

## **TOWN OF WOODSTOCK ETHICS BOARD 2018 ANNUAL REPORT**

**The Ethics and Disclosure Law of the Town of Woodstock, Section VIII Ethics Board, C Powers and Duties, number 8 requires the Ethics Board to "... prepare and submit and annual report to the Town Board summarizing the activities of the Ethics Board, listing any recommended changes to the text or administration of the Local Law." Herewith is our 2018 annual report:**

### **MEMBERS:**

Allison Dodd - Serving 3 year term (2016, 2017, 2018)  
Paul Washington – Serving 3 year term (2016, 2017, 2018)  
Neil Ratner – Serving 3 year term (2018, 2019, 2020)  
Iris York – Serving 3 year term (2017, 2018, 2019)

### **ELECTION OF OFFICERS:**

The Ethics Board decided not to appoint an official Secretary, but to continue rotating the responsibilities. There is no obligation under the Ethics and Disclosure Law to have a secretary, but we are required to elect a Chairperson, and Allison Dodd was re-elected as the Chairperson.

### **VOLUNTEER DAY, AUGUST 2018:**

Members attended the Town's Volunteer day.

### **ANNUAL DISCLOSURE FORMS:**

Performed review of annual disclosure forms.

**ETHICS INQUIRIES:** The following matters from 2017 were resolved without the need to notify the Town Board pursuant to Section 71-8C(6) of the Ethics and Disclosure Law: Cases 2017-4, 2017-5, and 2017-6. The following matters were resolved without the need for such notice: Cases 2018-1, 2018-2, 2018-3, 2018-4, 2018-5.

### **ETHICS LAW UPDATES:**

During 2018, at the request of Town Board members, the Ethics Board considered whether the Ethics and Disclosure Law should be amended to preclude, at least for a certain amount of time, individuals and firms who perform paid work for the Town or one of its boards, committees, or commissions, from thereafter appearing before such an entity. The Ethics Board noted that the Ethics and Disclosure Law already has such a provision applicable to Town employees (Section 71-3H). The Ethics Board concluded that it would be difficult to apply that, or a similar, provision to non-employees, given the wide variety of types of individuals and firms who perform work for the Town. The Ethics Board noted that the underlying concern could be addressed by including an "anti-revolving door" provision in the contract when the individual or firm is hired.

During the year, the Ethics Board had occasion to interpret the Ethics and Disclosure Law as it applies to a Town employee who also has a separate business (in this case, the Town Supervisor). The Ethics Board did not find any violations of the Ethics and Disclosure Law, but we believe it would be in the Town Board's interest for us to share our interpretation of the Law, set forth as

Annex A to this report, as it may provide useful guidance relating to the Town Supervisor and other employees who may own or operate a business.

We are also beginning to work on a quick reference guide on the Ethics and Disclosure Law that can be used by Town Employees.

### **RECOMMENDATIONS:**

The Ethics Board received some complaints during the year alleging conduct that did not violate the Ethics and Disclosure Law, but rather the Town's Employment Practices Compliance Handbook (the "Handbook"). The Ethics Board believes it would be helpful for the Town to provide the Handbook to all those who are covered by it (which includes not only paid employees, but also those who serve voluntarily on Town boards, committees, and commissions). This would help to ensure that individuals are not only aware of the standards applicable to them, but also know the process for reporting a violation of the Handbook.

### **2018 Meetings:**

The Ethics Board 10 times during 2018 (January 8, January 29, February 26, March 3, March 23, April 6, May 21, June 11, July 23, and November 12) based on business need.

Respectfully submitted by the Woodstock Ethics Board

Allison Dodd

Neil Ratner

Paul Washington

Iris York

## **Annex A to 2018 Annual Report of the Town Ethics Board**

This Annex summarizes the Ethics Board's interpretation of the Town's Ethics and Disclosure Law as it relates to the Town Supervisor's role with respect to matters relating to the construction industry, such as zoning, planning, design, and building code enforcement. While the Ethics Board has not found any instances in which there was "reasonable cause" to believe that the Ethics Law has been violated (which we would have been required to report to the Town Board), we thought it would be useful to let the Town Board know the ground rules as we see them to help avoid even inadvertent violations of the Ethics Law. We encourage the Town Board to share this guidance with any Town officials, employees, or others as it may see fit.

### **No Inherent Conflict of Interest**

First, there is no inherent conflict of interest under the Ethics Law in the Town Supervisor owning or operating a construction business. Section 71-3K of the Ethics Law prohibits a Town officer or employee from investing in a business that "would create a conflict with his/her official duties." We have consulted with counsel and reviewed Section 29 of Article 3 of the New York State Town Law (which defines the responsibilities of a Town Supervisor), and Chapters 32 and 36 of the Town Code (which describe the relationship between the Building Inspector and Code Enforcement Officer and the Town Board).

We have concluded that there is no inherent conflict because the Building Inspector does not report to the Town Supervisor (but rather to the Town Board as a whole), and thus the Town Supervisor does not have the individual authority to direct the Building Inspector to take any action or override a decision by the Building Inspector. Nor does the Town Supervisor have any individual authority to direct the Zoning Board of Appeals (ZBA), Planning Board, or Commission for Civic Design (CCD) to take any action.

### **Executive Capacity**

When the Town Supervisor is acting in his individual executive capacity, it is permissible for him to refer matters that come to his attention to the Building Inspector/Zoning Enforcement Officer, the ZBA, Planning Board, or CCD. However, Sections 71-3B and 71-5 of the Ethics Law require Town officials and employees to recuse themselves from matters that "give the reasonable appearance" of a "conflict of interest," which includes a "situation that has the *potential* to undermine the impartiality of a person" (emphasis added). When acting in his individual executive capacity, depending on the circumstances, there is the *potential* for considerations relating to the Town Supervisor's business to affect his impartiality. Therefore, to avoid the risk of a violation of Section 71-3B of the Ethics Law, the Town Supervisor should steer clear of activities that could be reasonably perceived as seeking to direct, override, or influence the decision of the Building Inspector/Zoning Enforcement Officer, the Planning Board, ZBA, of CCD.

## **Acting as a Member of the Town Board**

**Legislation.** When acting as a member of the Town Board in a legislative capacity, the Town Supervisor generally may participate in discussions and decisions of the Town Board on matters relating to zoning, planning, design, and code enforcement.

As background, Section 71-3A of the Ethics Law provides:

“General Prohibition. A Town officer or employee shall not use his/her official position, or take or fail to take any action in a matter in which *he/she knows or has reason to know* may provide a *personal* financial benefit or secure unwarranted privileges or exemptions for any of the following persons: (1) A Town officer or employee; (2) His/her outside employer, employee or business; a relative or immediate family member, a customer or client.” (Emphasis added.)

This “general prohibition” is then enforced through Section 71-3B, which requires recusal when “acting on a matter before the Town . . . may benefit the persons listed above [in Section 71-3A], financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.”

It is important to note that the Ethics Law focuses on benefits conferred “*personal[ly]*,” not on those that are conferred on a section of the *public* to which a Town Board member belongs. We would note that this distinction between (i) conferring a *special* benefit on an individual lawmaker in his or her personal capacity (which is prohibited), as compared to (ii) conferring a benefit shared by a group of other members of the public to which a lawmaker belongs (which is permitted), is reflected in legislative ethics codes across the country.<sup>1</sup>

There is a good reason for this distinction. In almost any piece of legislation – involving land use, taxation, fees, regulation or the provision of services – there will be those who benefit “financially or otherwise,” including members of the Town Board. To read the Ethics Law

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<sup>1</sup> See, among others, Alaska Stat. Ann Section 24.60.030 (prohibiting a member from acting on a matter where he or she has an interest that is greater than that of “a substantial class of persons to which the legislator belongs”); Colo. Const. Art V, Section 43 (discussing “personal or private interest”), Del. Code Ann. Title 29, Section 1002 (same); Pa. Const. Article III, Section 13 (same); Florida Stat. Ann. Section 112.3143 (prohibiting votes on matters that would “inure to his or her special private gain or loss); Georgia Senate Rule 2-4.2 (prohibiting a vote if the individual has a direct pecuniary interest which is “distinct, unique, or peculiar” to the Senator or Senator’s immediate family). Available at [www.ncsl.org/research/ethics/50-state-table-voting-recusal-provisions.aspx](http://www.ncsl.org/research/ethics/50-state-table-voting-recusal-provisions.aspx) (1/25/2018).

broadly to *require* recusal in such circumstances would undermine the ability of the Town Board to act. Assume a situation in which three of the Town Board members own local businesses, and the Town Board is considering funding a program to attract more visitors to shop in Woodstock – thereby financially benefitting their businesses. We do not believe the Ethics Law was intended to eliminate the ability of the Town Board to act in such matters. Indeed, the democratic legislative process is enhanced by having the knowledgeable participation of people from various professions and backgrounds in debating laws that affect members of the public who are similarly situated.

Having said that, any Town Board member *should* recuse himself or herself from voting on an ordinance or other matter where he or she knows that they (or their business, client, or family relative) would receive a particular benefit not shared more broadly by others. As we have previously noted, this includes appointing family members to positions on Town boards or committees. It would also apply in a hypothetical situation in which a Town Board member was the only doctor in town, and the Town Board was considering a zoning ordinance that would prohibit any other medical office from being established, thereby clearly conferring a special benefit on the doctor; in that case, recusal would be required.

We would also note that recusal is also required only when the Town official either “knows or has reason to know” that one of the foregoing individuals or entities would enjoy some special benefit. The text of the Ethics Law explicitly requires such actual or constructive knowledge of conferring a “benefit” on a “customer or client” for there to be a violation of Section 71-3A. Similarly, we believe it is also generally a prerequisite for requiring recusal under Section 71-3B. If a Town officer or employee is genuinely and in good faith ignorant that his or her actions may confer a special benefit on a relative or client, it is difficult to see how the officer’s or employee’s acting on a matter could “create a reasonable appearance of a conflict of interest or impropriety.”

**Appointment, Removal, and Oversight.** The Town Supervisor may convey decisions made by the Town Board to the Building Inspector/Zoning Enforcement Officer, ZBA, Planning Board, and CCD. The Town Supervisor may also generally participate in discussions and decisions of the Town Board when it comes to the appointment, removal, and oversight of the Building Inspector/Zoning Enforcement Officer, and the Town’s various committees and boards. Like any other member of the Town Board, the Town Supervisor should recuse himself when required by Section 71-3B or other relevant provisions of the Ethics Law. The Ethics Board is available to provide any Town Board member with guidance on whether recusal is required in a particular situation.

**General Good Practice.** Finally, even when recusal is not required by the Ethics Law, we believe it is appropriate for all Town officials and employees to disclose how an action may affect them, their business, customers, or family members, and to consider whether to recuse themselves to advance the overall goal set forth in the Ethics Law to “promote public confidence . . . in . . . our local government.”

We hope that this document has provided useful guidance. If you have any questions, please feel free to contact us.