

BOARD OF ETHICS
APRIL 03, 2019
MINUTES

Present: Bonnie Fillion, John Whittel, John Critchley, Thomas Welch

Also Present: Kenneth McDonnell, Town Counsel

The meeting was called to order at 6:02 pm.

Whittel made a motion, seconded by Fillion to go into executive session at 6:02 pm to discuss complain 19-02 and invite Mary Schettino and Attorney Ken McDonnell. The motion was unanimously approved.

The board came out of executive session at 7:25 PM.

Welch made a motion, seconded by Fillion and unanimously approved to dismiss complaint #19-02 for the following reasons.

The complaint in this matter alleges that the respondent had a conflict of interest because his/her in-laws may have been impacted financially by a decision made by a town board and the respondent is an alternate member of that board. The complaint alleges that the respondent participated by submitting written correspondence and making comments during public hearings on the matter. The respondent was not seated as a voting member of the board and did not vote on the application when the decision was made by the board at a regular meeting.

The respondent admitted having a family relationship to persons who were at least interested in the board's decision, but he/she denies a conflict of interest under the Town's Code of Ethics. The respondent claims that there was no evidence that his/her family members had a "financial or pecuniary interest" in the board's decision and that the subject application before his/her board was not a "transaction" because it did not involve a contract or purchase order made on behalf of the Town. The Board of Ethics rejects those two defenses raised by the respondent. The Code's use of the word "transaction" includes all reasonable and common definitions thereof, including a vote by a board to approve or deny an application and it is not limited to contracts or purchase orders. A financial interest means a monetary or pecuniary benefit as a result of a contract, transaction, zoning decision or other matter to be decided on behalf of the Town. Under the circumstances of this case wherein the respondent's family members were neighbors of the applicant seeking approval from the Town, it is presumed that there may be some financial impact upon the respondent's family and that potential impact alone is sufficient to raise a conflict of interest under the Code.

Nevertheless, the Board of Ethics shall dismiss this complaint because the respondent did not vote on the application. The Board of Ethics presumes that the respondent has a right to comment on all matters pending before his/her board as a member of the public, including those matters in which a family member may have a personal interest. However, the respondent and all board members in similar positions serving on behalf of the Town, should make it clear when speaking or otherwise contributing that he or she is speaking solely as a member of the public and not as a member of the board. The best way to achieve this is for the member to be seated with the public when commenting and not be seated with the board.

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Based upon the confidential investigation conducted by the Board of Ethics it is our conclusion in this case that there is no probable cause to believe that the respondent intended his/her public comments at the public hearings to have been made as a member of the board in question. Ultimately, he/she was not seated as a member of the board after the public hearings were closed and he/she did not vote on the application. For this reason, the complaint is dismissed.

Whittle made a motion, seconded by Critchley and unanimously adjourned the meeting at 7:30 pm.

Respectfully submitted,

Mary Schettino
Administrative Assistant