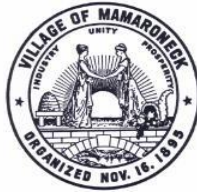


Village of



Mamaroneck

ETHICS BOARD

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May 22, 2020

VIA ELECTRONIC MAIL

To: Adam Stolorow

Cc: Mayor Tom Murphy

From: Ethics Board

Date: May 22, 2020

Re: Confidential Response to Waiver Request for Publication of Goldstein Record

The Ethics Board has received your request on behalf of the Mayor to waive the confidentiality of the record of our proceedings in the Goldstein matter in connection with the hearing by the Mayor in the Goldstein matter on May 27, 2020. Without conceding that a waiver is required, you assert that the record should be made public prior to the public hearing as a matter of due process and in order to meet the requirements of NY Village Law § 7-718(9), which requires a public hearing. Specifically, you request a waiver of the Ethics Code confidentiality provisions in connection with that disclosure. Ms. Goldstein's counsel has consented to that disclosure.

When the Board of Trustees adopted the Code of Ethics, it recognized that it was in the public interest for evidence derived from the Ethics Board's investigative and hearing processes to be kept confidential and not available to the public. Section 21-13(D) specifically provides that "All documents and hearings relating to the investigation and hearing of any alleged violation of this chapter shall be confidential and not available for public inspection or open to the public, except as otherwise required by state or federal law or by this chapter. All dispositions, including negotiated dispositions, in which the Ethics Board finds a violation of this chapter, shall be available for public inspection and copying." Section 21-20(A) specifically provides that "The only records of the Ethics Board which shall be available for public inspection are those whose disclosure is required by Article 6 of the Public Officers Law or by other state or federal law or by this chapter."

There are good reasons for these provisions. Village personnel and residents may be concerned about coming forward in an ethics investigation. Witnesses may be reluctant to testify or to be fully forthcoming on sensitive matters, often involving their peers or superiors, if they believe that their reports and testimony could be made public. Matters before the Ethics Board often are very sensitive affecting the reputations of the respondent, the witnesses and all involved. For example, an innocent party's reputation should not be subject to retrial in the public arena of thought. In fact, the law permits executive sessions when a person's employment is at stake. Moreover, the possibility of personal attacks on members of the Ethics Board, as have occurred in this case, may dissuade qualified and well-intentioned residents from accepting appointment to the Ethics Board, fearing adverse consequences to themselves and their families. In short, disclosure could have a chilling effect on the

workings of the Ethics Board that could adversely impact future investigations and hearings, and adversely affect the ability to conduct a fair process.

The Code of Ethics provides that there may be unique circumstances in which waiver of certain provisions are appropriate. Section 21-15(B) provides that the Ethics Board may waive a provision of the Code of Ethics, except certain provisions not at issue here, where it finds that “waiving such provision would not be in conflict with the purposes and interest of the Village of Mamaroneck.”

This matter presents a unique set of circumstances during a unique time in the nation’s and Village’s history with trials and hearings often being conducted via video conference, which is the proposed process for the May 27th hearing. The facts of this case are unprecedented. It is the most serious ethics case in memory. The Ethics Board has never before, in the memory of its members, been faced with a set of facts so concerning that required the Ethics Board to recommend that a sitting member of the Planning Board be removed from office for multiple violations of the Code of Ethics.

The matter also involves the first public hearing by a Village Mayor under Village Law § 7-718(9) with respect to the removal of a Planning Board member. Where the law requires a public hearing, as it does here, the Village has a significant interest in that hearing being conducted in a fair manner, consistent with due process of law, and in a way that is totally transparent to residents of the Village.

Ms. Goldstein has already sued the Village and the Ethics Board to set aside our recommendation and filed a notice of claim advising the Village, as required by law, that she intends to seek money damages from the Village. Her counsel has advised the Village Attorney that if the Mayor removes her from the Planning Board, she will amend her lawsuit to challenge that action, as well.

Immediately after the Board of Ethics closed the hearing relating to the violations of the Code of Ethics by Ms. Goldstein, she issued a letter to the Mayor and Board of Trustees making false allegations against the Ethics Board, to which she attached **two of the transcripts from the hearing to her letter** and other materials in an apparent attempt to front run publication of the Ethics Board Decision. In doing so, Ms. Goldstein has already released an incomplete record of the Ethics Board’s proceedings in a completely unprecedented matter. In these circumstances, it would be fundamentally unfair to the interests of the Village and all involved not to allow the full record to be disclosed.

And, as noted above, Ms. Goldstein’s attorney has consented to the release of the transcripts and documentary evidence.

The evidence supporting our Decision was overwhelming and conclusive. The Decision and Recommendation were approved unanimously by the Ethics Board. The Ethics Board is confident that any resident of the Village who takes the time to read the thousands of pages that constitute the record in an honest and thoughtful manner will be convinced, as the Ethics Board was, that Ms. Goldstein committed serious violations of the Code of Ethics requiring her removal.

The issue here is what is in the interest of the Village, or at least what is not in conflict with the Village’s purposes and interests as per Section 21-15(B) cited above. The Mayor is the highest elected official in the Village. He is the official charged by law with determining whether Ms. Goldstein should be removed from the Planning Board. In the course of conducting the public hearing which the law requires before he can make that determination, the Mayor has requested that the Ethics Board waive the confidentiality requirement in the interest of due process and transparency. We see that request on its face as a good faith expression of what is in

the interests of the Village by the chief elected official of the Village, whose determination as to what is in the interests of the Village should be given the highest consideration and, arguably, accepted on face value.

Limited to the complex and unprecedented circumstances that are presented, the Ethics Board grants the waiver to allow the public release of the Goldstein matter transcripts and documentary evidence in these very unusual and unprecedented circumstances. We are very mindful of the chilling effect of this type of disclosure, but in light of the totality of the present unique circumstances, we believe waiver here would not be in conflict with the interests and purposes of the Village. However, the Ethics Board cautions all who read this that we do not see this as setting or intending to establish any form of precedent for future disclosures, requested or otherwise.