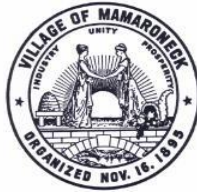


Village of



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ETHICS BOARD

To: Mayor Murphy
Cc: Board of Trustees
From: Ethics Board
Re: Goldstein Sanctioning Hearing-May 27, 2020
Date: June 10, 2020

A number of incorrect statements were made during the Goldstein sanctioning hearing held on May 27, 2020 in connection with the Decision and Recommendation of the Board regarding Cindy Goldstein dated November 29, 2019. The Ethics Board had concluded that it was neither necessary nor appropriate for any of our members to participate in the public comment period of the hearing since our findings and recommendations, and the underlying evidence, are complete and public.

However, a number of incorrect statements were made in the Mayor's May 27th Goldstein Sanctioning Hearing regarding the Code of Ethics and Ethics Board which, in the public interest, should be corrected. The Ethics Board will not comment on matters related to the evidence in the Goldstein matter or on statements she or her attorney made at the May 27th hearing other than in the following paragraph.

The evidence presented at the Ethics Board hearing in the Cindy Goldstein matters, now in the public domain, was either testimony taken under oath before a court stenographer, or documentary material, both entered into evidence pursuant to accepted procedural standards with Ms. Goldstein present and represented by counsel of her own choosing. Ms. Goldstein and her counsel had the right to call, and did call, witnesses, cross examine witnesses, make objections and were provided a full opportunity to present evidence, witnesses and make any arguments desired. We understand that the fees of Ms. Goldstein's counsel and expert witnesses in connection with the Ethics Board proceedings are being paid by the Village.

Our comments are broken down into a section on **BACKGROUND**, to provide the public with a heightened awareness of the Ethics Code and Board, and then a section on pages correcting statements about or related to the Code of Ethics and Ethics Board during the public comment section of the **MAYORS' MAY 27TH HEARING**.

BACKGROUND

The Village Code of Ethics

In 2009, the Board of Trustees ("BOT") enacted the current Code of Ethics (Chapter 21 of the Village Code) to promote "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."¹ The requirements of the Code of Ethics are established by law, not selected by the Ethics Board. The standards for implementation are set by local or state law and are not chosen by the

¹ Village Code § 21-1.

Ethics Board. The Ethics Board has made suggestions for amendments as called for in the Code of Ethics, but none have been acted on by the BOT.

Of note, and applicable here, is that Section 21-15 of the Code of Ethics allows the Ethics Board to waive certain provisions if it finds the waiver is not in conflict with the interests or purposes of the Village. Certain provisions that cannot be waived, including the sections on transactional, applicant and annual disclosure.

Ethics Board Duties

The Ethics Board is required to fulfill various duties under the Code of Ethics including to:

- (1) provide advisory opinions to Village officers, employees and board members that seek guidance regarding their ethical obligations and the meaning of the Code of Ethics;²
- (2) verify that each Village officer, employee and board member files an annual disclosure statement;³
- (3) review and determine whether the annual disclosure statement, transactional or applicant disclosure statements filed by a Village officer, employee or board members “reveal a possible or potential violation” of the Code of Ethics;⁴
- (4) conduct investigations into potential violations of the Code of Ethics by Village officers, employees and board members;⁵
- (5) assess on its own or recommend appropriate disciplinary actions if it is determined after a hearing that a Village officer, employee or board member violated the Code of Ethics ;⁶ and
- (6) recommend changes to the Code of Ethics;⁷
- (7) make available for public inspection and copying lists of officers, board members and employees, transactional disclosure statements, applicant disclosure statements, annual disclosure statements and sworn complaints filed with the board, and certain other records;⁸ and
- (8) protect whistleblowers.⁹

Members of the Ethics Board

The Ethics Board has five members who are appointed by the Board of Trustees and serve three-year terms. By law, no more than two members can belong to the same political party.¹⁰ The Board is currently comprised of two Democrats, two Republicans and one independent member. All are long-term residents. Four are lawyers, two of whom are in practice. The fifth is a long-time educator and school administrator. All have had experience dealing with personnel and administrative issues before joining the Ethics Board.

² Village Code §§ 21-10(C)(7), 21-16.

³ Village Code §§ 21-10(C)(3), 21-12.

⁴ Village Code § 21-12(B).

⁵ Village Code §§ 21-10(C)(4), 21-13.

⁶ Village Code §§ 21-10(C)(5), 21-14.

⁷ Village Code §§ 21-10(C)(9), 21-19.

⁸ Village Code § 21-10(C)(3, 10), 21-11, 21-13(D), 21-15(B).

⁹ Village Code § 21-22.

¹⁰ Village Code § 21-7(D).

Evidentiary Records Related to Ethics Board Investigations and Hearings

The Code of Ethics mandates what information should be kept confidential and provides and delineates what information must be made public and what is to be kept confidential. For example, all decisions of the Ethic Board that find a violation, not an acquittal, must be available to the public, and at the same time the Code requires that that all evidence relating to an investigation or hearing be kept confidential, except as otherwise required by Village, state or federal law.

Section 21-3 D. of the Code of Ethics mandates that:

“All documents and hearings relating to the investigation and hearing of any alleged violation of this chapter shall be confidential and not available for public inspection or open to the public, except as otherwise required by state or federal law or by this chapter. All dispositions, including negotiated dispositions, in which the Ethics Board finds a violation of this chapter, shall be available for public inspection and copying.”[emphasis added]

While the Code of Ethics clearly acknowledges the public interest in the disposition (i.e. a decision) when the Ethics Board finds a violation, it also mandates confidentiality of the documents and hearings, with exceptions. The law acknowledges that certain matters that come formally before the Ethics Board may contain highly sensitive information that should be kept confidential. There is a balance to be found between these two requirements, which sometimes involves ambiguity and unsettled law, as we have been advised.

Ethics Board Investigations

Under the Code of Ethics, the Ethics Board is required to commence an investigation if it receives a sworn complaint. It is also expressly permitted to commence an investigation and issue charges on its own initiative. In practice, this can occur when a party reports a potential violation, but wishes to remain anonymous (e.g. a VOM staff member who is subordinate to the subject or a board peer wishing not to disrupt board functionality).

The Ethics Board does not actively monitor or review Village board proceedings, review board minutes or attend board meetings other than in response to credible information provided by others. We do not seek out violations. But if the Ethics Board receives credible information of a potential violation, we have an obligation to review the available information and decide whether further action is required, even in the absence of a sworn complaint.

Whistleblower Protection

As described above, the Village Ethics Code places limits on what information the Ethics Board can disclose and explicitly protects whistleblowers who notify the Board of Ethics about potential violations and others who provide information to the Ethics Board.

MAYOR’S MAY 27TH GOLDSTEIN SANCTIONING HEARING

Ethics Board: Protecting Sources

In the Goldstein matters, there were not sworn complaints filed by a third party. The Ethics Board’s initial and informal inquiry into the Goldstein matters began after it confirmed certain information brought to it, all of which was publicly available, but which the Ethics Board would otherwise not have become aware, as it does not proactively monitor meetings. The inquiry led to informal discussions with Ms. Goldstein (and her counsel), which led to an investigation and to charges by the Ethics Board, then a hearing and ultimately, to the Ethics Board’s Decision and Recommendation.

The Publication of the Record from the Goldstein Hearing

Some criticized that the record from the Ethics Board Goldstein Hearing was released so soon before the Mayor's May 27, 2020 Goldstein Sanctioning Hearing with inferences that the record had been inappropriately withheld by the Ethics Board. The facts do not support those assertions. As described above, the Code of Ethics specifically requires, not suggests, that records of investigations and hearings be kept confidential and not made public, unless other Village, State or Federal law requires it. There are confidentiality provisions in various sections of the Code. Here are the facts.

The Ethics Board provided the evidentiary record of its November 2019 hearing on the Goldstein matters to the BOT in February 2020 on a timely basis after being requested to do so by the BOT, which passed a Resolution on the subject allowing such disclosure.

On May 18, 2020, the Mayor (through special counsel) requested a waiver by the Ethics Board of certain confidentiality provisions of the Code of Ethics to allow public disclosure of the Goldstein evidentiary record prior to the scheduled May 27th hearing. The Ethics Board issued that waiver four days later on May 22, 2020, after receiving advice of counsel and calling a meeting as quickly as possible in light of the three-day notice requirement.

To review the specifics, the Ethics Board issued its Goldstein Decision and Recommendation on November 29, 2019. In February 2020, the Ethics Board provided the Mayor and the Board of Trustees with the entire hearing record, including all testimony and documentary evidence, pursuant to a Resolution adopted by the BOT stating it would receive the hearing record, but hold it confidential and not make it available to the "public," consistent with Section 21-3 D. of the Code of Ethics, discussed above. This Resolution arose out of mutual agreement by the Board of Trustees and the Ethics Board, communicated through and each advised by counsel, that the Goldstein hearing record could be released to the Board of Trustees, as the Board of Trustees did not constitute the "public," but could not be provided to anyone else. The Ethics Board considered the question settled. The Ethics Board was satisfied that this result respected the interests of Ms. Goldstein and the other witnesses at the hearing, while allowing the potential decision makers to have access to all pertinent information. It was subsequently determined by the Board of Trustees that the Mayor, not the Board of Trustees, would be the sole sanctioning authority.

For three months, the Ethics Board neither received any further requests from nor had any substantive communications regarding further disclosure of the hearing record in the Goldstein matter with the Mayor, Board of Trustees or Ms. Goldstein. Again, we believed the Resolution passed by the Board of Trustees had settled the confidentiality question. Then, on May 18, 2020, special counsel to the Mayor (who also represents the Board of Trustees) in the Goldstein matter, informed the Ethics Board that the Mayor wished to have the record released to the public and requested that the Ethics Board issue a waiver of the confidentiality provisions of the Ethics Code as applied to the evidentiary record of the Ethics Board Goldstein hearing. Ms. Goldstein's counsel consented, but only with the condition described below which was met.

Upon receipt of the request from the Mayor's special counsel on May 18th, the Ethics Board sought legal advice and then met on May 22, the earliest possible date under the Open Meetings law, and issued a written waiver pursuant to section 21-15 of the Code of Ethics, along with a full explanation.

To summarize, in four (4) days-between May 18 and May 22- we obtained legal advice, met and issued the requested waiver, which allowed public disclosure. The Ethics Board adhered to the statute enacted by the Board of Trustees and acted expeditiously each time it received requests regarding the record.

To amplify on a comment above, in connection with our waiver, we asked the Mayor's special counsel to confirm his indication to us that Ms. Goldstein counsel consented to the public release of evidence. However, in response, Ms. Goldstein's counsel did not simply consent. Instead, Ms. Goldstein's counsel conditioned his consent, stating that the record should only be posted on the Village website if, and only if, (i) a legal memo he had filed in connection with Ms. Goldstein's Article 78 lawsuit filed against the Ethics Board, and (ii) that Goldstein's Motion to Disqualify a Member of the Ethics Board, were also published on the Village website. The Ethics Board agreed to Ms. Goldstein's counsel's conditions even though it has not yet filed response(s) to the foregoing.

False Claim that the Ethics Board Disproportionately Investigated Women

During the Mayor's May 27th Goldstein Sanctioning Hearing and while under oath, Kathy Savolt, a former mayor who currently chairs the Planning Board, made a patently false statement and baseless inferences that the Ethics Board has disproportionately targeted women on land use boards. Ms. Savolt stated she had looked into it and claimed that five women and no men who sat on land use boards had been subject to Ethics Board actions. Ms. Savolt declined to reveal any specific information citing confidentiality leaving her unsubstantiated false statement in the public domain. We invite Ms. Savolt to meet with and/or provide the Ethics Board and Mayor with the specifics of her claims as that would not involve her concern about confidentiality. We also would welcome a discussion with the BOT about this either in open or executive session as guided by counsel.

Most matters that come to the Ethics Board are handled informally, in the nature of reminder letters or calls, completely confidential, and only occasionally gives rise to any formal process. Even in the rare cases when the official at first declines to comply with the Code of Ethics, the Ethics Board does all it can to keep the matter informal.

During their terms in office and prior to the Goldstein matters, the Ethics Board believes there have been three (3) ethics matters that reached the first formal stage of the Code of Ethics compliance process, an investigation. All three involved men. Two of the men were land use board members. The third was then a member of the Board of Trustees.

In the course of administering the annual disclosure form filings due February 15th, and as previously reported to the BOT, the Ethics Board works closely with the Village Clerk's office to gain compliance. Numerous Village board members, some elected and some appointed, of both genders, have not filed on time or filed incompletely over the last several years. Only twice in the terms of current Ethics Board members have other disclosure requirements of the Code of Ethics been triggered (not involving annual disclosure forms), of which the Ethics Board is aware. In those two instances, the board members who triggered disclosure requirements were both women and members of land use boards. In those two and all cases referenced in this paragraph, the non-filing or incomplete filing board member ultimately complied when notified of the requirements; all such issues were handled informally and confidentially, without the need for an investigation or any formal process whatsoever.

In summary, Ms. Savolt's assertions are without basis in facts and misinformed the Mayor and the public. There is no gender disparity in seeking compliance with the Ethics Code.