

Village of Mamaroneck Ethics Board  
State of New York

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In the Matter of

**CYNTHIA GREER GOLDSTEIN,**

Respondent

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Decision and Recommendation  
of the Ethics Board

Village of Mamaroneck Ethics Board  
State of New York

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In the Matter of

**CYNTHIA GREER GOLDSTEIN,**

Respondent

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**Recommendation by the Ethics Board of Disciplinary Action**

The Village of Mamaroneck Ethics Board submits this recommendation simultaneously with and based upon its decision dated November 29, 2019, issued following a hearing on potential violations of the Village Code of Ethics by Cynthia Goldstein.

As detailed in the decision, the Ethics Board unanimously found that Ms. Goldstein's participation as a member of the Planning Board in the consideration of the applications of Hampshire Recreation LLC, regarding the development of the Hampshire Country Club, and Last Home LLC, regarding the demolition of an existing home and the construction of a new one at 203 Hommocks Road, constituted multiple violations of the Code of Ethics.

In light of all of the facts and circumstances surrounding those violations, the Ethics Board recommends that Ms. Goldstein be removed from the Village of Mamaroneck Planning Board.

**Application of the Code of Ethics – Overview**

Under former Mayor Kathleen Savolt, the current version of the Code of Ethics was adopted in 2009. It expressly states as a Declaration of Policy that the Code of Ethics was adopted for the express purpose to:

“...establish high standards of ethical conduct for officers, board members and employees of the Village so as to promote public confidence in the integrity of local government. It is the purpose of this chapter to afford officers, board members and employees of the Village clear guidance on ethical standards, to require public disclosure of interests that may influence or appear to influence the actions of Village officers, board members and employees and to provide for the fair and effective administration of this chapter, including the protection of those who make good faith disclosure of suspected unethical or wrongful conduct.”<sup>1</sup>

Requiring disclosure of interests that may influence or appear to influence the actions of officials is central to the underlying policy of the Code of Ethics. Ms. Goldstein's violations of the Code of Ethics and her conduct during the investigation and hearing conducted by the Ethics Board are in direct conflict with the standards embodied in this policy.

The Code of Ethics also recognizes that its specific provisions regarding ethical behavior are not necessarily exclusive. It provides that Village board members and employees, “...should seek

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<sup>1</sup> Village Code § 21-1.

assistance of the Board of Ethics when in doubt about any particular behavior or conduct.”<sup>2</sup> Moreover, the Code of Ethics also provides a specific mechanism by which to seek advisory opinions.<sup>3</sup> Ms. Goldstein chose not to avail herself of these provisions.

## **Factual and Procedural Background**

### Hampshire Recreation LLC

On December 10, 2018, Ms. Goldstein was appointed to the Planning Board. Ms. Goldstein owns and resides at 5 Oak Lane, purchased in June 2017, which is located either next to or very close to (see discussion below) Hampshire Country Club, and has winter views of the golf course and year round open views from the lower rear yard towards the Hampshire property and the tidal pond that touches both Ms. Goldstein’s and Hampshire’s property. Since her appointment, Ms. Goldstein has actively participated in each Planning Board meeting that addressed the application of Hampshire Recreation LLC.

In January 2019, the Ethics Board received information suggesting that Ms. Goldstein may have violated the disclosure and recusal requirements of the Code of Ethics when she participated in the consideration of the Hampshire application before the Planning Board.

After the Ethics Board contacted Ms. Goldstein regarding its concern that her participation in the application of Hampshire Recreation LLC could be an issue, two members of the Ethics Board met informally with Ms. Goldstein on March 12, 2019 to discuss the potential that recusal could be required. At that meeting, those Ethics Board members were seeking her input and to gather information from Ms. Goldstein to determine if there were any factors in addition to the location of her property relative to Hampshire that were relevant for the Ethics Board’s consideration. While the Ethics Board had not then concluded, and to this date has not had to conclude, that proximity could alone be a factor requiring recusal under the Code of Ethics, it did view proximity and participation as appropriately giving rise to a question. Contrary to her assertions, the members of the Ethics Board who met with her never provided assurance that her conduct did not violate the Code of Ethics. Rather, the meeting was for the purpose of gathering facts and letting her know that no conclusions had been reached.

In any event, at that March 12, 2019 meeting, Ms. Goldstein dismissed the Board’s concerns out of hand, arguing that her property did not abut the Hampshire property. Later at the hearing, the Village Engineer (who has expertise in reading surveys) testified that a survey previously filed with the Village by the Goldsteins showed that the northerly boundary of the Goldstein property indeed abuts the Hampshire property. The Ethics Board also found, as detailed in the decision, that the testimony by Ms. Goldstein’s expert witness did not controvert this testimony by the Village Engineer. The Ethics Board found that Ms. Goldstein’s property does abut Hampshire or is so close as to make the finding of boundary adjacency not determinative in our decision or recommendation. **To be clear, the Ethics Board did not base its decision solely on the “proximity” of Ms. Goldstein’s property to Hampshire, but on the totality of the evidence presented.**

### Last Home LLC

Shortly after the Planning Board met on March 27, 2019, the Ethics Board received information

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<sup>2</sup> Village Code § 21-4(R).

<sup>3</sup> Village Code § 21-16.

suggesting that Ms. Goldstein may have violated the disclosure and recusal requirements of the Code of Ethics when she participated at that meeting in the Planning Board's consideration of an application to demolish and replace the house at 203 Hommocks Road. In connection with the proposed work, the owner planned to extend a public sewer line down Hommocks Road, from a manhole near Hommocks School to approximately the intersection of Hommocks Road and Oak Lane, to allow the applicant to connect his home to public sewer lines. Extending the sewer line would make it substantially less expensive to add sewer service to nearby residents, whatever the source of funding, and specifically to Oak Lane where the Goldsteins live.

As of the March 27, 2019 Planning Board Meeting, Ms. Goldstein knew that her husband, Steve Goldstein, had been working for many months to get his neighbors and the Board of Trustees to support his efforts to get a sewer line extended down Hommocks Road to Oak Lane. In emails to his neighbors, at three appearances before the Board of Trustees and in letters to the Village, Mr. Goldstein consistently touted the economic and environmental benefits of adding the sewer line. In fact, after hearing the news of the outcome of the March 27 Planning Board meeting in which his spouse participated, Mr. Goldstein wrote the Village on March 31, 2019 encouraging the Village to support extension of the sewer to include Oak Lane. Mr. Goldstein's efforts are discussed below and detailed in the decision.

The Ethics Board contacted and met with Ms. Goldstein and her counsel after it received information suggesting that Ms. Goldstein may have violated her disclosure and recusal obligations at the March 27, 2019 Planning Board meeting. She again dismissed the Ethics Board's concerns that her actions were inconsistent with the Code of Ethics.

#### The Hearing

Ms. Goldstein engaged counsel in May 2019. The details of the timing of the Ethics Board's investigations are detailed in the decision.

After conducting its informal inquiries and investigations, including meeting with Ms. Goldstein on multiple occasions, the Ethics Board voted to hold a hearing to determine whether or not Ms. Goldstein violated the disclosure and recusal requirements of the Code of Ethics with respect to the both matters. Ms. Goldstein was represented by counsel, at the Village's expense, throughout the four-day hearing. Ms. Goldstein was provided the full opportunity to call witnesses, to examine witnesses called by the Ethics Board, to submit evidence and to present arguments.

As detailed in our decision, overwhelming evidence was adduced at the hearing that Ms. Goldstein committed each of the charged violations of the recusal requirement of sections 21-4(C) and the disclosure requirement of section 21-4(N) of the Code of Ethics.<sup>4</sup>

#### **Factors the Ethics Board Considered in Reaching Its Recommendation**

The Ethics Board considered the number and pattern of violations as an adverse factor when considering appropriate penalty or recommendation.

The Ethics Board acknowledges that while there could be varying views of the severity of each of Ms. Goldstein's multiple violations of the recusal and disclosure provisions of the Code of Ethics, the totality of the evidence throughout this process establishes a pattern and course of conduct by Ms. Goldstein that we find is inconsistent with the letter and spirit of the Code of

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<sup>4</sup> Having found a violation of section 21-4(N), the Ethics Board concluded that it did not have to reach a decision with respect to section 21-5(C).

Ethics and supports our recommendation.

Prior to being charged and promptly after the Ethics Board became initially concerned, Ms. Goldstein was informed that her participation in each of the Matters had raised serious concerns with the Ethics Board and others. The Ethics Board gave Ms. Goldstein ample time to consider its concerns and take appropriate action or to avail herself of the assistance and advisory opinion provisions of the Code of Ethics. Quite to the contrary, and as further detailed below, Ms. Goldstein at all times rejected out of hand the concerns raised in writing and in person by the Ethics Board and others with not even a suggestion she would consider them. She insisted that she knew her ethical obligations.

In every setting in which the Ethics Board met with Ms. Goldstein, she refused to even consider the Ethics Board's view that her conduct could be in violation of the disclosure requirements and recusal provisions of the Code of Ethics. This attitude prevailed from the very first informal meeting with her on March 12, 2019 to a subsequent informal meeting during which the Ethics Board sought a negotiated resolution as contemplated by the Code of Ethics, and throughout the investigation and hearing process. This was amplified by her unrelenting hostile attitude towards the Ethics Board, Village Attorney, and later towards the Village Engineer, and ultimately directed at the Code of Ethics itself. As described below, this hostility, and disregard for truth and disclosure, was most recently evidenced in her attempt to circumvent and discredit the process proscribed by the Code of Ethics, by sending an inaccurate email and an incomplete evidence set to the Mayor, the Village Manager and the Ethics Board just hours after the hearing closed on November 22, 2019.

The Ethics Board found that Ms. Goldstein's conduct surrounding the Last Home LLC application blatantly flouted the language and spirit of the Code of Ethics. In the case of the Last Home LLC matter, Ms. Goldstein ignored the concerns of the Chair of the Planning Board. Chair John Verni testified with credibility that prior to the March 27, 2019 Planning Board meeting he asked Ms. Goldstein to consider recusal and explained that the Village Attorney had raised concerns about her continued participation in the matter. Moreover, the Ethics Board finds Ms. Goldstein's argument was not credible and without merit when she testified that she was disadvantaged somehow because neither the Village Attorney nor any other official interrupted the meetings in which she participated to note her potential violation. Simply put, she already knew of and had ignored the concerns raised.

By the time the Planning Board discussion of 203 Hommocks commenced on March 27, 2019, Ms. Goldstein had been asked to consider recusal and was aware of her husband's efforts to gain the support of neighbors by touting economic benefits (detailed below), his multiple presentations to the Board of Trustees and his other efforts aimed at having the Village and/or neighbors fund a sewer line that would reach Oak Lane and be capable of servicing the Goldstein's home. In fact, Mr. Goldstein's efforts were extensive.

That sewer project connected to the 203 Hommocks application was always dependent on a line being extended, irrespective of funding source, from a manhole near the Hommocks School approximately one mile along Hommocks Road to a point near the intersection of Hommocks Road and Oak Lane. Only with that line in place could a line then be extended to Oak Lane. And, even in light of her knowledge before commencement of the March 27th Planning Board meeting, Ms. Goldstein did not recuse herself.

Mr. Goldstein emailed one neighbor who agreed with him that a connection to a sewer line

should enhance property values. Mr. Goldstein also emailed multiple neighbors to enlist their support by stating that a sewer line would avoid the potential for “catastrophic” expense if their aged septic systems failed, that the expense could reach into six figures, discussed the sewer line as an “insurance policy” against septic failure and touted the benefits of a sewer system to the surrounding area. Parenthetically, the real estate professional Ms. Goldstein called as an expert witness at the hearing gave testimony, among other things, confirming that extending the sewer line would benefit the Goldsteins.

Yet, Ms. Goldstein did not and still does not acknowledge that she and/or her husband “may benefit” from the sewer line being installed as he had asserted to neighbors or that all of these facts and circumstances could create the reasonable appearance of conflict or impropriety, despite the fact that the installation of a sewer line at that time was dependent on the Last Home LLC application being approved.

The Ethics Board finds that the Goldsteins’ testimony that they do not always agree and Mr. Goldstein’s testimony that he may have “oversold” the benefits of the sewer line he was pursuing are not exculpatory. Even if the Board were to accept this argument, and even if Ms. Goldstein she knew he was overselling or disagreed with him, the fact is Mr. Goldstein was seeking economic and other benefits and is a person described in Village Code § 21-4(A). That necessitated her prompt recusal.

Ms. Goldstein knew her husband must have thought that it “may benefit” them. That her husband (a person described in section 21-4 A) touted these economic and other benefits over a lengthy period to his neighbors and the Village demonstrates and supports the Board’s conclusion that the “may benefit” element of the recusal provision was met, as well as meeting the alternative standard of a “reasonable appearance” of a conflict of interest or impropriety.

The Ethics Board also found Ms. Goldstein’s declaration at the opening of the Planning Board consideration of the application of Last Home LLC on March 27, 2019 to be woefully incomplete and misleading in light of her knowledge at that point in the meeting. Ms. Goldstein’s statement that her “home was within notification of the proposed wetlands permit application but this particular property is surrounded by a five and a half foot stone wall and the way the properties are configured I can’t even see this house” belies the reality that the core of the potential conflict of interest involved the sewer line, which is below ground.

Following Ms. Goldstein’s declaration, she had further opportunities to enhance her disclosure and consider the impact of the Code of Ethics on her participation. At the opening of the presentation on the matter, the applicant’s architect stated that the sewer line was an integral part of the application. Within minutes, Mr. Gironda of Bibbo Associates, whom Ms. Goldstein knew her husband had hired (as had the applicant) to design the Oak Lane sewer line extension, spoke in detail about the sewer line and its capacity to service an Oak Lane extension and was questioned about it at length by Planning Board member Kathleen Savolt. Oak Lane is mentioned at least six times during this colloquy.

Ms. Goldstein made her incomplete and misleading declaration knowing of her husband’s activities, having already been asked to consider recusal, and having received the standard Planning Board packet on the application that specifically references the sewer line in multiple places. She then participated in the hearing, listening to statements that the sewer line on Hommocks Road is an important part of the project, hearing her husband’s engineer (who was also the applicant’s engineer) state that the line was sized to accommodate Oak Lane and hearing

Oak Lane mentioned multiple times. Ms. Goldstein asked questions about trees and tennis lights during the meeting. But she did not amplify on her declaration and did not promptly recuse herself after the meeting. This problematical set of facts is an adverse factor in considering any penalty.

Similarly, the Ethics Board finds that Ms. Goldstein's June 14, 2019 letter recusing herself from Last Home LLC and her subsequent disclosure of that recusal at a Planning Board meeting only acted to further the Board's recommendation. Far from acknowledging that her participation in the Last Home LLC might have been improper, Ms. Goldstein asserted that she was not required to recuse herself and made misrepresentations.

The Ethics Board believes the evidence and Ms. Goldstein's conduct before, during and after the hearing show no contrition and no willingness to consider the views of the Ethics Board or others with respect to the application of the Code of Ethics. In fact, Ms. Goldstein testified that even with complete knowledge of the facts in the record and everything she had learned to date, that she would still have not changed her conduct with respect to recusal or disclosure in either of the two applications. It strongly suggests that Ms. Goldstein has the potential to ignore the application of the Code of Ethics in other circumstances and will continue violating her obligations with respect to Hampshire.<sup>5</sup>

Lastly, while not a factor in finding that Ms. Goldstein violated the Code of Ethics, the Ethics Board notes that Ms. Goldstein sent an email to the Mayor, Village Manager and Ethics Board within two hours of the conclusion of hearing on November 22nd, only confirming our finding that Ms. Goldstein demonstrates a disregard for the law and refuses to conform her conduct to either the letter or spirit of the Code of Ethics. In the email, Ms. Goldstein transmitted confidential information regarding the proceedings contrary to the provisions of the Code of Ethics, made blatant misrepresentations about the evidentiary record and made baseless personal attacks against the Ethics Board, even going so far as to "hypothesize" that the Ethics Board was motivated by a financial nexus to the Hampshire developer and accusing the Ethics Board of manipulating land use board members. **To be clear, no member of the Ethics Board has any financial or other interest in the Hampshire project or its sponsor.**

### **Recommendation**

Village Code §§ 21-10(C) and 21-13 authorize the Ethics Board to conduct investigations and hearings into possible violations of the Code of Ethics. Village Code § 21-14 provides that after a hearing, the Ethics Board, in its discretion, may assess a civil fine of not more than \$1,500 for each violation of the Code of Ethics, may impose various other penalties and "may recommend appropriate disciplinary action . . . to the appointing authority or person or body authorized by law to impose such sanctions." With respect to a member of the Planning Board, the appointing authority is the Board of Trustees.<sup>6</sup> The "person or body authorized to impose such sanction" is the Mayor, who is authorized by the Village Law "to remove, after public hearing, any member

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<sup>5</sup> The Ethics Board observes that when the Goldsteins purchased 5 Oak Lane in June 2017, a property next to Hampshire, while Ms. Goldstein served on the HCZMC and was participating in matters related to the Hampshire application, she did not comply with the Code of Ethics requirement that she update her annual disclosure form for changed circumstance. While Ms. Goldstein is not charged with a violation with respect to this failure to update the required disclosure, this was not an immaterial omission. During her HCZMC tenure, she heard testimony from her new neighbors, but never disclosed publicly where she lived and did not make any form of opening declaration.

<sup>6</sup> Village Code § 58-1.

of the Planning Board for cause.”<sup>7</sup>

Given its obligations to uphold the Code of Ethics, the overwhelming evidence of Ms. Goldstein’s violations as detailed in the decision and having considered at great length the factors described above, the Ethics Board is compelled to recommend that Ms. Goldstein be removed from the Planning Board.

Each member of the Ethics Board is a volunteer and each has great reluctance to recommend removing a volunteer board member, let alone someone who has devoted considerable time and energy serving on land use boards in the Village.

However, the evidence, coupled with Ms. Goldstein’s attitude and conduct, has overwhelmed that reluctance. Throughout the entire process, Ms. Goldstein consistently demonstrated a disregard for and refusal to conform her conduct to the letter or spirit of the Code of Ethics. In coming to this difficult and painful conclusion, the Ethics Board reviewed a large volume of evidence including videos of public meetings, information readily and publicly available on the Village’s website, hearing four days of testimony, considered all of Ms. Goldstein’s arguments and gave due consideration to memoranda submitted by her attorney.

Based on the foregoing, the Ethics Board recommends that Ms. Goldstein should be removed from the Planning Board.

Dated: Mamaroneck, New York  
November 29, 2019

**VILLAGE OF MAMARONECK ETHICS BOARD**

By:   
Mark Ettenger  
Chair

To: Mayor Murphy and the Board of Trustees  
Hon. Agostino A. Fusco, Village Clerk-Treasurer  
Steven G. Leventhal, Esq. (sleventhal@lcmblaw.com)  
Leventhal, Mullaney & Blinkoff, LLP  
*Attorneys for Cynthia Greer Goldstein*  
15 Remsen Avenue  
Roslyn, NY 11576

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<sup>7</sup> Village Law § 7-718(9).



Village of Mamaroneck Ethics Board  
State of New York

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In the Matter of

**CYNTHIA GREER GOLDSTEIN,**

Respondent

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The Code of Ethics of the Village of Mamaroneck – Chapter 21 of the Village Code – declares as the policy of the Village that there be “high standards of ethical conduct for officers, board members and employees of the Village so as to promote public confidence in the integrity of local government.”<sup>1</sup> It charges the Ethics Board with the responsibility to administer and enforce the requirements of the Code of Ethics.<sup>2</sup> The Ethics Board takes that responsibility very seriously. For that reason, in January 2019, the Ethics Board, on its own initiative, commenced an informal inquiry and then an investigation into whether Cynthia Greer Goldstein (Ms. Goldstein), a member of the Planning Board, had complied with her obligations under the Code of Ethics when she participated in the consideration of and acted on the application of Hampshire Recreation LLC for subdivision approval and other permits. Similarly, after receiving several comments from Village officials with respect to the March 27, 2019 meeting of the Planning Board, the Ethics Board commenced an informal inquiry and then an investigation into whether Ms. Goldstein had complied with her obligations under the Code of Ethics with respect to the application of Last Home LLC for a wetlands permit. In each case, members of the Ethics Board met with Ms. Goldstein to discuss their concerns before proceeding with the investigation.

After concluding its investigation, the Ethics Board determined on July 31, 2019 that Ms. Goldstein may have violated the Code of Ethics in the Last Home LLC matter by failing to make required disclosures and by participating in the matter. On September 16, 2019, the Ethics Board further determined that Ms. Goldstein may have violated the Code of Ethics in the Hampshire Recreation LLC matter, also by failing to make required disclosures and by participating in the matter. With respect to each matter, the Ethics Board notified Ms. Goldstein of its determinations and advised her that it would hold a hearing to determine whether she had violated the Code of Ethics. The Ethics Board held that hearing over four days in October and November 2019. Ms.

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<sup>1</sup> Village Code § 21-1.

<sup>2</sup> Village Code § 21-10(C).

Goldstein was represented at that hearing by counsel of her choosing, paid for, in accordance with Village Code § 36-3, by the Village. After carefully considering all the evidence presented at that hearing, we conclude that Ms. Goldstein has violated the Code of Ethics with respect to both matters.

Ms. Goldstein failed to properly disclose and did not promptly recuse herself from participating in and taking action on the application Last Home LLC even though the approval of the application may have had a benefit to her or her husband – the completion, at no cost to her, of a public sewer line in Hommocks Road that would substantially reduce the cost of continuing that line to serve her home on Oak Lane. Although she ultimately recused herself in that matter after meeting with the Ethics Board, Ms. Goldstein's letter of June 14, 2019, by which she announced her recusal, disingenuously failed to address the actual conflict of interest or explain why she had not acknowledged the conflict and recused herself on March 27, 2019 when the matter was before the Planning Board and the conflict was readily apparent on the record.

Ms. Goldstein violated the Code of Ethics with respect to the application of Hampshire Recreation LLC by failing to make the disclosure required by the Code of Ethics and failing to recuse herself from participating in and acting on the application because the property she owns and on which she resides either abuts the Hampshire site, as the Village Engineer testified,<sup>3</sup> or is separated from it by only by the water of Prickly Pear Inlet, a tongue off Delancey Cove, regulated by tidal gates. Although, her attorney has argued, proximity alone could not give rise to a conflict of interest, the Board of Ethics did not reach that question as it finds that the facts clearly establish that Ms. Goldstein will be affected by numerous circumstances and conditions arising from the development of the Hampshire project in a manner materially different than almost all residents of the Village. The Code of Ethics requires that the decisions of the Village's boards and agencies be made by residents who are representing, and whose conduct gives no reason to doubt that they are representing, only the interests of the Village, untainted by their own particular interests, whether those interests could give rise to bias for or against an application. As with Last Home LLC, Ms. Goldstein therefore has direct or indirect financial interest in the outcome of the Hampshire Recreation LLC application that required her to disclose that interest formally and recuse herself from participating in and acting on the matter and that gives rise to reasonable appearance of impropriety.<sup>4</sup>

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<sup>3</sup> T1 at 96.

<sup>4</sup> In reaching this conclusion, we have not addressed Ms. Goldstein's contention, with respect to both Last

## **Record**

The record of this matter consists of four parts. Part I of the record consists of the documents reflecting the procedural history of this matter. Part II of the record consists of a flash drive containing the public records with respect to the following matters: (i) the proceedings before the Planning Board with respect to the application of Last Home LLC for a wetlands permit with respect to the premises at 203 Hommocks Road; (ii) the proceedings before the Planning Board and Harbor and Coastal Zone Management Commission with respect to the application of Hampshire Recreation LLC for subdivision approval and other permits; (iii) the proceedings before the Board of Trustees with respect to the request by Mr. Steven Goldstein, Ms. Goldstein's husband, for the installation of a public sewer main to serve Hommocks Road and Oak Lane; and (iv) the proceedings before the Board of Architectural Review with respect to the application of Mr. and Mrs. Goldstein with respect to their residence at 5 Oak Lane. Part III of the record consists of the exhibits introduced at the hearing, among which are documents and excerpts of documents drawn from Part II of the record. Part IV of the record is the transcript of the hearing.

## **Facts**

Ms. Goldstein resides at 5 Oak Lane in the Village of Mamaroneck, New York with her husband, Mr. Goldstein. Ms. Goldstein is an attorney and certified public accountant, with a private practice specializing in tax and financial planning matters.<sup>5</sup> The Goldsteins purchased the residence at 5 Oak Lane on or about June 1, 2017. The Goldstein residence at 5 Oak Lane is designated as Section 9, Block 44, Lot 32 on the tax map of the Town of Mamaroneck.<sup>6</sup> The only access to Oak Lane is by utilizing Hommocks Road in the Village of Mamaroneck.<sup>7</sup> Prior to

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Home LLC and Hampshire Recreation LLC, that the conflict of interest provisions of the Code of Ethics cannot be enforced against her because they are unconstitutionally vague and, specifically, that the Code provision regarding a personal financial benefit is vague and that there is no possible conduct that could subject a Village board member to discipline based on a reasonable appearance of impropriety.

It is not the role of the Ethics Board to adjudicate the constitutionality of an the Ethics Code, an act duly adopted by the Board of Trustees. It is, rather, our role to construe and enforce the Code of Ethics as we understand the language of the Code and the intent of the Board of Trustees. We have no difficulty in doing so here. If Ms. Goldstein did not understand the Code of Ethics, her obligation was to ask for an advisory opinion. The Code of Ethics specifically states that, "Village employees, board members and officers should seek the assistance of the Board of Ethics when in doubt regarding any particular behavior or issue." Ms. Goldstein never did so.

<sup>5</sup> T1 at 173.

<sup>6</sup> Exhibit A.

<sup>7</sup> Exhibit O.

purchasing 5 Oak Lane, the Goldsteins resided at 1066 Seahaven Drive in the Village of Mamaroneck.

Mr. Goldstein and Ms. Goldstein have long been involved in volunteer activities within the Village.<sup>8</sup> Ms. Goldstein has spent 30 years doing volunteer work in the Village. She has done pro bono legal and tax work for the senior center for 25 years. She was the honoree at the At Home on the Sound Gala two years ago and she has received the Tri-Municipal Martin Luther King Award for Volunteerism. She has also received an award from the Daughters of the American Revolution. She has been on the Board of Pace University for 28 years. She was an executive board member and treasurer of the Washingtonville Housing Alliance. She is the founder of Employment for Larchmont and Mamaroneck. She was on the Larchmont Mamaroneck Hunger Task Force. She was co-President of the Hommocks School PTA, of the Central School PTA and of the Larchmont-Mamaroneck PT Council. She has been on the Village's Flood Mitigation Committee and Budget Committee and has been a Brownie Girl Scout leader.<sup>9</sup> Mr. Goldstein served as Chair of the Tri-Municipal Conservation Advisory Commission, on the LMC Board and on the Board of Governors of Sound Shore Medical Center. He has been a Village Trustee, Chair of the Harbor and Coastal Zone Management Commission, a member of the Village Health Commission and has served as a volunteer firefighter.<sup>10</sup>

Ms. Goldstein was appointed to the Village of Mamaroneck Harbor and Coastal Zone Management Commission (HCZMC) on April 22, 2013. She filed an oath of office as a member of the HCZMC in the office of the Clerk-Treasurer of the Village of Mamaroneck on April 24, 2013.<sup>11</sup> Ms. Goldstein was a member of the HCZMC until December 3, 2018 when she was appointed to the Village of Mamaroneck Planning Board (Planning Board). She filed an oath of office as a member of the Planning Board in the office of the Clerk-Treasurer of the Village of Mamaroneck on December 10, 2018.<sup>12</sup> Ms. Goldstein has served as a member of the Planning Board continuously since her appointment.

As a member of the HCZMC and then the Planning Board, Ms. Goldstein was required by Village Code § 21-5(B) to file annual disclosure forms with the Ethics Board for each year from 2013 to present. Ms. Goldstein filed annual disclosure forms with the Ethics Board in 2015,

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<sup>8</sup> Exhibits II and MM.

<sup>9</sup> T2 at 174-176.

<sup>10</sup> T2 at 253-256.

<sup>11</sup> Exhibit D.

<sup>12</sup> Exhibit E.

2017, 2018 and 2019.<sup>13</sup> There is no record of Ms. Goldstein updating her annual disclosure statement when she moved to 5 Oak Lane, as required by Village Code § 21-5(B).

Ms. Goldstein testified that prior to retaining her present counsel she understood her ethical obligations as a board member.<sup>14</sup>

### **Last Home LLC**

On February 28, 2019, Last Home LLC, submitted an application to the Planning Board for a wetland permit to demolish an existing home located at 203 Hommocks Road in the Village of Mamaroneck and replace it with a new single-family home. The property at 203 Hommocks Road is designated as Section 9, Block 45, Lot 98 on the tax map of the Town of Mamaroneck.<sup>15</sup> David Picket is the principal of Last Home LLC.

There are no public sewers serving properties on Hommocks Road or Oak Lane.<sup>16</sup> All of the residences on those streets, including the Goldstein's residence, have septic systems.<sup>17</sup> A septic system can last 20 to 50 years, depending upon usage.<sup>18</sup> The Goldsteins' septic system was constructed in the 1950's.<sup>19</sup>

Beginning in the summer of 2018, Mr. Goldstein engaged in a campaign to bring public sewers to Hommocks Road and Oak Lane. The owners of the other properties on Oak Lane are as follows: Paul Cantwell, Nancy Zweng, Jeffrey Maggard ("Jeff Maggard"), Sean McCance, and Ruth Hinerfeld.

In late 2017 or 2018, Matt Gironda, P.E., of Bibbo Associates called Village Engineer Hernane de Almeda on behalf of the prospective purchaser of a home on the corner of Hommocks Road and Oak Lane. The prospective purchaser was David Picket.<sup>20</sup> Mr. Gironda told Mr. de Almeda that Mr. Picket wanted assurances that he could install a sanitary sewer line along Hommocks Road to serve the property he was purchasing. Mr. de Almeda informed Mr. Gironda that the sanitary sewer line would have to be a public sanitary sewer line.<sup>21</sup>

Mr. Picket contacted Mr. Goldstein about his interest in installing a sewer line in Hommocks

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<sup>13</sup> Exhibit F.

<sup>14</sup> T2 at 248.

<sup>15</sup> Exhibit G.

<sup>16</sup> T1 at 52.

<sup>17</sup> T1 at 55.

<sup>18</sup> T1 at 59.

<sup>19</sup> T2 at 284.

<sup>20</sup> T1 at 53.

<sup>21</sup> T1 at 53-4.

Road. In an August 16, 2018 email to Mr. Goldstein, Mr. Picket made the following statement:

I understand from Matt Girona, Bibbo Associates, that you have recently purchased a house on Oak Lane and are exploring the possibility of installing a sewer line. As Matt may have told you, we are about to purchase 203 Hommocks. The house has septic, but we are thinking at some point we will install a sewer and have gone as far as getting an actual permit to do the work. We are two years away from moving in and have just begun doing plans for our renovation. If you want to give me a call we can compare notes and see if there's a way to work together. I look forward to speaking with you.<sup>22</sup>

Ms. Goldstein was aware in the fall of 2018 of Mr. Goldstein's discussions with Mr. Picket.<sup>23</sup>

Mr. Goldstein also engaged Bibbo Associates. By letter dated August 17, 2018, and revised September 18, 2018, Bibbo Associates, consulting engineers, submitted a proposal to Mr. Goldstein for "engineering services in connection with the construction of a low-pressure sewer main and associated sewer service connection" to serve the Goldstein residence at 5 Oak Lane. Mr. Goldstein accepted the proposal on September 24, 2018.<sup>24</sup> Mr. Picket and Mr. Goldstein shared some of the costs of the engineering services. In an email on February 15, 2019, Tim Allen of Bibbo Associates responded to a billing inquiry by Mr. Goldstein by stating: "your invoice and Mr. Picket's [sic] were split proportionately."<sup>25</sup> Ms. Goldstein was aware that Mr. Goldstein had retained Bibbo Associates and that Bibbo Associates was doing design work for the sewer line extension to Oak Lane.<sup>26</sup>

Mr. Goldstein had more than four conversations with Mr. de Almeda about the possibility of installing a sewer line to serve his property. Mr. de Almeda testified that Mr. Goldstein "definitely expressed his desire to see this built" and was "very enthusiastic."<sup>27</sup> Mr. de Almeda advised Mr. Goldstein that if he wanted the sewer line that Mr. Picket was proposing to install to serve his home on Oak Lane, he would have to extend the line to the end of Oak Lane.<sup>28</sup> The design of the sewer line was adequate in diameter to serve all of the residences on Oak Lane.<sup>29</sup>

Mr. Goldstein contacted his neighbors with regard to the installation of the sewer line. On August 17, 2018, at 7:35 p.m., Mr. Goldstein sent an email to Jeff Maggard, who resides at 8

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<sup>22</sup> Exhibit H.

<sup>23</sup> T2 at 185.

<sup>24</sup> Exhibit H.

<sup>25</sup> Exhibit H.

<sup>26</sup> T2 at 186.

<sup>27</sup> T1 at 63.

<sup>28</sup> T1 at 86.

<sup>29</sup> T1 at 87-88.

Oak Lane, stating:

I spoke to the prospective purchaser of 203 Hommocks Road, who has filed and received the permits to put in a sewer line down Hommocks Road from the school to his connection on Oak. The news is not promising. He is planning on doing extensive renovations to the property before moving in about two years from now. He said that he would hope that others might help defray at least a portion of the construction costs for the line and, if so, he would consider moving up the timing of the construction. As of now he figures he'll start the construction in about one year from now. I would assume that means you would not have any interest in connecting to a sewer.<sup>30</sup>

Mr. Maggard responded, at 9:35 p.m., "Thanks Steve, We want to get back into our house ASAP so we would have to go ahead with improvement of our septic system. That said, we would consider at a later date when the dust settles. Are any of our other neighbors up for it?"<sup>31</sup>

On September 10, 2018, Mr. Goldstein wrote the following in an email to Sean McCance, who resides at 10 Oak Lane: "As you may know we have the opportunity to bring sewer service to our homes on Oak Lane. I am very interested in having a sewer hook-up not just for the environmental benefits but also to insure against septic system failure in the future which could be a catastrophic expense."<sup>32</sup> He followed up with two emails to Mr. McCance on September 15, 2018. At 2:34 p.m. he wrote, "Are you willing to share in the engineering expenses at this point?" Mr. McCance responded, at 4:03 p.m., "In my opinion it is premature to engage in funding the engineering aspect. . . ." At 4:49 p.m., Mr. Goldstein wrote Mr. McCance: "The new owner of the Lovejoy property had Bibbo Associates complete all surveys and engineering plans required to obtain all of approvals to construct his part of the line. They have also received the permits and approvals necessary to begin construction. His portion of the sewer line will most likely be constructed approximately a year from now."<sup>33</sup>

On September 10, 2018, at 10:36 a.m., Mr. Goldstein emailed Nancy Zweng, who resides at 4 Oak Lane. Mr. Goldstein stated in the email:

As you may know, we have the opportunity to bring sewer service to our homes on Oak Lane. I am very interested in having a sewer hook-up not just for the environmental benefits but also to insure against septic system failure in the future which could be a catastrophic expense.

I plan to hire Bibbo Associates by this Friday September 15th to conduct

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<sup>30</sup> Exhibit H.

<sup>31</sup> Exhibit H.

<sup>32</sup> Exhibit H.

<sup>33</sup> Exhibit H.

the engineering plan required for a proposed sewer extension from the section currently planned from the Hommocks Middle School, up Hommocks Road and part of Oak Lane. If all goes as planned the extension will be constructed from that point to the circle on Oak Lane so that all of us can tie into the sewer line.

If you have any interest in hooking up to the sewer line extension, now or in the future, please join me in engaging Bibbo Associates to include your property as well.<sup>34</sup>

Ms. Zweng responded, at 2:27 p.m., stating, “Based on where the sewer outlet from my house and the topography of my lot, I think it would be difficult, i.e., expensive (and perhaps prone to break down) to connect my house to the sewer line.”<sup>35</sup>

On September 21, 2018, Mr. Goldstein received an email from Ruth Comp (Hinerfeld), who resides at 11 Oak Lane, stating that neither she nor her husband had any interest in sharing the cost of the design of the sewer line.<sup>36</sup>

On December 6, 2018, Mr. Goldstein submitted a letter to the Board of Trustees in which he made the following statements:

As you may be aware the recent purchaser of 203 Hommocks Road has been working with the Village Engineer and obtained that necessary permits and approvals to construct a sanitary sewer line from the existing line on Hommocks Road near the Hommocks Middle School to a planned connection near his driveway on Oak Lane. Construction of the line is anticipated to begin in the Fall of 2019. Hommocks Road and Oak Lane are two of the few public roads in the Village without sanitary sewer service and rely on individual septic systems. . . .

At my expense I had the survey prepared that is required to install the sanitary sewer line extension to Oak Lane and retained Bibbo Associates to prepare the necessary engineering work needed for the construction and other permits.

Considering the potential for negative health and environmental impacts as well as the Village’s endorsement of the WAC 5 report I respectfully request that the Village extend the proposed sewer line to the end of Oak Lane, giving the residents an opportunity to disconnect their aging septic systems and connect to the only environmentally viable solution, a new sanitary sewer line, to this public street.

I would appreciate the opportunity to address the Board at a regularly scheduled meeting or work session to further discuss the matter and explore whatever options there might be.<sup>37</sup>

Mr. Goldstein did not note that he had not received any favorable responses from his immediate

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<sup>34</sup> Exhibit H.

<sup>35</sup> Exhibit H.

<sup>36</sup> Exhibit H.

<sup>37</sup> Exhibit H.



neighbors.

On January 8, 2019, Mr. Goldstein submitted copies of the engineering plans for the sewer project to the Board of Trustees.<sup>38</sup> On January 30, 2019, Mr. Goldstein sent an email to the members of the Board of Trustees, which contained the following statement: “I am writing to express my disappointment and concern that the Board of Trustees has not yet met to discuss the installation of a sanitary sewer line along Hommocks Road and Oak Lane.”<sup>39</sup>

On February 11, 2019, Mr. Goldstein appeared at a work session of the Board of Trustees and made the following statement:

The new owner of 203 Hommocks was proposing to build a sewer line from basically the Hommocks School down to his house, which actually comes partially up Oak Lane. And then what we were hoping to do is simply add on to that. There are about seven residences beyond that point that could hook into that line. . . . The new owner of 203 has kind of . . . I’ve been talking to him and his newest decision is that he will probably not keep the remaining house on the property now and he’ll probably take that down and build a smaller house. So he’s talking about possibly using the existing field. He doesn’t basically want to pay for the entire run from Hommocks School and partially up Oak Lane. He is willing to make a financial contribution and there are others willing to make a financial contribution toward getting this built, but I think we’re looking for the entire line to be built by the Village.”

The estimate cost for his section was between three and four hundred thousand and our section was about a hundred, a hundred twenty.<sup>40</sup>

Mr. Goldstein testified that the idea was to reduce the cost to the neighbors of installing a sewer line to the end of Oak Lane:

The idea was that if the sewer district would be formed for everyone along Hommocks Road, not the point after you make the turn, but going straight up Hommocks Road and straight up Oak, and allocated those costs to all of those individuals, being that Mr. Pickett was now going to be paying for three-quarters of the line, if not more, that the cost that the Village would have to extend would be much reduced and therefore he would pass those on to the people who could hook into the line, into the system.<sup>41</sup>

On February 26, 2019, at 1:02 p.m., Mr. Goldstein sent emails to David Picket and Celia Felsher, at 12:59 p.m. and 1:02 p.m., respectively. Ms. Felsher resides at 521 Eagle Knolls Road and owns other residences in the vicinity of Hommocks Road. The emails are identical other than

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<sup>38</sup> Exhibit H.

<sup>39</sup> Exhibit H.

<sup>40</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-2-11-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-2-11-19/).

<sup>41</sup> T2 at 300-301.

the addressee and contain the following statements:

Last December I submitted the attached letter to the Village of Mamaroneck Mayor and Board of Trustees. . . .

It was my suggestion that the Village form a sewer district and fund the project, which should cost about \$500,000, with a 30-year bond. Any connection from individual homes would have to be paid for by the homeowner.

Most of us have aged septic systems and I consider a sewer line to be an insurance policy against future failure. Replacement of a septic system can cost well into six figures – not to mention the inconvenience. And as you may know your tax bill already includes a sewer tax that cannot be waived despite the fact that none of us have a sanitary sewer.

It is also my understanding that having a sewer connection (or access to a sewer line) will enhance our property values.

I now ask that you contact the Village Board to indicate your support of the project. All of the surveys and engineering have been completed. The section of the project from the sewer line at the Hommocks Middle School to of [sic] Oak Lane already has the required approvals and permits. The final Oak Lane section only needs to have the plans submitted. The Mayor and Board can be contacted by mail at Mamaroneck Village Hall, 123 Mamaroneck Avenue, Mamaroneck, NY 10543 or by email through the Village Clerk, Treasurer, Agostino Fusco who will disseminate your email to the Board or you may email to the individual members whose emails are found on this web page.

I have attached a quick draft of a letter for your convenience. If you have any questions please do not hesitate to call me.<sup>42</sup>

Ms. Felsher responded by email at 1:14 p.m. She wrote: “We agree on the problem with the aging septic system and that the sewer line would enhance property values. I thought the main line going up Hommocks was going to be paid for by a purchaser of one of the homes up on Hommocks by the water. Is that no longer the case?” Mr. Goldstein responded on the same day: “No, he has decided he wasn’t willing to pay for the project himself.”<sup>43</sup>

Mr. Goldstein appeared at the work session held by the Board of Trustees on March 11, 2019. At that meeting, Mr. Goldstein stated:

I know that there is a home that is going to be built at the very end of Hommocks Road that experiences – it’s going to be a tear down to my understanding – they experience severe flooding. My guess is that their field is under water a great deal of the time which means that it’s going to fail or it’s going to be difficult to replace so it’s going to be a demand for them as well.<sup>44</sup>

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<sup>42</sup> Exhibit H.

<sup>43</sup> Exhibit H.

<sup>44</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-3-13-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-3-13-19/).

The discussion at the work session of the Board of Trustees on March 11, 2019 included the following colloquy:

- Trustee Waitt: Are the residents in line, happy with this approach?
- Mr. Goldstein: Some of them are, some of them aren't. I know of at least two residents who just recently put in new septic systems. So they're like I don't want to do this now, I just spent \$45,000 or something. . . . As I said last time, there are people who are willing to donate money into this to help it happen. So that should be further incentive for the Village.<sup>45</sup>

The Board of Trustees discussed the sewer line Mr. Goldstein had proposed again at its work session on March 25, 2019. At that meeting, Mr. Goldstein told the Board of Trustees that there are 14 properties in the Village that could benefit from the construction of the sewer line and he knew that eight residences are definitely interested. He also stated: "As I said earlier, there are private funds that are available to supplement the Village's. So that would help a lot in obviously defraying some of the cost to the individuals. The details obviously would have to be worked out."<sup>46</sup> Mr. Goldstein testified at the hearing that the source of the private funds was Mr. Picket.<sup>47</sup>

The meeting included the following colloquy:

- Mayor Murphy: You know what would make me feel comfortable, more comfortable, if there are 17 residences, if we could get a letter from at least nine of them saying – that's a majority –
- Mr. Goldstein: Nine property owners?
- Mayor Murphy: Yea, exactly. Nine property owners saying I would be interested in hooking up if the Village put in. You know . . . I believe you that there's a lot of people . . . but some day we're going to have to support why we did this and if nine people could just send a letter saying we agree with the idea and we'd like to participate in the program. Would you want the Village to send a letter?
- Mr. Goldstein: I would prefer that since I haven't been in contact with ...

The meeting also included the following colloquy:

- Mr. Goldstein: And again, you're talking about apportionment. I could probably guarantee you at least a third of the estimated amount could be collected from private residents off the bat so that helps to defray the cost.

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<sup>45</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-3-13-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-3-13-19/).

<sup>46</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-3-25-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-3-25-19/).

<sup>47</sup> T2 at 290.

Trustee Wait: We're talking about \$30,000 per residence if you divide 17 into 500. I mean that's quite a lot, right.

Mayor Murphy: Yeah, but you're apportioning it 30 years over their taxes.

Mr. Goldstein: But you're saying that out of five hundred. What if it's only three hundred?

Ms. Goldstein knew that Mr. Goldstein had made three appearances before the Board of Trustees with regard to the sewer line proposal.<sup>48</sup>

Representatives of Last Home LLC appeared before the Planning Board for the first time for a public hearing at the meeting of the Planning Board two days later, on March 27, 2019. Ms. Goldstein was present and participated in the meeting, including the 34-minute discussion of the Last Home LLC application.<sup>49</sup> The video of the hearing shows Ms. Goldstein paying attention, audibly whispering and later asking questions regarding plans for trees and tennis lights. The agenda packages, including the application and all of the supporting documents, were delivered to the Planning Board members, including Ms. Goldstein, five days before the meeting.<sup>50</sup> In part one of the short environmental assessment form dated February 25, 2019 that accompanied that application and was included in the agenda package distributed to Planning Board members in advance of that meeting, Last Home LLC made the following statement: "The existing SSTS, which is within the tidal wetland adjacent area, will be abandoned and the new house will be connected to public sewer via a new (approved) connection." The agenda for the meeting contained the identical description of the proposed work.

Planning Board Chairman John Verni testified that prior to the March 27th meeting, he spoke with Ms. Goldstein at the urging of Village Attorney Robert A. Spolzino to suggest that she recuse herself from the Last Home LLC matter because it involved the potential extension of a public sewer line on Hommocks Road that could be further extended onto Oak Lane. He said that Ms. Goldstein responded that she would consider his suggestion.<sup>51</sup> Ms. Goldstein testified that he did not call her until after the meeting.<sup>52</sup> The Ethics Board finds Mr. Verni's testimony to be credible and compelling.

When asked about the Last Home LLC application at the hearing, Mr. Verni testified as

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<sup>48</sup> T2 at 186.

<sup>49</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

<sup>50</sup> T2 at 188.

<sup>51</sup> T1 at 36-37. Mr. Verni testified that he made the phone call prior to the Planning Board meeting. Ms. Goldstein testified that she received the call after the meeting. T2 at 213. We credit Mr. Verni's testimony.

<sup>52</sup> T2 at 212.

follows:

I think my view is that it was – this seemed like a good application. It was something that the engineering department said that they were in favor of, that there was a benefit to the applicant and was going to be a benefit to the neighbors, and that since it was likely to be approved anyway, Cindy should probably just recuse herself.<sup>53</sup>

Mr. Leventhal asked him on cross-examination, “When you said that it was your understanding that the sewer line would result in a benefit to the neighbors, which particular neighbors were you talking about?” He responded, “The neighbors in the proximity of Hommocks and Oak.”<sup>54</sup>

At the beginning of the Planning Board’s consideration of the matter, Ms. Goldstein made the following statement: “Mr. Chair, may I just mention that I own a home within notification of the proposed wetlands permit application but this particular property is surrounded by a five and a half foot stone wall and the way the properties are configured I can’t even see this house. So, I’m just disclosing this for the record.”<sup>55</sup> Ms. Goldstein did not mention that she owned and lived in one of the homes that could benefit from the proposed sewer line extension. Ms. Goldstein then voted to open the public hearing.

In introducing the application, the architect for the project made the following statements:

“We are proposing to connect to a municipal sewer that our client has already had approved.”

“We’re proposing to remove the existing main house and the septic system. We’re connecting to a municipal sewer that our client has already had approved which is a separate application from this.”

“And then we’re connecting to a proposed and approved municipal sewer.”<sup>56</sup>

In response to a question from Planning Board Member Kathy Savolt about the status of the approvals for the sewer line, Matt Girona from Bibbo Associates made the following statements:

The proposed sewer “would make accommodation for a future extension down Oak Lane.”

“The applicant is actually building a sewer to accommodate 26 homes.”

“So this is a public sewer that the applicant is building.”<sup>57</sup>

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<sup>53</sup> T1 at 38.

<sup>54</sup> T1 at 40-41.

<sup>55</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

<sup>56</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

<sup>57</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

The following colloquy ensued:

Ms. Savolt: So the applicant is going to pay to have a public sewer built. Its first phase is going to serve his home and have capacity to be extended to 25 other homes, a total of 26 homes. That'll be Oak Lane and Hommocks, down Hommocks where people are on septic still at this point.

Mr. Gironda: Yes. In fact, everybody essentially between the end of Oak Lane, the end of Hommocks Road and Hommocks School are all currently on septic. This public sewer would allow for them if they so choose . . .

Ms. Savolt: To hook up.

Mr. Gironda: To hook up.<sup>58</sup>

Mr. Gironda stated later in the meeting: "After construction the applicant is building this."

Even after this discussion, Ms. Goldstein did not disclose that she owned and lived in one of the homes being discussed or other statements with respect to her husband's involvement or that Mr. Gironda had been retained by her husband to design the extension from the line being built by the applicant to Oak Lane. At the conclusion of the presentation, Village Planner Greg Cutler said, "We're recommending that it be treated as a Type II action. You have your discretion." On a motion by Mr. Litman, seconded by Mr. Mendes, the Planning Board voted unanimously, Ms. Goldstein included, to type the action as a Type II action under the New York State Environmental Quality Review Act (SEQRA) and to refer the application to the HCZMC for a consistency determination.

Ms. Goldstein acknowledged that she was aware during the March 27, 2019 Planning Board meeting that Mr. Picket was going to install the sewer line in Hommocks Road. She testified:

Q. What is it you knew Mr. Pickett was not going to do . . . as of March 27th?

A. Well, I saw that it said an approved sewer line, so I knew when I reviewed for the meeting on the 27th, it looked like he was going to be doing this section of it. As of probably the end of February, until that March meeting or when I reviewed the packet probably three days before, I thought he was not doing a sewer line, that he was just renovating his house. I never -- until it appeared on the agenda and I got my packet, I would have never expected to see that address on that application. It would never come to a Planning Board if he's renovating his house. And even putting in a tennis court, that's a special permit from the ZBA. We don't look at this kind of application as a Planning Board. It's not our jurisdiction.

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<sup>58</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

Q. So the "it" was his sewer line, the sewer line that would have extended from Hommocks School down to his house.

A. To his house.

Q. But as of March 23, you got your packet, and you understood that he was going to do that line. Is that correct?

A. Well, I understood a line was going in. I did not know it was being done. Maybe – I did not know. There could have been a sewer district proposed for that section, I don't know.

Q. But then at the meeting, there was discussion at the beginning of the meeting from the architects and engineers for Mr. Pickett. Did you understand from that discussion who was going to pay for the sewer line?

A. It seemed it was Mr. Pickett.<sup>59</sup>

Despite this knowledge, Ms. Goldstein testified that she never considered recusing herself during that meeting.<sup>60</sup> She was asked about this during the hearing:

Q. But why when Oak Lane was specifically discussed, and it was very clear, why did you not raise your hand, or however you would like to make a declaration, and say I would like you all to know I live on Oak Lane and I'm one of the seven homes that might be benefitted?

A. There were many, many other homes that might be benefitted. But I made – I had stated on the record that I was within the notice area. I didn't think I needed to interrupt an applicant in the middle of their initial presentation to forward something that I think I might need to say. It didn't cross my mind.

Q. When Mr. Gironda of Bibbo Associates appeared before Planning Board on March 27th, why didn't you discuss the fact that your husband was a client of Bibbo in connection with the sewer line that Mr. Gironda was being questioned about?

A. It's not relevant.<sup>61</sup>

When asked if she thought the sewer line would be built if the application was not approved, she stated:

Q. Presumably if the wetlands permit was not granted the house wouldn't be built.

A. I know nothing about that.

Q. Did you expect that Mr. Pickett would build the sewer line if he didn't build the house?

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<sup>59</sup> T2 at 226-227.

<sup>60</sup> T2 at 195.

<sup>61</sup> T2 at 195-196.

A. Let me back up for a second. It never crossed my mind. This was a meeting on March 27th. I've explained. I'm a tax attorney and a CPA. April 15th is a very important day for me. Because I knew this particular application would not be finished, would barely even be opened on March 27th, I did not spend a lot of time going through it. That agenda on March 27th had 1400 pages of backup documentation. This was probably the least important application that night. We were going through the motions. Open the meeting, type it for SEQRA and send it to Harbor and Coastal Zone Management, because the Harbor and Coastal Zone Management Commission could completely redo a project. I did not have previous time to spend in engineering or documentation at that point in time when it could all change. So, no, I wasn't looking at it from that point of view.<sup>62</sup>

Ms. Goldstein acknowledged at the hearing that she knew during the March 27, 2019 Planning Board meeting that Mr. Pickett was going to be build the sewer line in Hommocks Road:

Q. During that meeting did you believe the sewer project was alive?

A. I believed that Mr. Pickett was planning to put in a sewer. Yes, of course. But the extension was dead.

Q. What information – the extension was dead. Okay.

A. Which is, if you look at a map, it's the crux of the matter. The manhole comes nowhere near my property. It's many feet away.<sup>63</sup>

Ms. Goldstein testified later at the hearing that if she knew then what she knew today she would not have done anything differently.<sup>64</sup> And contrary to the argument she is making now, Ms. Goldstein did not decline to recuse herself because her vote to type the action under SEQRA was only a "ministerial" act. She testified:

Q. If you had the discretion to do more than just type the SEQR at the meeting would that change your analysis of whether you should be recused?

A. You mean – I don't know.

Q. Was the sense that you had no discretion other than to make a SEQR classification, was that a factor that went into your decision not to recuse?

A. No. Because I knew the facts very well. I knew that there was no benefit to me from this application. It was providing nothing to me that was of value. I couldn't just use the sewer line. It wasn't coming to my house.<sup>65</sup>

On March 31, 2019, Mr. Goldstein sent a letter, by email, to Assistant Village Manager

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<sup>62</sup> T2 at 200-202.

<sup>63</sup> T2 at 223.

<sup>64</sup> T3 at 403-404.

<sup>65</sup> T2 at 237.



Daniel Sarnoff, with copies to the Board of Trustees and the Village Manager, regarding the “Hommocks Road/Oak Lane Sanitary Sewer.” In the letter, Mr. Goldstein made the following statements:

At the Wednesday March 27th meeting of the Village Planning Board they reviewed an application for a Wetlands Permit to allow for the construction of a single family home and other improvements at 203 Hommocks Road. As part of the documentation and presentation the owner committed to building a sanitary sewer line from the Hommocks Road Middle School, up Hommocks Road and apportion of Oak Lane and then along Old Hommocks Road connecting to his property, as shown on pages 3 & 4 of the attached engineering plans. It is my understanding that as part of the Village’s consent to the Building Permits and the County Health Department permits that once construction of the line is complete ownership of the line will be turned over to the Village (and I would assume certain parts to the Town of Mamaroneck). Once this line is in place adding an extension to the end of Oak Lane becomes a much less expensive project than the proposal previously discussed at the previous BOT work sessions.

The new information should make the decision to forgo canvassing of the affected property owners and installation of a sanitary sewer line for the entire neighborhood much simpler. The cost of the extension should be no more than \$150,000. Establishing a “sewer” district and using a pro-rata distribution of the cost across the abutting property owners (the 4 properties nearest the Middle School might be considered in the Town of Mamaroneck) after issuing a 30 year bond would be less that [sic] \$500 per lot per year.

I hope that the Village understand the importance of constructing a sanitary sewer for this area (surrounded by Critical Environmental Areas) and will coordinate the construction of the last section with the construction of the line by the owner of 203 Hommocks Road.<sup>66</sup>

There was no activity before the Planning Board with respect to the application of Last Home LLC between March 27, 2019 and June 26, 2019. In a letter dated June 14, 2019, addressed to the Mayor and Board of Trustees, the Village Manager, the Chairman of the Planning Board, the Chairman of the Ethics Board and the Village Attorney, Ms. Goldstein stated:

On March 27, an application for a wetlands permit for demolition of existing structures and construction of a new home at 203 Hommocks Road appeared on the Planning Board agenda for the first time.

When the matter was called, I stated on the record that I own a home within the notification radius.

The Board opened the hearing and classified the action for SEQRA purposes. No other action was taken.

After the meeting it was suggested that I recuse myself in the matter based on

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<sup>66</sup> Exhibit H.

the speculation that I might benefit in the event a sewer line is approved and installed at the property. As you may be aware, the proposed sewer line does not extend to my property where I could tie in without considerable costs that I would have to pay for.

On May 14, I received a letter from the Ethics Board informing me that the Ethics Board had opened an investigation regarding my participation in the matter.

Because I am committed to the highest standards of ethics in Village government, I consulted a prominent legal expert in the field of local government ethics.

Based on his advice, I believe that my participation in this matter did not give rise to a conflict of interest or a reasonable appearance of impropriety.

Nevertheless, in order to avoid even the speculation that I might benefit from this application as well as any appearance of impropriety whether deemed reasonable or not and to put the matter to rest, I have decided to recuse myself.

Therefore, I will not participate in the discussions, deliberations or vote in connection with the application for a wetlands permit at 203 Hammocks Road.<sup>67</sup>

When asked at the hearing why she recused herself at that time, Ms. Goldstein testified as follows:

Up until March 27th, I did not think Mr. Pickett was doing a sewer line. I knew as of March 27th, the Village was not interested in extending a sewer line and forming a sewer district. So whether Mr. Pickett has a sewer line or not is irrelevant to me. But it seemed appropriate, out of an abundance of caution, and to clear up the matter, since there were so many questions and misinformation around, I decided that I would recuse, and I laid that out in my letter.<sup>68</sup>

On June 19, 2019, the HCZMC adopted a resolution finding the application of Last Home LLC for a wetlands permit to be consistent with the Village of Mamaroneck Local Waterfront Revitalization Plan.

The application of Last Home LLC next appeared on the Planning Board agenda on June 26, 2019.<sup>69</sup> At the beginning of the consideration of the matter, Ms. Goldstein stated:

I have something I would like to say. As I stated at our March 27th meeting when this application first appeared before the Planning Board, my house is located in the notice area and so in order to avoid even the slightest appearance of a conflict of interest I have recused myself on this matter.

Ms. Goldstein left the room after making that statement – which again failed to reference the

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<sup>67</sup> Exhibit I.

<sup>68</sup> T2 at 212-213.

<sup>69</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-6-26-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-6-26-19/).

sewer line or her husband's communications with the Board of Trustees. The proceedings at the June 26th Planning Board meeting include the following colloquy:

Ms. Savolt: I think when you came to us the first time we really just typed it and sent them on their way, right? We didn't really do a thorough review of anything with regard to this, but you mentioned right now the property is on septic and you were going to build a new public sewer pipe.

Mr. Gironda: So the property currently served by public water and there's an existing septic system in the – below the swimming pool in the existing lawn area. The applicant, under a separate application which he has previously submitted and received approval from the Department of Health, in coordination with the Village Engineer as well as the Town Engineer, designed a low pressure sewer system which will be funded and constructed by the applicant which will be a public sewer to extend from as part of this project that he'll be building from the intersection of Oak Lane to the manhole in front of Hommocks School. . . . So, the system was designed for, essentially, all the homes on Hommocks Road that you see identified in these hatched areas as well as every home on Oak Lane. . . . The system and force main was sized to contemplate connections from all these homes in the future if funding is available or the neighbors get together and decide to extend this sewer main further down Hommocks Road or Oak Lane. There is sufficient capacity within that force main to allow that extension.<sup>70</sup>

On motion of Ms. Savolt, seconded by Mr. Mendes, the Planning Board voted unanimously, Ms. Goldstein not participating, to direct the staff to prepare a resolution granting the application of Last Home LLC for a wetlands permit.<sup>71</sup>

The application of Last Home LLC next appeared on the Planning Board agenda on July 10, 2019.<sup>72</sup> At the beginning of the consideration of the matter, Ms. Goldstein stated that she had recused on the matter and left the room. On motion of Ms. Savolt, seconded by Mr. Mendes, the Planning Board voted unanimously, Ms. Goldstein not participating, to adopt a resolution granting the application of Last Home LLC for a wetlands permit.<sup>73</sup>

When Ms. Goldstein was asked during the Ethics Board hearing if after hearing all of the evidence before the Ethics Board, whether she would have handled the Last Home LLC situation

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<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-7-10-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-7-10-19/).

<sup>73</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-7-10-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-7-10-19/).

differently, Ms. Goldstein responded, “I wouldn’t do anything differently.”<sup>74</sup>

### **Hampshire Recreation LLC**

On June 26, 2015, Hampshire Recreation LLC applied for a planned residential development on the 94.5 acre portion of the Hampshire Country Club, which would result in a total of 105 units, consisting of 44 single-family residences and 61 townhouses. The Hampshire property is located at 1025 Cove Road, Mamaroneck, NY 10543. It designated on the tax map of the Town of Mamaroneck as Section 9, Block 35, Lot 700; Section 9, Block 36, Lot 1; Section 9, Block 42, Lots 568, 695 and 367; and Section 9, Block 43, Lots 1 and 12 and on the tax map of the Village of Mamaroneck as Block 72, Parcels 11 and 28.<sup>75</sup> The Hampshire application is still pending before the Planning Board.

The Draft Environmental Impact Statement (DEIS) for the Hampshire project contains an aerial view of the Hampshire site as Exhibit 2-2.<sup>76</sup> It also contains a drawing of the tax map showing the Hampshire site as Exhibit 2-3.<sup>77</sup>

Village Code § 240-21(D)(2) requires that an applicant for a marine construction or reconstruction permit from the HCZMC notify, in writing, all property owners within 400 feet of any boundary line of the proposed site affected by the pending application. Ms. Goldstein’s residence at 5 Oak Road is within the required notice area.<sup>78</sup>

In July 2017, the Goldsteins submitted an application to the Board of Architectural Review of the Village of Mamaroneck with respect to their residence at 5 Oak Lane, which included a survey of their property.<sup>79</sup> Village Engineer Hernane de Almeda, a licensed professional engineer who has studied and taught surveying,<sup>80</sup> testified that the survey submitted by Ms. Goldstein in support of her application to the Board of Architectural Review shows that Ms. Goldstein’s property touches the property of Hampshire Recreation LLC. The northerly property line of Ms. Goldstein’s property at 5 Oak Road is the same line as the southerly line of the Hampshire Recreation LLC property line.<sup>81</sup>

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<sup>74</sup> T3 at 403-404.

<sup>75</sup> Exhibit J.

<sup>76</sup> Exhibit L.

<sup>77</sup> Exhibit L.

<sup>78</sup> Exhibit K.

<sup>79</sup> Exhibit C.

<sup>80</sup> T1 at 100.

<sup>81</sup> T1 at 93-96.

The DEIS describes the Hampshire project as follows:

The Applicant proposes to develop a new Planned Residential Development (“PRD”) of single-family homes and semi-detached carriage houses located on a portion of the existing Hampshire County Club golf course in the Village of Mamaroneck, NY. The proposed PRD consists of 105 residential units (comprising 44 single-family detached housing lots and 61 carriage homes, which consist of 28 two-family and 33 three-family semi-detached housing lots) on the Project Site (the “Proposed Action”). The Proposed Action would also include development of seven tennis courts and 36 acres of common open space. The existing golf course use would be downsized to a 9-hole course to facilitate the development of the PRD. No development is proposed in the MR-zoned area where the existing membership club facilities (including a clubhouse, pool and parking areas) are located; these amenities will remain on the Project Site. Development is limited to the R-20-zoned area in the Village of Mamaroneck.<sup>82</sup>

The DEIS analyzes the potential impacts of the Hampshire project on the community. It contains an analysis of the visibility of the project from the surrounding neighborhood and photo simulations.<sup>83</sup> With regard to drainage patterns and existing stormwater runoff, it states:

In general, the site rainfall runoff drains toward the golf course and then drains to two discharge points (Point A and B) before eventually discharging to the Long Island Sound. Discharge Point A is at the existing pond where Hommocks Road and Eagle Knolls Road intersect. Discharge Point B is at existing pond located at southeast of the property next to Delancey Cove. There are two sets of existing tide gates on the Project Site. At the southwestern end of the Project Site near Hommocks Road, there are two existing tide gates and at the southeastern end of the Project Site near the intersection of Cove Road and Eagle Knolls Road there are three existing tide gates. These tide gates control the input and output of water between the Project Site and Delancey Cove which is tributary to the Long Island Sound. During high tide, the tide gates will close to prevent tidal water from entering the Project Site. After the tidal waters recede, the tide gates will open to release any flooding within the Project Site. The tide gates are sized for a typical tide, not a tidal storm event. Both sets of tide gates were inspected and documented.

Runoff from the proposed development will drain toward the same discharge Points A and B as under existing conditions. There is a reduction in the contribution drainage area to discharge Point A under proposed conditions which offset the increase in peak rates of runoff due to the development, resulting in decreases of the 100-year peak rate at discharge Point A from 116 cfs (existing) to 113 cfs (proposed). Increases in the contribution drainage area to discharge Point B under the proposed development will increase the peak rate runoff to discharge Point B. The 100-year peak rate increases from 189 cfs (existing) to 220 cfs (proposed). The drainage channel draining from the Project Site to Delancey Cove

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<sup>82</sup> Exhibit L at 1-1.

<sup>83</sup> Exhibit L at 3B-3 to 3B-5

would have to be modified to have a minimum 10 feet wide by 4 feet deep in order to convey the increase in peak flowrate.<sup>84</sup>

The analysis of the construction traffic impacts of the Hampshire project contains the following statements:

Construction activity for the proposed development will primarily be divided into three stages, grading, structures and finishing. Once construction of the proposed development commences, it is estimated that there will be approximately 24 trucks per day (on a five-day per week schedule) for the first 9 months of construction. After that, the number of trucks will begin to diminish to 3 or 4 trucks per day as the 105 units are built-out. The exact construction schedule is contingent on the build out rate of the homes; therefore, the duration of the construction period and the final build-out date are unknown at this time. Employee construction traffic activity is expected to be similar to the project traffic levels listed in Table 3M-11, above.

All construction trucks accessing the Project Site will be required to use I-95, exiting at either Exit 17 (to and from the south) or Exit 19 (to or from the north) to use Boston Post Road (US Route 1) to get to and from Hommocks Road and Eagle Knolls Road. There will be no truck access allowed via Orienta Avenue or East Cove Road. When school is in session, truck access to the Project Site will only be permitted between 8:15 am and 2:30 pm, as well as between 4:00 pm and 7:00 pm.<sup>85</sup>

The proposed construction truck routes are depicted in Exhibit 2-19.<sup>86</sup>

The DEIS also addresses the construction noise impacts of the project. It states:

Construction activities associated with the Proposed Action could result in a temporary increase in noise impacts. There is the potential for noise and vibration during construction activities, however, the extent of the construction may be short-term. Noise and vibration impact from construction can vary greatly depending on the types of equipment used and the complexity of the project. . . .

The Proposed Action will be constructed in one phase, with construction of roads and related improvements anticipated to last between 18 and 24 months and residential construction anticipated to last between 24 and 36 months. A total of 55.6 acres of disturbance are associated with construction.

Housing would be constructed when there is a buyer and it is anticipated that about 20 units would be constructed annually. It is estimated that the initial construction period would be approximately 9 months with an estimated 16-yard truck visits per day (or 24 per day on a 5-day week schedule). After that, truck activity is expected to diminish to approximately 3-4 per day as the 105 units are built out.<sup>87</sup>

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<sup>84</sup> Exhibit L at 3F-1 to 3F-5

<sup>85</sup> Exhibit L at 3M-37.

<sup>86</sup> Exhibit L.

<sup>87</sup> Exhibit L at 3R-3.

The DEIS analyzes the construction air quality impacts of the Hampshire project. It contains the following statements:

Construction activities associated with the Project could result in a temporary increase in air quality impacts. The primary source of potential emissions is from fugitive dust resulting from construction operations (e.g., clearing, grading). Fugitive dust consists of soil particles that become airborne when disturbed by heavy equipment operation or through wind erosion of exposed soil after groundcover (e.g., lawn, pavement) is removed.

It is estimated that the initial construction period would be approximately 9 months with an estimated 4,300 16-yard truck visits (or 24 truck visits per day on a 5-day week schedule). After that, truck activity is expected to diminish to approximately 3-4 per day as the 105 units are built out. Therefore, it is expected that these construction-related air quality impacts (i.e. fugitive dust) would be of relatively short duration.

Overall, air quality in the proposed development area is not expected to be substantially affected by the construction of the project because of emission control procedures (described below) and the temporary nature of construction activities. Emissions from the operation of construction machinery (CO, NOx, PM, VOCs, and GHGs (greenhouse gasses)) are short-term and not generally considered substantial. With the implementation of the various mitigation measures to minimize construction-related air quality impacts, no significant adverse impacts would be expected.<sup>88</sup>

The DEIS contains, at, an analysis of the blasting impacts of the Hampshire project. It contains the following statement:

Based on the Preliminary Geotechnical report prepared by GZA Geoenvironmental (Appendix G), shallow bedrock is expected to be encountered by the project in the vicinity of boring GZ-2 (4 feet below existing ground surface) and GZ-6 (3 feet below existing ground surface). Boring GZ-2 is located near the intersection of relocated Eagle Knolls Road and existing Hommocks Road. The existing grade will be cut approximately 2 feet leaving 2 feet to the bedrock. Minor bedrock removal may be required for installation of utilities and foundations. Boring GZ-6 is located in the vicinity of Lot 9. The grade in this area is proposed to be lowered on average of 5 to 6 feet requiring 7 to 8 feet of rock removal. Potential blasting is only anticipated in the area around Boring GZ-6. Based on the GZA Report rock removal will be performed by either mechanical chipping using a hydraulic ram hoe or by blasting performed in accordance with New York State Department of Transportation Geotechnical Engineering Manual #22 "Procedures for Blasting" latest edition.<sup>89</sup>

On August 8, 2019, Hampshire Recreation LLC submitted a proposed Final Environmental Impact Statement (FEIS). The FEIS contains the following statements in the chapter entitled

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<sup>88</sup> Exhibit L at 3S-5.

<sup>89</sup> Exhibit L at 3S-5.

“Introduction and Project Description,” under the heading “Construction Traffic Impacts”:

Submitted comments to the DEIS expressed concern about impacts from construction traffic, including the number of trucks, the access routes taken and impacts on Hommocks Middle School arrival and departure periods. The FEIS provides further details on the number of trucks, routes and travel restrictions, as summarized below.

Construction Traffic - A detailed construction schedule is provided in the FEIS Chapter M Appendix V which includes the anticipated daily and peak hour construction trips by vehicle type. As shown in the table, during the busiest period for construction truck activity (Main Platform Fill) 26 trucks and 25 cars/pickup vehicles are projected to visit the site per day. During the busiest hour, it is projected that 12 trucks and 17 cars/pickups would enter or exit the site. The busiest construction period (Structure/Foundation/Roads/Utilities/Fitout/Spurs Fill) would see approximately 12.5 truck visits on a daily basis with a maximum of 8 truck trips in any hour (see responses to Comments M.1 and M.2).

Truck routes – Trucks would only use Hommocks Road to access the site. The Applicant would work with the Mamaroneck School District to minimize impacts and would anticipate prohibiting trucks from Hommocks Road for 30 minutes on either side of the school’s peak morning arrival period and for 30 minutes on either side of the afternoon departure period.<sup>90</sup>

The FEIS contains the following statements in the chapter entitled “Executive Summary,” under the heading “Response 1.10”:

A detailed construction noise study has been conducted and includes existing ambient noise measurements, predictions of construction noise, an assessment according to applicable state policies and local ordinances, and recommendations for best management practices to reduce construction noise effects. The Construction Noise Study is attached as FEIS Appendix Y. As discussed, construction noise levels would increase existing ambient conditions by more than 10 dBA at certain locations close to the proposed earthwork construction. Although noise levels would not exceed 65 dBA (Leq), best management practices to reduce construction noise would be implemented. The predominant source of construction noise would be the stationary equipment. In efforts to reduce potential noise impacts during construction, noise reduction measures would include limitations to certain daytime and weekday hours, locating stationary construction equipment far from noise-sensitive sites, and use of temporary noise barriers, among others. With the implementation of these noise reduction measures, no significant noise impacts are anticipated.<sup>91</sup>

The FEIS contains the following statements in the chapter entitled “Executive Summary,” under the heading “Response 1.11”:

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<sup>90</sup> Exhibit M at 1-22.

<sup>91</sup> Exhibit M at 3-6.



Under the Proposed Action, the most significant period of construction truck traffic (and associated noise and air quality effects) would occur in the first nine months when the central development platform is being prepared. The additional platforms accommodating the relocated portion of Eagle Knolls Road, the extended Cooper Avenue, and the new internal roadway "Road A" would be developed beyond the first nine months.<sup>92</sup>

The FEIS contains the following statements in the chapter entitled "Project Description," under the heading "Response 3.9":

Once construction of the proposed development commences, it is estimated for Step 1 that there would be approximately 24 soil fill trucks per day (on a five-day per week schedule) for the first 9 months of construction to perform excavation and filling to construct realigned Cove Road and adjacent single-family lots. After that, the number of soil fill trucks would begin to diminish to 3 or 4 trucks per day as the 105 units are built-out. Housing would be constructed pursuant to pre-sales and it is anticipated that about 20 units would be constructed yearly. However, the exact construction schedule is contingent on the build out rate of the homes; therefore, the duration of the construction period and the final build-out date are unknown at this time.<sup>93</sup>

The FEIS contains the following statements in the chapter entitled "Project Description," under the heading "Response 3.47":

The Proposed Action does not include the removal of the golf course. It proposes to keep a nine-hole course. Further, the DEIS states on page 2-18 "the club expects, based on their professional experience running events at the club and operating golf courses that, both the number of members and the number of events held at the club annually to remain at their current levels once the project is complete."<sup>94</sup>

The FEIS contains the following statements in the chapter entitled "Geology – Soils, Topography and Steep Slopes," under the heading "Response C-13":

As discussed on page 3C-5 of the DEIS, rock removal is anticipated to meet the proposed grades for the project. An area of bedrock removal has been identified in the vicinity of lot 9 based on borings performed by GZA (as shown in Appendix N and in Figure 10b in FEIS Appendix C). Bedrock would be required to be removed up to 5 to 6 feet to meet the proposed surface grade, and additional removal would be required to accommodate the basements for residences in the vicinity. Based on the character of the rock, it is expected that blasting would be required to achieve proposed grade. No chemical removal of bedrock is proposed. During construction careful attention must be paid to the

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<sup>92</sup> Exhibit M at 3-7.

<sup>93</sup> Exhibit M at 3-20.

<sup>94</sup> Exhibit M at 3-40.

neighboring properties during construction.<sup>95</sup>

The FEIS contains the following statements in the chapter entitled “Surface Water Courses and Wetland,” under the heading “Response E.6”:

As detailed in DEIS Section F, the Project Site currently contains three drainage systems comprised of the site wetlands features (seven ponds and two vegetated wetlands), as well as drainage pipes and several drainage ditches that channel runoff to two discharge points (Points A and B). Discharge Point A occurs at the existing golf course pond located to the north of the intersection of Eagle Knolls Road and Hommocks Road (“Pond 13,” see DEIS Exhibit 3E-1). Discharge Point B occurs at the golf course pond located to the southwest of the intersection of Eagle Knolls Road and Cove Road and adjacent to Delancey Cove (“Pond 10,” see DEIS Exhibit 3E-1). The two ponds in turn discharge to Delancey Cove/Long Island Sound via drainage pipes and tide gates. The Tide gates keep salt water from the adjacent Long Island Sound from entering the site removing the potential for Brackish water accumulation on site. Salt water does intrude during storms greater than the 5-year storm that breaches the tide gate berm at the Delancey Cove tide gates and during greater storms that seep in from the Hommocks Road wetlands. This causes an accumulation of brackish water at the site outfalls that will discharge through the tide gates at the conclusion of the storm. . . .

Pond 10 adjacent to the tide gate is expected to experience an increased contribution of approximately 17% during significant rain events. If the tide gate is open, water will be immediately released that there will not impact water elevation in Pond 10. If rainfall accumulates while tide gates are closed, water will rise the area of Pond 10 by approximately four additional inches and then discharge through the tide gate when tide drops identical to what occurs today. For Pond 13, the proposed discharge is nearly identical to existing conditions under the Proposed Action and no changes are expected. . . .

During heavy rains in the spring and fall, Ponds 5 and 6 have insufficient capacity to impound accumulated water and water is pumped to the south into the drainage ditch which runs under Eagle Knolls Road and discharges to Delancey Cove. If water was not pumped from this area during in response to large storm events, the rainwater would accumulate and pond in the areas of existing golf holes 5 and 6 (proposed golf holes 8 and 9).

Under the Proposed Action water from the residential lots would discharge to the golf course areas and be managed in the pipe and drainage ditch network. As noted, above the design of the distribution of the flow has been maintained at current levels with the exception of discharge through the Delancey Cove flood gates and channel under culverts in the vicinity of Eagle Knolls Road which would increase 17%. To address these flows, the drainage channel to Delancey Cove is proposed to be upgraded to handle increased flow.<sup>96</sup>

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<sup>95</sup> Exhibit M at 3C-8 to 3C-9.

<sup>96</sup> Exhibit M at 3E-6 to 3E-8.

The FEIS contains the following statements in the chapter entitled “Traffic, Transit and Pedestrians,” under the heading “Response M.1”:

A comparison of existing and future conditions was conducted by the civil engineer to determine how much compacted fill would be required for the Proposed Action. It was determined that the Project site would require a total of 84,100 cubic yards (CY) of compacted fill. The clean fill would be brought to the site uncompacted, and, based on industry standards, it was determined that one-third more fill would need to be brought to the site (112,140 CY) than the volume it would occupy when it is compacted properly, as required. The volume of import general fill was based on three-dimensional computer modeling of the site for the 84,100 CY compacted in place volume required. See Earthwork section of DEIS for calculations.

The 112,140 CY of uncompacted fill would be brought in 16 CY capacity trucks. The total number of trucks required to bring the fill to the site is 7,009 (divide 112,140 CY uncompacted fill by 16 CY truck). Therefore, assuming a nine-month duration for the primary fill phase (the central platform), 36 months for the secondary fill phase (project buildout and the secondary platforms), and 20.5 full workdays per month, 24 fill trucks per day would visit the Project Site during the primary fill phase and 3.5 fill trucks per day would visit the Project Site during the secondary fill phase. Accounting for other construction activities in addition to fill trucks, total trucks would amount to 26.2 during the first nine months and between 8.2 and 12.5 during the following 36 months.<sup>97</sup>

The FEIS contains the following statements in the chapter entitled “Traffic, Transit and Pedestrians,” under the heading “Response M.2”:

During the peak truck activity construction phase, it is anticipated that, on average, there would be 26 daily truck visits (24 fill trucks plus 2 general delivery trucks) with a maximum of approximately 6.5 truck visits (13 truck trips) occurring in a one-hour period. See Response to Comment M.1. Converting to truck trips from round trips, during the busiest hour of the busiest construction period, there are expected to be 8 truck trips and 33 private automobile trips (construction workers), for a total of 41 peak-hour trips.<sup>98</sup>

The FEIS contains the following statements in the chapter entitled “Traffic, Transit and Pedestrians,” under the heading “Response M.18”:

As detailed in the response to Comment M.1, The total number of trucks required to bring the fill to the site is 7,009 over a 47-month period (see tables in FEIS Appendix V). An additional 6,900 trucks are expected to visit the site for other construction activities over the course of the entire 52 months of construction. Combined, an average of 13.4 trucks per day are projected to visit the site during the 52-month construction period. During the primary fill phase, which is the busiest phase for construction truck activity), the project is expected

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<sup>97</sup> Exhibit M at 3M-1.

<sup>98</sup> Exhibit M at 3M-2 to 3M-3.

to add 13 truck trips and 17 construction-employee personal vehicle trips in the busiest hour. See also the Response to Comment M.1.<sup>99</sup>

The FEIS contains the following statements in the chapter entitled “Environmental Contamination,” under the heading “Response Q.1”:

Based on the chemical properties of the contaminants of concern, there is a low health risk of exposure to nearby property owners. The only elevated levels of contaminants found in the soil were arsenic, lead and six pesticides (4,4'-DDD, 4,4'-DDE, 4,4-DDT, Aldrin, alpha-Chlordane, and Dieldrin). . . .

The Plan proposes to undertake air monitoring, which includes organic vapor and particulate matter. Monitoring for organic vapors would be conducted during the first three days of ground intrusive activity to determine if further monitoring is warranted.<sup>100</sup>

The FEIS contains the following comment by Ms. Goldstein, in her capacity as Chair of the HCZMC, in the chapter entitled “Environmental Contamination:”

There are concerns that there is no remediation plan for proposed open space areas. There is concern that if open space areas are not subject to remediation, there still may be impacts to the 55 to 60 acres to be developed as well as to nearby properties.<sup>101</sup>

The FEIS contains the following statement in the chapter entitled “Noise,” under the heading “Response R.5”:

The Construction Noise Study included in FEIS Appendix Y details noise from trucking operations and stationary equipment and compares the sound levels from construction activities to existing conditions. As analyzed in the Construction Noise Study, the predominant source of construction noise would be the stationary equipment, since trucking operations and pass bys generate relatively brief noise exposure at approximately ten seconds. The Construction Noise Study finds that construction would generate noise levels ranging from 49 to 65 dBA.<sup>102</sup>

The FEIS contains the following statement in the chapter entitled “Air Quality,” under the heading “Response S7”:

Pursuant to the NYSDEC’s Regulations and standards, the delineated soil with elevated levels of arsenic, lead or other materials would be excavated and relocated under the core of the soil platform to ensure isolation from the proposed development with a minimum of two feet of clean soil cover.<sup>103</sup>

The construction plan included in the FEIS as Appendix G – “Preliminary Construction

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<sup>99</sup> Exhibit M at 3M-12.

<sup>100</sup> Exhibit M at 3Q-2.

<sup>101</sup> Exhibit M at 3Q-12.

<sup>102</sup> Exhibit M at 3R-3.

<sup>103</sup> Exhibit M at 3S-6.

Work Plan,” contains the following statement at page 8 under the heading “Construction Truck Traffic”

All construction trucks accessing the Project Site will be required to use I-95, exiting at either Exit 17 (to and from the south) or Exit 18 (to or from the north) to use Boston Post Road (US Route 1) to get to and from Hommocks Road and Eagle Knolls Road. There will be no truck access allowed via Orienta Avenue or East Cove Road. When school is in session, truck access to the Project Site will only be permitted between 8:15 am and 2:30 pm, as well as between 4:00 pm and 7:00 pm. Construction truck routes are depicted in Exhibit 2-19.<sup>104</sup>

The Planning Board held a public hearing on the DEIS on February 14, 2018. A copy of the transcript of the public hearing is included in the FEIS as Appendix A. Steven Kass, Esq., an attorney with the Carter, Ledyard & Milburn law firm, who represents the Mamaroneck Coastal Environmental Coalition, made the following comment at the DEIS public hearing, as set forth on page 44 of the transcript:

[T]his project would, one, require massive amounts of fill to be imported to the floodplain for more – and far more than the 80,000 – 84,000 cubic yards conceded by the applicant.<sup>105</sup>

Neil Porto, a professional engineer retained by the Carter, Ledyard & Milburn law firm to analyze the DEIS, made the following comments at the DEIS public hearing:

So we found [sic] that the expected fill would be 13 well above the 84,000 cubic yards identified in the site, and we're going to talk a little bit about why. Our findings indicated net fill of over 270,000 cubic yards as part of the basic preferred alternative . . .<sup>106</sup>

So factoring all of this, we predict that the – could require 100 to 140 truck round trips per day. So for the traffic analysis, that's 200 to 280, because the truck has to come in and has to go out. So we think that the impact of these trips should really be studied and could greatly exceed that in the DEIS.<sup>107</sup>

Norman Hinerfeld, who resides at 11 Oak Lane, which is adjacent to the Goldstein residence at 5 Oak Lane, made the following statement at the DEIS public hearing, as set forth on pages of the public hearing:

I bought and built my house in 1969 on 11 Oak Lane. I'm a close neighbor of Hampshire. I own one-third of that big pond that's two-thirds owned by Hampshire, and Hampshire earthenware dam, which holds back the ocean water, ends up abutting my property. So I'm a close neighbor.

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<sup>104</sup> Exhibit M.

<sup>105</sup> Exhibit M at 44.

<sup>106</sup> Exhibit M at 69.

<sup>107</sup> Exhibit M at 75.

In 1992, the storm that was referred to where one of our neighbors died, the water came rushing out of the golf course, over into my property and in my cellar. In the house, we had five feet of water. Because Hampshire was built originally on a floodplain, which – you have rivers and streams pouring in water, hoping to get out to the sound with a dam blocking it.

So what happens? The water builds up in the golf course, and the only way it can get out is to go south, where my house is and a string of other homes along Hommocks Road.

Five years ago, this whole procedure happened again, and this time, I had six feet of water in my basement. And looking at five and ten-year projections of the rise of the sea water, I probably will find the next storm is going to be in the living quarters of my home.

And what I'm trying to point out is that the construction they are talking about is going to redirect where all this water has to go, and I would think that Oak Lane and Hommocks Road is in great danger of being washed away with no other changes than what the builders here are proposing.<sup>108</sup>

Paul Cantwell, who resides at 3 Oak Lane, adjacent to the Goldstein residence on the other side, made the following statement at the DEIS public hearing, as set forth on pages of the public hearing:

I am the president of the Hommocks Road Property Owners Association. Actually, we don't cover all of Hommocks Road. We only cover it from the top end of Hommocks Road, where Oak Lane branches off. I live at Three Oak Lane, and so I overlook the 10th Hole. And I would just like to reinforce a point Norman made, which is when water flows in there, and it has done on a regular process, this is not a slow seepage. This is high-velocity seepage. It's actually moving at quite a pace. I've stood there and actually watched it come through.<sup>109</sup>

The Planning Board continued the public hearing on the DEIS on April 11, 2018. A copy of the transcript of the public hearing is included as Appendix A of the FEIS.

As Chair of HCZMC, Ms. Goldstein heard the Hampshire application on June 15, 2015, January 17, 2018, February 21, 2018, March 22, 2018, and April 18, 2018. Although each of the 2018 meetings occurred after Ms. Goldstein moved to 5 Oak Lane, she never disclosed the proximity of her home to the Hampshire property while a member of the HCZMC.

At the January 17, 2018 meeting, HCZMC reviewed the Hampshire application as an involved agency. During the hearing, Ms. Goldstein made the following statement regarding the impact of flooding on Hampshire's neighboring properties:

I think with the plan as it is, the people in the new development would

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<sup>108</sup> Exhibit M at 148 to 149.

<sup>109</sup> Exhibit M at 172-173.

probably be on their island, in the case of the next hurricane and the major storm. It is not a question of if, it is a question of when. But there are other low-lying residences along Hommocks Road so the water has to go somewhere and if you have all this fill and you've built everything up and we saw how inundated the entire site was – somebody died there because they got out of their car – I mean there is a lot of water there and Sandy was no exception. I saw that first hand, the roads were blocked, so I think we need to worry about protecting adjacent homeowners.<sup>110</sup>

At the February 21, 2018 meeting, HCZMC reviewed the Hampshire application as an involved agency. During the hearing, Ms. Goldstein requested information on the effects of soil contamination as a result of the Hampshire development, as follows:

Can we move onto the contamination because I think some Commissioners, myself included, were a little horrified to hear that the plan was basically to put in a basement and use the foundation to cap this...<sup>111</sup>

At the March 22, 2018 meeting, Ms. Goldstein provided commentary for the Planning Board on rising sea-levels, groundwater testing and emergency vehicle access pertaining to the Hampshire application.<sup>112</sup>

At the meeting on April 18, 2018, Ms. Goldstein requested that additionally commentary be added to their memo to the Planning Board regarding the impact of contaminated soil, as follows:

I have a few little things that I saw but otherwise I think we're in pretty good shape.

I think under #2, we ask for more information regarding the location of and effects...so I think we wanted to identify where the cutting and filling and contaminated soils were, and maybe the answer is everywhere, but um, I think that was one thing that I thought was missing.<sup>113</sup>

The Hampshire application was discussed by the Planning Board, during Ms. Goldstein's tenure as a member of the Planning Board, on December 12, 2018, January 9, 2019, April 10, 2019, June 12, 2019, July 10, 2019, July 24, 2019, September 10, 2019, September 11, 2019 and September 25, 2019. During her tenure as a member of the Planning Board, Ms. Goldstein has never disclosed the proximity of her home to the Hampshire property.

At the meeting on December 12, 2018, Ms. Goldstein asked Mr. Mesinger, the Village's environmental consultant with respect to the Hampshire application, to look into soil testing. She

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<sup>110</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-hczm-meeting-1-17-18/](https://lmctv.org/videos_list/village-of-mamaroneck-hczm-meeting-1-17-18/).

<sup>111</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-hczm-meeting-2-21-18/](https://lmctv.org/videos_list/village-of-mamaroneck-hczm-meeting-2-21-18/).

<sup>112</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-hczm-meeting-3-22-18/](https://lmctv.org/videos_list/village-of-mamaroneck-hczm-meeting-3-22-18/).

<sup>113</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-hczm-meeting-4-18-18/](https://lmctv.org/videos_list/village-of-mamaroneck-hczm-meeting-4-18-18/).

stated:

Can I throw another one in there? Soil testing. We know as its been operated as a golf course for many, many years, um it's common practice to use pesticides, herbicides. From limited testing, we know there's arsenic, there's lead, there's all sorts of stuff in that soil. What happens when it starts to be moved around and is it normal to test – I mean it's 98 acres – where do you test? I mean I would think you'd need extensive testing in many locations to really see what's there because I think some of this, once it's airborne, um is a problem and it also could be a problem seeping into people's basements.<sup>114</sup>

On January 8, 2019 and January 9, 2019, Ms. Goldstein submitted a series of comments on the final environmental impact statement to Mr. Mesinger in connection with the Hampshire application.<sup>115</sup>

At the meeting on January 9, 2019, Ms. Goldstein requested additional information on hydraulic equivalency with respect to 100-year flooding and tidal flooding, including the following:

...so not being an engineer, um, I'm interested in understanding more about the hydraulically equivalent volume of excavated material and how that impacts things. There are statements that the 100 year flood at Hampshire property occurs as a result of tidal flooding rather than a rainfall. I think anecdotally, looking at pictures and looking at the site after not a particularly heavy rain, there's significant ponding there. So I am not positive that it's only tidal flooding that is affecting things so I want someone who knows something about this to prove it.<sup>116</sup>

Ms. Goldstein again asked for additional information and clarification with respect to the floodplain, impact on wetlands, traffic, contamination and sewage at a special work session with respect to the Hampshire application on September 10, 2019. Specifically, Ms. Goldstein stated:

Oh, I think under traffic, we were talking about – I guess there's traffic during construction and then there's traffic after people have moved in. So I think there was a question about whether or not the truck traffic during construction were roundtrips or one-way trips. And there also is no information, since now, um, natural gas is not currently an option for these residences, the propane trucks – the frequency of trips for 96 homeowners with individual tanks of propane.

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And then so my other question, out of the geotechnical data for groundwater and rock, um, the other big topic here is environmental contamination because on one hand we say it's a golf course and on the other hand we say that everything is pristine and clean, and there's no arsenic, or it's not...

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<sup>114</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-12-12-18/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-12-12-18/).

<sup>115</sup> Exhibit N.

<sup>116</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-9-10-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-9-10-19/).



but when you come across a patch of contamination of something that would go airborne, there are also things you have to do so I don't want to sort of gloss over it and wait until the arsenic is released in the air before someone figures out there's a problem.<sup>117</sup>

The Mamaroneck Coastal Environment Coalition, in an email dated June 20, 2019, made the following statement:

Risks Associated with Toxins. Unanswered questions remain about the dangers of airborne pollutants from the contaminated golf course (arsenic, lead and other toxins were evident in tests conducted by Hampshire), including:

Spreading of toxins as massive earthmoving is undertaken to cut/blast and then move soil to create the housing platforms, potentially impacting neighbors and the Hommocks Middle School children and staff.<sup>118</sup>

Ms. Goldstein has never disclosed during the Hampshire proceedings before the Planning Board that she resides at 5 Oak Lane and has never recused herself from participating in the Planning Board's consideration of the matter. When asked if, after hearing all of the evidence before the Ethics Board, she would have handled the Hampshire matter differently, she engaged in the following colloquy with the Ethics Board Chair:

Q. In light of all you know from the testimony to date, the documentary evidence presented and any other information you have seen, gained in any other way, would you do anything today different with respect to your participation in the Hampshire matter?

A. No.

Q. Whether it relates to disclosure?

A. No.

Q. So you would say you don't have a disclosure obligation and you don't have a – you don't feel like you have a disclosure obligation?

A. I do not.

Q. Do you plan to participate in any future matters concerning the Hampshire application?

A. Yes.

Q. And do you plan to make any disclosures at those meetings?

A. No.<sup>119</sup>

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<sup>117</sup> Id.

<sup>118</sup> Exhibit P.

<sup>119</sup> T3 at 428-429.

### **Proceedings before the Ethics Board**

When the Ethics Board became involved in the Hampshire matters, in January of this year, it advised Ms. Goldstein, by memorandum dated January 25, 2019, that she should consider whether the sections 21-4 N (Disclosure) and 21-4 C (Recusal) of the Code of Ethics applied to her participation in the Hampshire matter because of the proximity of her residence to the Hampshire property. By letter dated January 26, 2019, Ms. Goldstein responded that she believed she was neither required to disclose the proximity of her property to the Hampshire site nor to recuse herself from the matter because she has no direct or indirect interest in the matter, that her property does not abut the Hampshire property and that, even if it did, there is nothing in the Code of Ethics that requires recusal “where a volunteer’s property ‘abuts’ an applicant.” She explained in the letter that, “As both an attorney and a CPA I am well aware of my ethics obligation.” The Ethics Board, in a memorandum to Ms. Goldstein dated January 30, 2019, noted its disagreement with her analysis and invited her to discuss the matter at the next meeting of the Ethics Board, which would be held on February 6, 2019. On March 12, 2019, Ms. Goldstein met with two members of the Ethics Board, Jefferson Meighan and Michael Newgaard, to discuss Ms. Goldstein’s recusal from the Hampshire matter. At that meeting, those Ethics Board members were seeking her input and to gather information from Ms. Goldstein to determine if there were any factors in addition to the location of her property relative to Hampshire that were relevant for Ethics Board’s consideration.

By letter dated May 14, 2019, Mark Ettenger, the Chairman of the Ethics Board, notified Ms. Goldstein that the Ethics Board was opening an investigation into potential violations of the Code of Ethics in connection with Ms. Goldstein’s participation in the Last Home LLC and Hampshire matters. By letter dated May 15, 2019 to Village Attorney Robert A. Spolzino, citing Mr. Ettenger’s letter, Ms. Goldstein requested indemnification and defense from the Village pursuant to Chapter 36 of the Village Code. Mr. Spolzino acknowledged his receipt of the letter. By letter dated May 20, 2019, Steven Leventhal, Esq., of Leventhal, Mullaney & Blinkoff, LLP, notified Mr. Ettenger and the members of the Ethics Board that his firm had been engaged by Ms. Goldstein in connection with the investigation.

On June 14, 2019, Deputy Village Attorney Edward A. Smith spoke with Mr. Leventhal by telephone. In the conversation, Mr. Leventhal, on behalf of Ms. Goldstein, requested a meeting with the Ethics Board. By letter dated June 14, 2019, to Mr. Leventhal, Mr. Smith confirmed that the Ethics Board was willing to meet with Ms. Goldstein. In the same letter, Mr. Smith requested

that Ms. Goldstein and Mr. Goldstein produce documents regarding the Last Home LLC matter, the Goldstein's septic system, and the Hampshire Recreation LLC matter.

On July 2, 2019, the Ethics Board met with Ms. Goldstein to discuss the Last Home LLC and Hampshire Recreation LLC matters. On the same day, Ms. Goldstein submitted 74 pages of documents in response to Mr. Smith's request.<sup>120</sup> On July 15, 2019, Mr. Leventhal submitted a memorandum of law to the Ethics Board setting forth his argument as to why Ms. Goldstein had not violated the Code of Ethics in either matter.

By notice dated July 31, 2019, the Ethics Board notified Ms. Goldstein that it had determined that she may have violated the Code of Ethics in connection with the application of Last Home LLC and that a hearing would be held with respect to the possible violation at a time to be determined. On August 12, 2019, Mr. Ettenger, Village Attorney Robert A. Spolzino and Deputy Village Attorney Christy Mason, on behalf of the Ethics Board, met with Ms. Goldstein and Mr. Leventhal to discuss the possibility of Ms. Goldstein recusing herself from the Hampshire matter. Ms. Goldstein refused to do so. By notice dated September 16, 2019, the Ethics Board notified Ms. Goldstein that it had determined that she may have violated the Code of Ethics in connection with the application of Hampshire Recreation LLC and that a hearing would be held with respect to the possible violation at a time to be determined.

By letter dated October 2, 2019, Mr. Spolzino provided Mr. Leventhal with a proposed witness list for the hearing. By letter dated October 2, 2019, Mr. Leventhal (i) confirmed that he had received the witness list and asked Mr. Spolzino to identify the matter with respect to which each witness would be providing testimony; and (ii) requested that the Ethics Board issue charges with more particularity. By notice dated October 18, 2019, the Ethics Board provided Mr. Leventhal with a more definite statement of the charges relating to both Last Home LLC and Hampshire matters.

By notice of motion dated October 2, 2019, Mr. Leventhal moved to recuse or disqualify Deborah Chapin, a member of the Ethics Board, with respect to the Goldstein matters. By decision dated October 10, 2019, the Ethics Board determined that it did not have the authority to rule on Mr. Leventhal's request to disqualify Ms. Chapin because Village Code § 21-13(E) prohibits the Ethics Board from conducting an investigation into its members. The Village Attorney, on behalf of the Ethics Board, transmitted a copy of the complaint to the Village Manager, as required by Village Code § 21-13(E).

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<sup>120</sup> Exhibit H.

By letter dated October 21, 2019, Mr. Leventhal requested that the Ethics Board issue two separate notices of the proceedings, one with respect to Last Home LLC and one with respect to Hampshire Recreation LLC. By letter dated October 24, 2019, Mr. Spolzino provided Mr. Leventhal with two separate notices of the proceedings, an update on the hearing schedule, and updated witness list and an overview of the hearing procedure. On Tuesday, October 29, 2019, Deputy Village Attorney Christy Mason provided Mr. Leventhal with (i) two draft statements of undisputed facts, one pertaining to Last Home LLC and one pertaining to Hampshire Recreation LLC, (ii) an Exhibit List, and (iii) a flash drive containing the record.

On Tuesday, October 29, 2019, the Ethics Board commenced a hearing regarding the charges outlined in the Notice of Proceedings. At the hearing, the Ethics Board heard testimony from John Verni, with respect to Last Home LLC; Hernane de Almeida, Village Engineer of the Village of Mamaroneck, with respect to Last Home LLC and Hampshire Recreation LLC; and Kathleen Savolt, with respect to Last Home LLC and Hampshire Recreation LLC. The Ethics Board continued the hearing on Thursday, October 31, 2019, hearing testimony from Mr. Goldstein and Ms. Goldstein with respect to the Last Home LLC matter. The Ethics Board continued the hearing on Friday, November 15, 2019, at which time Ms. Goldstein called as expert witnesses Andrew Tung, an architect, landscape architect and attorney and Carol Vergara, a real estate appraiser as expert witnesses before testifying herself. The Ethics Board concluded the hearing on Friday, November 22, 2019, after hearing testimony from Ms. Goldstein's other expert witness, Professor Patricia Salkin, and concluding statements by Ms. Goldstein and Mr. Leventhal.

The Ethics Board deliberated on this matter after the conclusion of the testimony on November 22, 2019 and at meetings on November 27, 2019 and November 29, 2019.

## **Discussion**

### **Last Home LLC**

The charges against Ms. Goldstein with respect to Last Home LLC allege that she violated the Code of Ethics by failing to recuse herself from acting on that application at the Planning Board meeting on July 27, 2019 and by failing to disclose her direct or indirect interest in the outcome of the application. The specific charges as previously provided to Ms. Goldstein by notice dated July 31, 2019, are as follows:

## **1. Village Code § 21-4(C)**

Village Code § 21-4(C)(1) requires that every member of a Village board “recuse himself/herself from acting on a matter before the Village when acting on the matter, or failing to act on the matter, may benefit the persons listed in § 21-4A, financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.” Among the persons listed in § 21-4(A) are the board member and “[a] member of his or her household.”

On or about February 28, 2019, Last Home LLC applied to the Planning Board of the Village of Mamaroneck for a wetland permit with respect to premises located at 203 Hommocks Road in the Village of Mamaroneck. The application included the construction of a sewer line to be constructed in Hommocks Road to serve the premises at 203 Hommocks Road. If the sewer line were extended, it would also have the capacity to serve Ms. Goldstein’s residence at 5 Oak Lane in the Village of Mamaroneck. At or about and/or prior to that time, Ms. Goldstein’s husband, Mr. Steven Goldstein, had discussed with the principal of Last Home LLC constructing the sewer line so that the sewer line could also serve the Goldstein residence and the residences of other neighbors. Mr. Goldstein appeared before and sent letters to the Board of Trustees of the Village of Mamaroneck in or about that time to advocate for a special improvement district to construct the sewer line.

Ms. Goldstein is a member of the Planning Board. On or about March 27, 2019, Last Home LLC appeared before the Planning Board in connection with its application for a wetland permit. Ms. Goldstein was aware of the proposed sewer line prior to that meeting, was aware of Mr. Goldstein’s appearances before and letters to the Board of Trustees with respect to the proposed sewer line and was aware that if the proposed sewer were built at the expense of Last Home LLC, as a condition of its wetland permit, Mr. and Mrs. Goldstein would benefit from the construction of the sewer line because it would reduce the cost of providing public sewer service to their residence and might enhance the value of their property. Ms. Goldstein was also aware at the March 27, 2019 meeting, as a result of statements made at that meeting, that the sewer line project would continue. Despite this knowledge, Ms. Goldstein did not recuse herself with respect to the application of Last Home LLC, participated in the consideration of, and acted on, the Last Home LLC application as a member of the Planning Board at the March 27, 2019 meeting.

By failing to recuse herself before acting on the application of Last Home LLC before the Planning Board and acting on the matter as a member of the Planning Board, Ms. Goldstein violated Village Code § 21-4(C)(1).

## **2. Village Code § 21-5(C)**

Village Code § 21-5(C) requires that “[a]ny Village officer, board member, employee, or consultant who has a direct or indirect private interest in any transaction under consideration by a board, court, commission, district, department, committee or agency of the Village or in any property which may be affected by such transaction, or whose relative has such a private interest, shall

publicly disclose the nature and extent of that private interest on the record of the board, court, commission, district, department, committee, or agency before which such transaction is pending and shall file a copy of such disclosure with the Village Clerk-Treasurer.”

For the reasons stated above, Ms. Goldstein and her relative, Mr. Goldstein, had a direct or indirect private interest in the application of Last Home LLC before the Planning Board. Ms. Goldstein did not publicly disclose the nature and extent of that interest on the record of the Planning Board and did not file any disclosure with the Village Clerk-Treasurer.

By failing to publicly disclose the nature and extent of that interest on the record of the Planning Board and failing to file a disclosure with the Village Clerk-Treasurer, Ms. Goldstein violated Village Code § 21-5(C).

### 3. Village Code § 21-4(N)

Village Code § 21-4(N) provides that “[t]o the extent that she/he knows thereof, any Village officer, board member and/or employee with respect to matters in which she/he participates or in which her/his board is involved in the decision-making process, shall specifically and fully disclose on the official record of the Board of Trustees at a regular public meeting thereof the nature and extent of any direct or indirect interest in legislation or official action pending before the Village.”

For the reasons stated above, Ms. Goldstein had a direct or indirect private interest in the application of Last Home LLC before the Planning Board and participated as a member of the Planning Board in the decision-making process with respect to that application. Ms. Goldstein did not specifically and fully disclose the nature and extent of that interest on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees.

By failing specifically and fully disclose the nature and extent of her interest in the application of Last Home LLC on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees, Ms. Goldstein violated Village Code § 21-4(N).

Simply stated, the Code of Ethics requires prompt recusal by a member of the Planning Board “when acting on the matter, or failing to act on the matter, **may benefit the [member or his or her spouse], financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.**” (Emphasis added.) Disclosure is required in any matter where the member has a “direct or indirect private interest” in the matter or “in any property which may be affected.” The Code of Ethics defines “interest” as “a direct or indirect pecuniary or material benefit.”

The Village's Code of Ethics is not identical in this regard to the State Code of Ethics.<sup>121</sup> The Village Code was intended, as former Mayor Kathleen Savolt, who presided over the adoption of the Code of Ethics, noted in her testimony, to be more strict than the State Ethics Code<sup>122</sup> and it specifically provides that "[t]o the extent this chapter is inconsistent with the provisions of § 808 of the General Municipal Law, the more restrictive provision applies."<sup>123</sup> The State Ethics Code defines "interest" as only "a direct or indirect pecuniary or material benefit"<sup>124</sup> and, unlike the Village's Code of Ethics, does not mandate recusal for "the reasonable appearance of a conflict of interest or impropriety."<sup>125</sup>

Here, the record establishes that Ms. Goldstein, and Mr. Goldstein, could, and likely would, benefit financially or otherwise from the installation of the sewer line on Hommocks Road by Last Home LLC, that Ms. Goldstein knew about that benefit on March 27, 2019, when the Last Home LLC application was before the Planning Board, that she did not disclose that interest to the extent and in the manner required by the Code of Ethics and that she did not recuse herself from participating in the Planning Board's consideration of the application. In fact, she attended the entire review lasting approximately 34 minutes, asked questions regarding trees and tennis court lights and voted as a member of the Planning Board to both open the public hearing on the matter and to determine its type under the New York State Environmental Quality Review Act (SEQRA). These same facts establish that Ms. Goldstein's continued participation in the matter created a reasonable appearance of impropriety.

Ms. Goldstein defended against the charges on three grounds: (i) that when the application was considered at the March 27, 2019 Planning Board meeting, she thought that the party proposing to install the sewer line on Hommocks Road had withdrawn his proposal; (ii) that even if the sewer line were installed on Hommocks Road, it was uncertain or speculative that the sewer line would ever be extended to serve her home on Oak Lane and she would still incur a substantial expense for the extension and connection to her residence; and (iii) that her votes to open the public hearing and type the action under SEQRA were ministerial acts and, therefore, do not constitute acting on the application within the meaning of the Code of Ethics. For the reasons that follow, we conclude that there was a potential benefit to Ms. Goldstein from the

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<sup>121</sup> General Municipal Law Article 18.

<sup>122</sup> T1 at 106.

<sup>123</sup> Village Code § 21-2.

<sup>124</sup> General Municipal Law §§ 800(3).

<sup>125</sup> Village Code § 21-4(C).

installation of the sewer line in Hommocks Road, that she knew there was such a potential benefit and that she violated the Code of Ethics by failing to disclose her interest and in acting on the Last Home LLC application.

From the fall of 2018 through March 27, 2019, and until at least March 31, 2019, Mr. Goldstein actively campaigned for the installation of a public sewer line along Hommocks Road that would extend past the Goldstein's residence on Oak Lane and allow them to connect their residence to the sewer line. Ms. Goldstein testified that she was aware of his activities in this regard. In his email communications with neighbors and in several appearances before the Board of Trustees in January and February 2019, Mr. Goldstein emphasized the financial benefits of sewer service while also noting the environmental benefits from the installation of the sewer line, but the financial benefits to the residents that would be served by the line. In an August 17, 2018 email to his neighbor Jeff Maggard and a September 20, 2018 email to neighbor Sean McCance, he described the proposed construction of the sewer line as "an opportunity."<sup>126</sup> In the email to Mr. McCance, and in an email the same day to neighbor Nancy Zweng, he said that he was "very interested in having a sewer hook-up not just for the environmental benefits but also to insure against septic system failure in the future which would be a catastrophic expense." Mr. Goldstein estimated that the failure of his septic system would cost anywhere from \$30,000 to \$60,000.<sup>127</sup> In emails to Mr. Picket and Ms. Felsher, he wrote:

Most of us have aged septic systems and I consider a sewer line to be an insurance policy against future failure. Replacement of a septic system can cost well into six figures – not to mention the inconvenience. And as you may know your tax bill already includes a sewer tax that cannot be waived despite the fact that none of us have a sanitary sewer.

It is also my understanding that having a sewer connection (or access to a sewer line) will enhance our property values.<sup>128</sup>

She agreed. Mr. Goldstein was asked about these statements at the hearing:

Q. You say at one point "most of us have septic systems and I consider an insurance line to be an insurance policy against future failure."

A. Uh-huh.

Q. Is that environmental or economic?

A. Certainly environmental.

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<sup>126</sup> Exhibit H.

<sup>127</sup> T2 at 315.

<sup>128</sup> Exhibit H.



Q. Is it economic?

A. If you had to replace the system. 15,000 to hook into a sewer system versus 60,000 to replace a septic system, sure.

Q. The next sentence says “replacement of a septic system can cost well into six figures - not to mention the inconvenience.” Is that about economics?

A. I don't know what your question is.

Q. Is that sentence about money or environmental?

A. It talks about cost.<sup>129</sup>

The financial projections he presented to the Board of Trustees reflect the benefit, as well. Mr. Goldstein told the Board of Trustees on February 11, 2019 that the cost of constructing the sewer line down Hommocks Road to the Last Home LLC property would be between \$300,000 and \$400,000 and that the cost of extending the sewer line onto Oak Lane would be approximately \$120,000.<sup>130</sup> In his February 26, 2019 email to Mr. Picket and Ms. Felsher, he stated that the entire project, including both Hommocks Road and Oak Lane, would cost approximately \$500,000.<sup>131</sup> When Mr. Goldstein discussed the sewer line with the Board of Trustees at its meeting on March 25, 2019, he told the Board of Trustees that 14 residences would be served would be served by the entire line. In the course of that discussion, it became apparent that 17 homes would be served.<sup>132</sup> If the Board of Trustees had adopted his proposal and charged the \$500,000 cost of the sewer line to those 17 homes, the cost to each would have been \$29,412. (If 14 homes had been served, as Mr. Goldstein stated, the cost would have been \$35,714 per home.) If Mr. Picket were to build the Hommocks Road portion, however, and the remaining cost of \$120,000 were to be apportioned just among the six homes on Oak Lane, the cost per home would have been \$20,000.

Mr. Goldstein nevertheless insisted at the hearing that there was no financial benefit to him:

Q. Other than environmentally do you see any benefit to you from a sewer system being –

A. To me personally? No.

He was asked a few minutes later about the statements he had made in the emails:

Q. Mark listed some statements that we looked at earlier, catastrophic event,

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<sup>129</sup> T2 at 303-304.

<sup>130</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-2-11-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-2-11-19/).

<sup>131</sup> Exhibit H.

<sup>132</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-3-25-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-3-25-19/).

six figures. I'm trying to understand. Is it your position that you might have puffed things a little bit to try to –

A. Oversold it?

Q. Oversold it.

A. Did I think that they were plausible? Yes. Did I oversell it? Perhaps.

Q. So there was an outcome that you felt was important and you were willing to oversell things to accomplish that.

Mr. Leventhal: Objection.

Mr. Goldstein: Can I answer that?

Mr. Leventhal: Yes.

A. I think if you look at my resume, you look at who I am, and ask people around the area. The one thing I have done my entire life is give back to the community. I believe very strongly in working for the community. This is exactly the kind of thing. I have put in more time for community support events, whatever, probably than anybody else in this room except for perhaps my wife.

So when you talk about benefits, I'm not looking for a benefit for myself. I'm looking for the benefit of the Village. The continued enjoyment of the water bodies that surround this Village that make this Village what it is. So, no, I'm not talking about my own personal benefit. Does that answer your question.

Q. Actually it didn't, but that's fine.<sup>133</sup>

Ms. Goldstein's contention that at the time of the March 27, 2019 Planning Board meeting there was no potential benefit from the approval of the Last Home LLC project to Ms. Goldstein and Mr. Goldstein because Mr. Pickett had withdrawn his proposal to build the sewer line is not supported by the record. Ms. Goldstein bases this contention on his email exchange with Ms. Felsher on February 26, 2019, which includes the following exchange:

Ms. Felsher: I thought the main line going up Hommocks was going to be paid for by a purchaser of one of the homes up on Hommocks by the water.

Mr. Goldstein: No, he has decided he wasn't willing to pay for the project himself.<sup>134</sup>

On March 25, 2019, however, after the February 26, 2019 email and before the March 27, 2019 Planning Board meeting, Mr. Goldstein told the Board of Trustees that "there are private funds that are available to supplement the Village's. So that would help a lot in obviously

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<sup>133</sup> T2 at 313-314.

<sup>134</sup> Exhibit H.

defraying some of the cost to the individuals.”<sup>135</sup> He testified at the hearing that the source of the “private funds” was Mr. Picket. Had Mr. Picket contributed to the cost of the sewer line in excess of his per residence obligation, let alone paid for the Hommocks Road extension himself, Ms. Goldstein and Mr. Goldstein would have benefitted financially by a reduction in the cost to them and/or making the plan to extend to Oak Lane even feasible. Mr. Goldstein’s March 31, 2019 letter to the Village following the March 27, 2019 Planning Board meeting is confirmatory.

Ms. Goldstein testified at the hearing that she was of aware what Mr. Goldstein was telling the Board of Trustees.<sup>136</sup> But even if she was not aware of Mr. Goldstein’s statements to the Board of Trustees two days earlier, or of Mr. Picket’s continuing willingness to contribute to the cost of the sewer line beyond his proportional share, she was aware at the March 27, 2019 Planning Board meeting, from the Last Home LLC application, which she had received the previous Friday, and from first minutes of the Last Home LLC presentation, that Mr. Picket was proposing to install the sewer line to his home as part of his project.

The agenda for the March 27, 2019 meeting and other documents, including the short environmental assessment form submitted with the application, copies of which were included in the package Ms. Goldstein received, stated that “the new house will be connected to public sewer via a new (approved) connection.” When he introduced the application, the project architect stated three times that the proposed home would be connected to new public sewer line.<sup>137</sup> In the course of the 34-minute discussion that followed, the project engineer, Mr. Gironda from Bibbo Associates, who was also Mr. Goldstein’s engineer for the sewer line project responded to questions by Planning Board Member Kathy Savolt, that the applicant “would “make accommodation for a future extension down Oak Lane,” that “[t]he applicant is actually building a sewer to accommodate 26 homes” and “this is a public sewer that the applicant is building.” And if there was any remaining doubt about what the applicant was proposing after the short environmental assessment form and these six statements by the representatives of Last Home LLC, the colloquy between Ms. Savolt and Mr. Bibbo removes it:

Ms. Savolt:        So the applicant is going to pay to have a public sewer built. Its first phase is going to serve his home and have capacity to be extended to 25 other homes, a total of 26 homes. That’ll be Oak Lane and Hommocks, down Hommocks where people are

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<sup>135</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-work-session-3-25-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-work-session-3-25-19/).

<sup>136</sup> T2 at 186.

<sup>137</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

on septic still at this point.

Mr. Gironda: Yes. In fact, everybody essentially between the end of Oak Lane, the end of Hommocks Road and Hommocks School are all currently on septic. This public sewer would allow for them if they so choose . . .

Ms. Savolt: To hook up.

Mr. Gironda: To hook up.<sup>138</sup>

Regardless of what Ms. Goldstein may have understood as a result of Mr. Goldstein's February 26, 2019 email to Celia Felsher, therefore, she knew at the March 27, 2019 Planning Board meeting that if the Planning Board granted the application of Last Home LLC for a wetland permit, Mr. Pickett, the principal of Last Home LLC, would install the sewer line down Hommocks Road to his residence at his expense and that would reduce the cost of providing sewer service to the Goldsteins' residence. That potential financial benefit is an "interest" within the meaning of the Code of Ethics. Ms. Goldstein and Mr. Goldstein stood to benefit financially if the Planning Board approved the application of Last Home LLC. Under Village Code §§ 21-4(N) and 21-5(C), she was required to disclose that interest and, under Village Code § 21-4(C)(1), she was required her to recuse herself from, and not participate in, consideration of the Last Home LLC application.

Ms. Goldstein's second argument is that even if Last Home LLC installed the sewer line at its expense to the end of Hommocks Road, there was no certainty that the sewer line would ever be extended onto Oak Lane to serve the Goldsteins' residence and, therefore, any benefit to her and Mr. Goldstein was speculative. That is not true and Mr. Goldstein clearly thought it was an important step, as evidenced by his March 31, 2019 letter. The fact that a sewer line was being installed down Hommocks Road by the owner of 203 Hommocks, at no cost to the Goldsteins, benefitted them as it facilitated the extension to Oak Lane. Most of the costs of the infrastructure work required to extend a sewer line to Oak Lane was the line from Hommocks School to the intersection of Hommocks Road and Oak Lane, assumed by the new owner of 203 Hommocks Road. This made it far more likely the sewer line would be extended up Oak Lane residences, an undisputed benefit, particularly if the Goldsteins should ever need to replace their 70-year old septic system.

While there was no certainty that the sewer line would be extended in the future to serve Oak

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<sup>138</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

Lane, it is also beyond dispute that approving Last Home LLC's applications would make it far more likely. Mr. Goldstein's letter of March 31, 2019 to the Village regarding the opportunity now provided by the Planning Board's actions, showed that at least he thought the sewer line was beneficial to him. As Mr. Goldstein stated in his February 26, 2019 email to Mr. Picket and Ms. Felsher, "[t]he final Oak Lane section only needs to have the plans submitted."<sup>139</sup> And while it is true, as Ms. Goldstein argues, that it would not have been reasonable for the Goldsteins to bear the entire cost of extending the sewer line onto Oak Lane just to serve their residence,<sup>140</sup> the Board of Trustees had already indicated, at its March 25, 2019 meeting, that if a majority of the residents who would be served supported the project, it would entertain Mr. Goldstein's application to install the sewer line and apportion the cost among the benefitted owners.<sup>141</sup>

Ms. Goldstein's contention that the availability of sewer service to her residence would not affect its value, based on the testimony of her expert appraiser, Carol Vergara of Carol Vergara Associates, is not convincing. Ms. Vergara testified that installation of a sewer line in Oak Lane would not immediately benefit the Goldstein's because their septic system is adequately sized for their residence and it has a history of minimal use.<sup>142</sup> In reaching those conclusions, however, Ms. Vergara acknowledged that the only source for her information about the use and condition of the septic system was Ms. Goldstein.<sup>143</sup> When asked if "the option to hook up to a sewer line" would be a benefit to a buyer, she responded, "It could be."<sup>144</sup> And when asked if a buyer deciding on the amount to offer to purchase a residence would "take into account the potential cost of repair, maintenance or replacement of the existing 60-year old septic system," she said, "Yes."<sup>145</sup> Her testimony included the following colloquy:

Q. So if a buyer was buying this house as it currently stands and the selling broker said to the buyer, and in the street there's a municipal sewer system that you can hook up to, would that be a benefit to the buyer, that option?

A. Yes.<sup>146</sup>

Ms. Goldstein's third argument is that voting to type the Last Home LLC application as a Type II action under SEQRA, as she did, is not an "action" within the meaning of the Code of

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<sup>139</sup> Exhibit H.

<sup>140</sup> T2 at 197-198.

<sup>141</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-meeting-3-25-19/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-meeting-3-25-19/)

<sup>142</sup> T3 at 373-375.

<sup>143</sup> T3 at 378.

<sup>144</sup> T3 at 381.

<sup>145</sup> T3 at 383.

<sup>146</sup> T3 at 383.

Ethics. That argument is incorrect. Although the SEQRA regulations identify the categories of actions which are defined as Type II actions, it is the responsibility of the agency to determine whether the action falls within one of the Type II categories.<sup>147</sup> Ms Goldstein's expert witness, Andrew Tung, an architect, landscape architect and attorney with substantial experience in environmental impact review,<sup>148</sup> confirmed this: "At the end of the day, the agency itself makes its determination. It may have advice from an initial reviewer, be it a planner, a building inspector, a Village attorney, but the agency will – the agency is the one that's making the determination."<sup>149</sup> It does so by voting.<sup>150</sup> The act of voting on the typing of the action, therefore, as Ms. Goldstein did, is a judgment about whether the proposed action falls within the Type II criteria. As Mr. Tung testified:

Q. Would it be correct to say what they do, I think you testified to this, tell me if I'm wrong, that they compare what they know about the action to the list, the Type II list, and decide if those facts fit within any category on the list. Is that a fair characterization of what happens?

A. It is.<sup>151</sup>

That is not a ministerial act. And that was, in fact, how the question was put to the Planning Board by Village Planner Greg Cutler when, at the conclusion of the applicant's presentation, he stated, "We're recommending that it be treated as a Type II action. You have your discretion."<sup>152</sup>

But even if typing an action was ministerial, that would not excuse Ms. Goldstein's failure to recuse herself. Village Code § 21-4(C)(1), which requires each member of the Planning Board to "recuse himself/herself from acting on a matter" in which he or she has an interest, does not distinguish between acts that are ministerial and those that are not.<sup>153</sup> Therefore, whether the vote to type the Last Home LLC application under SEQRA was ministerial or discretionary, Ms. Goldstein's failure to recuse herself from voting violated the Code of Ethics. And failure to recuse is not the only violation of the Code of Ethics that is alleged. Ms. Goldstein also failed to disclose her interest in the Last Home LLC in the required manner. That obligation exists whether the act she ultimately took was discretionary or material. She therefore also violated the

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<sup>147</sup> 6 NYCRR § 617.6(a)(1).

<sup>148</sup> T3 at 331-334.

<sup>149</sup> T3 at 348.

<sup>150</sup> Id.; T4 at 24.

<sup>151</sup> T3 at 348-349.

<sup>152</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-3-27-19/](https://lmctv.org/videos_list/village-of-mamaroneck-planning-board-meeting-3-27-19/).

<sup>153</sup> Village Code § 21-4(A) does apply only to discretionary actions. Ms. Goldstein is not charged with violating that provision of the Code of Ethics.

Code of Ethics by failing to disclose.

Ms. Goldstein's analogy to the case of Trustee Lou Santoro is also misplaced. As the decision of the Ethics Board in that matter states, the complaint was that Trustee Santoro had "read and introduced the resolution authorizing the payment of his legal bills" and "failed to step off the dais after his recusal and during the portion of the Board of Trustee's meeting concerning the legal fees." Unlike Ms. Goldstein, Trustee Santoro did not vote on the matter. As the decision states, Trustee Santoro "did not vote on the resolution approving the legal fees or participate substantively in the public comments on the resolution or in the Board of Trustees' discussion on the resolution."<sup>154</sup> That is a crucial distinction.

The Ethics Board found that it was inappropriate for Trustee Santoro even to read the resolution. But by refraining from voting, he avoided taking any action on the matter that involved him. Ms. Goldstein, on the other hand, voted to type the Last Home LLC as a Type II action. Unlike Trustee Santoro, therefore, Ms. Goldstein acted on the application.

The Code of Ethics, however, requires more of members of the Village's boards and commissions than that they not take discretionary actions with respect to applications in which they are interested. It requires that they avoid the reasonable appearance of impropriety. Village Code § § 21-4(C)(1). That requirement is not imposed by the common law or by the conflict of interest provisions of General Municipal Law Article 18. Where it did appear, until recently, was in Canon 9 of New York's Canons of Professional Ethics for attorneys. The Court of Appeals has construed that standard as meaning that "the lawyer may not place himself in a position where a conflicting interest may, even inadvertently, affect, or give the appearance of affecting, the obligations of the professional relationship."<sup>155</sup> The standard still applies generally to judges. Applying the judicial standard, the New Jersey Supreme Court defined the application of the standard this way: "Would a reasonable, fully informed person have doubts about the judge's impartiality?"<sup>156</sup>

Looking at the facts here, it is clear that Ms. Goldstein's participation in and continued presence as a member of the Planning Board during the consideration of the Last Home LLC application, however routine it may have been, created a reasonable appearance of impropriety. Ms. Goldstein potentially stood to gain if Last Home LLC installed the sewer line on Hommocks

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<sup>154</sup> [https://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-meeting-21317/](https://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-meeting-21317/).

<sup>155</sup> *Matter of Kelly v. Greason*, 23 N.Y.2d 368, 376 (1968).

<sup>156</sup> *DeNike v. Cupo*, 196 N.J. 502, 517 (2008).

Road. Last Home LLC would not have installed the sewer line if the Planning Board had not approved its application for a wetland permit. A reasonable person, knowledgeable about the facts, including the case Mr. Goldstein presented to the Board of Trustees for the installation of the sewer line and the economics of installing it, could only conclude that her participation created reasonable doubts about her impartiality. Her failure to disclose her potential interest and to recuse herself from participating in the consideration of the application at least gives rise to the “reasonable appearance of impropriety” and is, therefore, a violation of Village Code § 21-4(C)(1).

### **Hampshire Recreation LLC**

The charges against Ms. Goldstein with respect to Hampshire Recreation LLC are that that she violated the Code of Ethics by failing to recuse herself from acting on the application and by failing to disclose her direct or indirect interest in the outcome of that application. The specific charges are as follows:

#### **1. Village Code § 21-4(C)**

Village Code § 21-4(C)(1) requires that every member of a Village board “recuse himself/herself from acting on a matter before the Village when acting on the matter, or failing to act on the matter, may benefit the persons listed in § 21-4A, financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.” Among the persons listed in § 21-4(A) are the board member and “[a] member of his or her household.”

Hampshire Recreation LLC has applied to the Planning Board of the Village of Mamaroneck for subdivision approval and various other approvals with respect to its premises at 1025 Cove Road in the Village of Mamaroneck. The application proposes the construction of 105 residences. Ms. Goldstein resides at 5 Oak Lane in the Village of Mamaroneck. A reasonable person could perceive that the location Ms. Goldstein’s property at 5 Oak Lane in relation to proposed development on the Hampshire Recreation LLC property at 1025 Cove Road is such that the construction of the proposed Hampshire subdivision will necessarily impact Ms. Goldstein and the value, use and/or enjoyment of her property and, therefore, gives the reasonable appearance of a conflict of interest or impropriety. Ms. Goldstein may also benefit, financially or otherwise, from acting or not acting on the application.

Ms. Goldstein has participated, and continues to participate, as a member of the Planning Board in the consideration of the Hampshire Recreation LLC application. By failing to recuse herself from acting on the application of Hampshire Recreation LLC before the Planning Board, Ms. Goldstein violated Village Code § 21-4(C)(1).



## **2. Village Code § 21-5(C)**

Village Code § 21-5(C) requires that “[a]ny Village officer, board member, employee, or consultant who has a direct or indirect private interest in any transaction under consideration by a board, court, commission, district, department, committee or agency of the Village or in any property which may be affected by such transaction, or whose relative has such a private interest, shall publicly disclose the nature and extent of that private interest on the record of the board, court, commission, district, department, committee, or agency before which such transaction is pending and shall file a copy of such disclosure with the Village Clerk-Treasurer.”

For the reasons stated above, Ms. Goldstein has a direct or indirect private interest in the application of Hampshire Recreation LLC before the Planning Board. Ms. Goldstein did not publicly disclose the nature and extent of that interest on the record of the Planning Board and did not file any disclosure with the Village Clerk-Treasurer.

By failing to publicly disclose the nature and extent of that interest on the record of the Planning Board and failing to file a disclosure with the Village Clerk-Treasurer, Ms. Goldstein violated Village Code § 21-5(C).

## **3. Village Code § 21-4(N)**

Village Code § 21-4(N) provides that “[t]o the extent that she/he knows thereof, any Village officer, board member and/or employee with respect to matters in which she/he participates or in which her/his board is involved in the decision-making process, shall specifically and fully disclose on the official record of the Board of Trustees at a regular public meeting thereof the nature and extent of any direct or indirect interest in legislation or official action pending before the Village.”

For the reasons stated above, Ms. Goldstein had a direct or indirect private interest in the application of Last Home LLC before the Planning Board and participated as a member of the Planning Board in the decision-making process with respect to that application. Ms. Goldstein did not specifically and fully disclose the nature and extent of that interest on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees.

By failing specifically and fully disclose the nature and extent of her interest in the application of Last Home LLC on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees, Ms. Goldstein violated Village Code § 21-4(N).

The principal issue with respect to the Hampshire Recreation LLC matter is whether Ms. Goldstein has an interest in the application because her property at 5 Oak Lane would be affected by the outcome of the application in a way that is materially different than most Village residents. We find that 5 Oak Lane does abut the Hampshire property. But even if it does not, the potential impacts on Ms. Goldstein as a resident of 5 Oak Lane, as established by the Draft

Environmental Impact Statement (DEIS) submitted by the applicant to the Planning Board, the proposed Final Environmental Impact Statement (FEIS) submitted by the applicant and the comments and discussion by Ms. Goldstein and others with regard to the application, are such that she has an interest in the application. We conclude that by not disclosing that interest and by not recusing herself from participating in the consideration of the Hampshire application, Ms. Goldstein violated the Code of Ethics.

Whether Ms. Goldstein's property abuts, or touches, the Hampshire property was the subject of testimony at the hearing by Village Engineer Hernane de Almeda and Ms. Goldstein's expert witness, Andrew Tung. Mr. de Almeda, a licensed professional engineer who has both studied and taught surveying,<sup>157</sup> testified that a comparison of the survey submitted by Mr. and Mrs. Goldstein in 2017 in support of an application to the Board of Architectural Review with respect to their residence<sup>158</sup> and the survey submitted by Hampshire Recreation LLC,<sup>159</sup> shows that the property lines are identical. As Mr. de Almeda stated, "It's the same line. There is no distance. It's zero."<sup>160</sup> The course and distance on the survey is identical to the course and distance stated on the deed conveying title to the property at 5 Oak Lane to Mr. and Mrs. Goldstein.

Mr. Tung, an architect, landscape architect and attorney,<sup>161</sup> testified on the basis of an on-line database prepared by Westchester County, known as the Westchester County Geographical Information System, that there is a body of water to the north of 5 Oak Lane known as Prickly Pear Inlet and that although the Goldsteins own the property south of that line and Hampshire owns the property to the north of it, the Goldstein and Hampshire properties do not touch because neither owns Prickly Pear Inlet.<sup>162</sup> Westchester County does not guaranty the accuracy of the GIS map.<sup>163</sup>

Mr. Tung did not dispute Mr. de Almeda's testimony that the Goldstein's north property line

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<sup>157</sup> T1 at 100.

<sup>158</sup> Exhibits C, T.

<sup>159</sup> Exhibit U.

<sup>160</sup> T1 at 100.

<sup>161</sup> T3 at 331.

<sup>162</sup> T3 at 334-339, 351-355.

<sup>163</sup> When viewed online, the map contains the following disclaimer: "The digital map data provided is 'as is' and the County expressly disclaims all warranties, expressed or implied, as to the accuracy of the digital map data and merchantability and fitness for a particular purpose, and further expressly disclaims responsibility for all incidental, consequential or special damages arising out of or in connection with the use or performance of the digital map data. By downloading this data, you acknowledge this disclaimer of warranty and expressly waive all warranties express or implied and waives any right of claim for damages incidental, consequential or special, arising out of or in connection with the use of performance of the digital map data."

and Hampshire's south property line are the same. His testimony that the two properties do not abut is based his conclusion that Prickly Pear Inlet, through which that line passes, is a tidal body owned by the State of New York. It is true that the map on which Mr. Tung based his testimony shows as substantial portion of land between the tidal waters of Delancey Cove and Prickly Pear Inlet.<sup>164</sup> Mr. Tung acknowledged, however, that the map shows that there is land, which is colored white on the map, immediately on the northerly side of the Goldsteins' property line.<sup>165</sup>

The survey clearly shows land, not water, to the north of the property line.<sup>166</sup> A certified survey is presumably more accurate than a general map prepared by a governmental agency. As Mr. Tung testified, "The survey done for an individual property owner would likely be more specific and more exacting than a GIS database."<sup>167</sup> And Mr. Tung testified that he did not participate in the creation of the map on which he relied and his only knowledge as to how the map was prepared comes from the face of the map itself.<sup>168</sup>

Even assuming that the map is more accurate than the survey, however, it is unclear whether Mr. Tung's legal conclusion that the properties do not abut is correct. As Mr. Tung testified, there are tidal gates that control the flow of water into and out of Prickly Pear Inlet to protect the properties around Prickly Pear Inlet from flooding.<sup>169</sup> Those tidal gates are owned, controlled and maintained by Hampshire.<sup>170</sup> Those gates would appear to make Prickly Pear Inlet non-navigable. Analyzing whether a water body that would be tidal but for privately owned and controlled tidal gates is subject of the general rule of state ownership would require a legal dissertation that is beyond our capacity to determine with any authority. A hearing by the Ethics Board of the Village of Mamaroneck with respect to a potential violation of the Village Code of Ethics is not the forum in which to resolve such a complicated issue of the law of land titles.

More importantly, it is not necessary to our decision here to resolve the ownership of Prickly Pear Inlet. Whether Ms. Goldstein's property touches or does not touch the Hampshire property is not dispositive, for the simple reason that there is substantial evidence in the record that the proposed Hampshire development will have a greater impact on Ms. Goldstein's residence than others:

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<sup>164</sup> Exhibit XX.

<sup>165</sup> T3 at 349-352.

<sup>166</sup> Exhibits C, T.

<sup>167</sup> T3 at 358-359.

<sup>168</sup> T3 at 3556-357.

<sup>169</sup> T3 at 355-356.

<sup>170</sup> Exhibit M at 3E-6 to 3E-7.

- The aerial view and the visual impact analysis included in the DEIS and the pictures in Ms. Vergara's report demonstrate that the Hampshire site is visible from the Goldstein residence. The real estate listing for 5 Oak Lane at the time the Goldstein's purchased it advertised a "winter golf course view."
- Residents of the two properties adjacent to the Goldstein property, 3 Oak Lane and 11 Oak Lane testified at the public hearing on the DEIS that their properties already flood in heavy storms as a result of drainage from the Hampshire site. The drainage analysis in the DEIS establishes that a portion of the Hampshire site drains to Delancey Cove, the tidal body connected to Prickly Pear Inlet, which borders the Goldstein property, and that the drainage to that water body will increase as a result of the proposed development.
- The proposed construction will require 112,140 cubic yards of fill that will be brought to the site by 26 truck trips every day for nine months and additional truck traffic thereafter. The FEIS calculates the total number of truck trips necessary to bring fill to the site as 7,009 over a 47-month period and an additional 6,900 truck trips over the entire 52-month construction period. Opponents of the project contend that the truck traffic will be 200 to 280 trucks per day. All of that traffic will be on Hommocks Road. Hommocks Road is the route Ms. Goldstein takes to access her residence.<sup>171</sup>
- The construction will involve rock removal by mechanical chipping or blasting. The construction activity will increase noise levels at sites close to the construction by 10 dBA, generating noise levels between 49 and 65 dBA.
- The DEIS identifies a health risk to nearby property owners from chemicals in the soil that will be disturbed to construct the project.

Ms. Goldstein herself, as a member of the Harbor and Coastal Zone Management Commission and then of the Planning Board raised many of these issues. At the January 17, 2018 HCZMC meeting, she raised questions about flooding on Hommocks Road during Superstorm Sandy. Hommocks Road is the only outlet for residents on Oak Lane. At the February 21, 2018 HCZMC meeting she raised concerns about soil contamination. At the March 22, 2018 HCZMC meeting she provided commentary for the Planning Board with respect to rising sea levels, groundwater testing and emergency vehicle access. At the April 18, 2018 HCZMC meeting she added concerns about soil contamination. She raised the same concern at the December 12, 2018 Planning Board meeting. Six days earlier, on December 6, 2018, Mr. Goldstein had submitted a letter to the Board of Trustees in support of his request for the installation of a sewer line, in which he noted that "the area of Hommocks Road and Oak Lane is already stressed by the fertilizers and other chemicals used by Hampshire Country Club," substances that presumably

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<sup>171</sup> T3 at 424.

would be more easily transported across Prickly Pear Inlet by the additional drainage resulting from the construction. Ms. Goldstein testified that the area he was referring to was Prickly Pear Inlet.<sup>172</sup> At a special work session of the Planning Board on September 10, 2019, Ms. Goldstein requested additional information on traffic, groundwater and soil contamination, including arsenic contamination.

When asked about these requests, Ms. Goldstein stated that she has concerns about the contaminated soil for the Village, but not for herself.<sup>173</sup> She cited as her principal concern, the impact of airborne contaminants on the students and staff at the Hommocks School.<sup>174</sup> According to the map submitted by Mr. Tung, Hommocks School is approximately the same distance from the disturbance on the Hampshire site as Ms. Goldstein's residence.<sup>175</sup>

Ms. Goldstein responds to these issues by stating that she raised concerns as a member of the Planning Board on behalf of all Village residents, not just herself or her neighbors. And it is true that many of her concerns are about issues that could affect Village residents generally. But that does not change the fact that the location of her property in relation to the Hampshire site is such that these concerns will affect her more significantly than the vast majority of Village residents. That is why the Ethics Code requires prompt recusal and accurate disclosure and recusal.

The evidence Ms. Goldstein submitted does not refute these concerns. She relies on a report and the testimony of a real estate appraiser, Carol Vergara of Carol Vergara Associates and confirmatory testimony from Mr. Tung. Mr. Tung's testimony and Ms. Vergara's report and testimony show that Ms. Goldstein's residence is approximately 850 feet from the nearest structure on the Hampshire property.<sup>176</sup> Mr. Tung also testified that there are 169 homes within the same radius of the proposed buildings on the Hampshire site,<sup>177</sup> that the limit of site work on the Hampshire property is 765 feet from Ms. Goldstein's residence and that there are approximately 210 homes within the same radius, including two multi-family buildings.<sup>178</sup> Neither Ms. Goldstein nor her witnesses attempted to demonstrate that the other homes – the vast majority of which are on different roads and do not have similar views of the construction site as 5 Oak Lane – would be impacted by the construction in the same manner and degree as 5 Oak

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<sup>172</sup> T3 at 420.

<sup>173</sup> T3 at 412-413.

<sup>174</sup> T3 at 413-415.

<sup>175</sup> Exhibit ZZ.

<sup>176</sup> T3 at 340.

<sup>177</sup> Id.

<sup>178</sup> T3 at 344.

Lane.

While Mr. Tung's testimony and the exhibits entered into the record supporting that testimony refer to the distance from Ms. Goldstein's house itself to the limits of building construction and site work, rather than from property line to the property line, which is the standard that the Village Code uses with respect to notification of property owners of land use matters in their neighborhood.<sup>179</sup>

The Board of Ethics notes the irony in Mr. Tung, a witness for Ms. Goldstein solely relies on distance or proximity as suggesting that is dispositive. The Board of Ethics looked at a myriad of factors in making this Decision.

Moreover, Mr. Tung's analysis does not take into account the variations in points of access, of topography and natural buffers with regard to sight lines, the configuration of streets or the presence of structural buffers between homes he identified and the Hampshire property and other factors which could result in less the impact on many of those homes. Applying the numerous consequences of the Hampshire project as detailed in the evidence (e.g. potential chemical contamination in soil and ambient air, blasting, traffic, noise, etc.) would be impractical, but the Board specifically discussed those enumerated below.

For example, the Goldsteins' and fewer than ten other homes in the Village of Mamaroneck will have to use Hommocks Road as their sole route of egress and ingress in the areas Mr. Tung identified as being no further from the proposed site work or development than the Goldstein's home.<sup>180</sup> The other homes he identified are accessed from Orienta Avenue. The DEIS specifically states: "There will be no truck access allowed via Orienta Avenue or East Cove Road. As noted above, the Hampshire FEIS calculates the total number of truck trips necessary to bring fill to the site as 7,009 over a 47-month period and an additional 6,900 truck trips over the entire 52-month construction period. Opponents of the project contend that the truck traffic will be 200 to 280 trucks per day. All of that traffic will be on Hommocks Road. Hommocks Road is the only route available to Ms. Goldstein to access her residence. This level of truck traffic on Ms. Goldstein's only access point clearly distinguishes her from the entire Village, save less than ten similarly impacted homes in the Village.

Additionally, unlike 5 Oak Lane, more than a hundred of the homes Mr. Tung counted are

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<sup>179</sup> Village Code §§ 342-99, A348-6A.

<sup>180</sup> Exhibits YY and ZZ.

not situated adjacent to Hampshire, but rather are buffered by other homes that lie between them and the proposed development. The Board of Ethics believes that Ms. Goldstein's property will be considerably more and disproportionately affected by the factors cited in the DEIS and FEIS than most of the residences identified by Mr. Tung.

In any event, the Village of Mamaroneck has more than 19,000 residents and more than 7,000 homes. While we do not agree with Mr. Tung's radius analysis, the fact that 210 homes, out of 7,000, are a similar distance from the proposed development site does not alter the fact that Ms. Goldstein would be impacted in a materially different way than the vast majority of Village residents. Far from rebutting this evidence establishing that Ms. Goldstein does have an interest in the application that required her to recuse herself and that her continued participation on the Hampshire application creates the appearance of a conflict interest or impropriety, the testimony Ms. Goldstein submitted supports that conclusion.

While Ms. Vergara opined in her report and testimony that the approval of the Hampshire application would have a nominal effect on the value of the Goldsteins' residence at 5 Oak Lane because the construction would only last for a few years, she admitted that the construction would impact the residents of 5 Oak Lane and the neighboring homes.<sup>181</sup> Ms. Vergara acknowledged that "everybody in the area is going to be hearing noise."<sup>182</sup> In discussing the impact of the proposed construction, Ms. Vergara succinctly stated that, "It's not going to be any fun for anybody in the whole area to have to deal with the level of traffic and noise and dust."<sup>183</sup> When asked if the noise would be good or bad for value, she conceded that it would be "Bad."<sup>184</sup>

Ms. Goldstein's failure to make any disclosures at the Planning Board meetings that discussed the Hampshire matter concerning the location of her property in relation to the Hampshire site and the potential impacts to her property from the Hampshire project violated the disclosure requirements of the Code of Ethics. Her failure to make the disclosures is particularly troubling in light of Ms. Goldstein's testimony that it was her longstanding practice to make a disclosure whenever an application for a property near her home came before the land use boards on which she sat.<sup>185</sup> Nonetheless, when the Hampshire application – which could have a far greater impact upon her property than any of the applications for which Ms. Goldstein did make

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<sup>181</sup> Exhibit O; T3 at 365.

<sup>182</sup> T3 at 369-370.

<sup>183</sup> T3 at 392-393.

<sup>184</sup> T3 at 396.

<sup>185</sup> T2 at 199-200.

disclosures – came before the Planning Board, Ms. Goldstein chose not to make any disclosure. Ms. Goldstein claims she did not make a disclosure related to Hampshire because she “did not receive a notice” and “had been working on the application even before [she] moved to 5 Oak Lane.”<sup>186</sup> The fact that she acquired 5 Oak Lane after the notices were sent out and that she had worked on the application before she acquired 5 Oak Lane are simply irrelevant.<sup>187</sup> Moreover, her reasoning belies the language and spirit of the statute.

### **Conclusion**

For all of these reasons, we conclude that Ms. Goldstein violated the Code of Ethics with respect to both Last Home LLC and Hampshire Recreation LLC by failing promptly to recuse herself from acting on those applications 21-4(C) and by failing to disclose her direct or indirect interest in the outcome of those applications 21-4(N).<sup>188</sup>

Dated: Mamaroneck, New York  
November 29, 2019

### **VILLAGE OF MAMARONECK ETHICS BOARD**

By:   
Mark Ettenger  
Chair

To: Mayor Murphy and the Board of Trustees  
Hon. Agostino A. Fusco, Village Clerk-Treasurer  
Steven G. Leventhal, Esq. (sleventhal@lcmblaw.com)  
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<sup>186</sup> T3 at 406-407.

<sup>187</sup> T3 at 405-406.

<sup>188</sup> Having found a violation of section 21-4(N), the Ethics Board concluded that it did not have to reach a decision with respect to section 21-5(C).