5)

Mayor Moncrief adjourned the meeting at 12:40 p.m. on Thursday, August 19, 2010.

These minutes approved by the Fort Worth City Council on this the 14th day of September, 2010.

APPROVED:



Michael J. Moncrief
Mayor

ATTEST:



Marty Hendrix, TRMC/MCC
City Secretary