

Good afternoon Members of the Ethics Board:

Your service on this board is commendable as transparency in government is vital to democracy. Madison's Code of Ethics emphasizes this strongly under the **Declaration of Policy**: *"The operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government....."*

This Code of Ethics has been violated by Alder Eskrich. I will focus on several examples as included in the materials you have received:

On March 16, 2016 Alder Eskrich forwarded an email "Beer Garden in Olin Turville" with attachments to her husband Erik Kesting and Mike Bare. As an alder she was 'in the loop' to provide information to both her husband and 'good friend, Mike Bare' in conflict with the **Code of Ethics Section 3.35(5)**. Mike Bare attended the April 7th meeting that followed this email. Later, in November, 2016, Alder Eskrich cc'd her husband using city e-mail to connect Eric Kesting, and thus BKM, to Merlin Mentors, a possible source of funding for their biergarten business.

Section 3.35(5)(a): Standards of Conduct:

(5a) (1) Use of Office or Position. *No incumbent may use or attempt to use her or his position or office to obtain financial gain or anything of value or any advantage, privilege or treatment for the private benefit of herself or himself or her or his immediate family...."*

(5a)(3b). Limitations on Actions.: *"no incumbent may use her or his office or position in a way that produces or assists in the production of a benefit, direct or indirect, for her or him, a member of her or his immediate family either separately or together or an organization with which the incumbent or her or his immediate family member is associated."*

Given that Alder Eskrich was included in emails and aware of the developments in the various Parks beer garden discussions it is unlikely that she would not have discussed this with her husband, Erik Kesting who became the K in the three business partners BMK who will own/run the Olbrich Biergarten.

Some context: On Nov. 22, 2015 Alder Eskrich emailed Parks Superintendent Eric Knepp to introduce *"my dear friend Mike Bare who has a ... question/proposal that he would like to discuss with you"* The next day Mr. Knepp emailed Mike Bare and 20 minutes later, Mr. Bare responded with interest in being a vendor in potential beer gardens in Madison public park(s).

Given Mike Bare's frequent contact with Parks via email, phone, and meetings between November 23 2015 to May 24 2016, one must deduce that, although there was no legal business relationship formed until June 20 2016 (filing as an LLC with the State of Wisconsin), conversations occurred between Bare and Kesting well before BKM was legally incorporated.

From the February 2017 *Isthmus* article, “Mike Bare says he and Kesting had been discussing ‘investment opportunities for a while.’ But Eskrich and Bare say Kesting did not become a partner in the biergarten business until the Parks Division released its RFP for the Olbrich Beach House. ‘I had not discussed the idea, if at all, in any detail, with either, really anyone, until right up until the RFP was released’, [May 25, 2016] says Bare” (date added).

One can affirm from Bare’s quote that a partnership focused on a biergarten at Olbrich was discussed on May 25, 2016. It is not unreasonable to believe it was likely discussed prior to this date as well.

Note there is no paper trail between the summary of the April 7 2017 meeting discussing a travelling biergarten concept to the subsequent issuance of the RFP for “Services at Park” on May 25 2016 which never specified alcoholic services even in the amendment*, and the award of the contract for a biergarten at Olbrich to BKM, a vendor without experience, on September 19, 2016. Further, Eric Knepp has stated he never saw the name Kesting until the Legistar file, related to the alcohol license application, was created on October 19, 2016

When presenting the project at several public meetings in October, November and December 2016, Mike Bare, as the speaking representative of BKM Group, stated on several occasions that he “just happened to come across the RFP on the City website”. It took a member of the public at a public meeting on this project on December 8, 2016, asking him point blank about whether or not the “K” in Kesting stood for Erik Kesting, the husband of Alder Sarah Eskrich, for Mike to acknowledge this connection. He further stated she “hasn’t been involved”. This simply doesn’t stand considering information contained in open records

Another violation occurred in reference to **Section 3.35 (5)(d) Disclosure of Information**. *No incumbent may intentionally use or disclose information gained in the course of or by reason of her or his official position or activities in any way that could result in the receipt of anything of value for herself or himself, for a member of her or his immediate family, or for any other person or entity if the information has not been communicated to the public or is not a public record.*

On June 20, 2016 BKM filed as an LLC and on June 22, 2016 they submitted a proposal for a biergarten at Olbrich in response to an RFP for “Services at Parks.”. Alder Eskrich should have updated her Statement of Interest, at the very minimum, by June 22, 2016. She did not file until July 31, 2016, almost *six weeks* after BKM was incorporated and submitted a proposal to Parks. This is also two months after Mike Bare admits discussing this idea “with anyone.”

This was in violation of **Code of Ethics Section 3.35(9)(e) (2) Amending the Statement of Interests**. *“If, after filing the statement, any elected official...becomes aware of any change in the information contained in her or his current Statement, she or he shall amend as soon as possible, her or his Statement to reflect accurately the change”.*

*Parks has never provided an adequate explanation regarding how an RFP for Services at Parks, which included a sample agreement that referenced No Alcoholic Beverages twice, morphed into a biergarten award. Per the *Isthmus* article re the May 25 2016 RFP “*When did staff start considering a biergarten at Olbrich? That is not clear. ‘You know how stars align sometimes?’ Oleksiak says. ‘We did have an RFP that was going to go out for two of our underused facilities*

[at Olbrich and Marshall parks]. That opportunity [for a permanent biergarten] was possible at those sites. " "

Parks has stated the June 10, 2016 RFP amendment clarified that Alcohol Beverage concessions would be considered. This is the language from that addendum:

Vendor question: Section 1.7 of the RFP states that the terms of the sample agreement shall become contractual obligations following awarding of the RFP. Depending on the scope of services proposed, some terms of the sample agreement may not be relevant or appropriate. Will the City enter into a reasonable period of negotiation with the winning bidder in order to come to appropriate and agreeable terms specific to the services proposed in the winning bid?
A: The City will enter into negotiations based on the awarded proposal with the winning vendor.

These are the NIGP codes referenced in the RFP for Services in Parks, released May 25, 2016:

95283 Summer Youth Program
95290 Training and Instruction (For Clients, Not Staff)
96115 Concessions, Catering, Vending: Mobile and Stationary (See Class 905 for Airport Concessions)
96168 Sports Professionals Services (Including Sports and Recreational Programs and Referee/Umpire Services)
96171 Talent Agency Services
96173 Theatrical Services (Including Production, Scenery Design, Stage, etc.)
96196 Non-Professional Services (Not Otherwise Classified)
96205 Amusement and Entertainment Services (Incl. Performing Arts Professionals)

Please contrast with language and codes for RFB 8502-0-2016-BP Alcohol Beverage Service
2/1/2016 Request for Alcohol Beverage Service : The City of Madison Parks Department
("City") is soliciting Bids from qualified vendors for Alcohol Beverage Service for Olbrich Botanical Gardens and Warner Park Community Recreational Center.

66005 Alcoholic Beverages, All Types
96115 Concessions, Catering, Vending: Mobile and Stationary (See Class 905 for Airport Concessions)

The public requires an explanation based on facts rather than "stars aligning" to explain the outcome of this RFP award. The ethics violations by Sarah Eskrich produced a cloud of suspicions which continues to hang over the entire process.

In summary, there are documented violations of the Ethics Code which require a full hearing on this matter.

Jane Etnier
April 25, 2017

MENU



was not discussed at the meeting. Eventually parks staff determined that a biergarten would not work at Olbrich-Turville.

When did staff start considering a biergarten at Olbrich? That is not clear. "You know how stars align sometimes?" Oleksiak says. "We did have an RFP that was going to go out for two of our underused facilities [at Olbrich and Marshall parks]. That opportunity [for a permanent biergarten] was possible at those sites."

The BKM Group was founded in June 2016 days before the deadline to submit proposals for Olbrich. The day before the RFP for Olbrich was released, records show Oleksiak and Bare talked on the phone. Oleksiak doesn't recall what was discussed but says "it's possible" they talked about the Olbrich RFP.

Knepp says he wasn't aware Kesting was involved in the project before the formal RFP process began. Knepp says he first "heard the name Erik Kesting" when the alder's husband was listed as the agent for the liquor license application the BKM Group submitted to the Alcohol License Review Committee.

Kesting declined to comment for this story. Bare says he and Kesting had been discussing "investment opportunities for a while." But Eskrich and Bare say Kesting did not become a partner in the biergarten business until the Parks Division released its RFP for the Olbrich Beach House.

"I had not discussed the idea, if at all, in any detail, with either, really anyone, until right up until the RFP was released," says Bare.

BKM Group's proposal calls for it to invest at least \$62,500 by 2023 to improve the Olbrich Beach House. They hope to open in May and would pay an annual fee to the city, starting at \$12,350 this year, and increasing to \$30,000 by 2023.

Eskrich claims that she "very intentionally" distanced herself from her husband's proposal at Olbrich. She has recused herself from voting on the proposal and filed a state of interest with the city in July 2016.

"It's not appropriate for alders to be voting or involved in something that has a direct financial implication for them. I've been approaching it from that perspective from the very beginning," says Eskrich. "I have not approached any of my [council] colleagues or city staff to talk about the proposal."

Bare says that his interest in developing a biergarten came about organically and was not facilitated by his friendship with Eskrich.

A state lobbyist, he is familiar with biergartens in other parts of the state, including in Milwaukee. "It got me thinking, why doesn't Madison have biergartens similar to what Milwaukee has?" says Bare. "I asked the question of the parks department and shared some information that I put together with them and started developing this idea."

Bare says concerns about his business partner's marriage to Eskrich are "a desperate attempt to derail the proposal" by those opposed to the project.

"There have been no improprieties whatsoever, and Ald. Eskrich has declared her conflict and recused herself from consideration of the proposal," says Bare. "To question the integrity and put at risk the reputation of alders, members of the parks commission and city staff is unfortunate and unjustified."

Bare adds that he finds these "conspiracies" troubling and stifling to entrepreneurs who want to do business with the city.