1. Minutes Of Executive Session - September 11th, 2018
   Minutes of executive sessions are only posted upon dismissal of a complaint or a determination of probable cause

   Documents:

   2018 09-11 MINUTES OF EXECUTIVE SESSION.PDF
GREENWICH BOARD OF ETHICS

Minutes of Executive Session During Regular Meeting on September 11th, 2018

Members Present: Paul de Bary, Chair, Robert Grele, Rev. Ian Jeremiah, Secretary

Members Absent: John Margenot, Robert Sisca,

Others Present: Norma Kerlin, Eric Brower

The purpose for the executive session was to review a submission received as a complaint. Copies of the submission (attached as Exhibit A), which include an original submission on the Board’s official complaint form dated June 25th, 2018 and a follow-up submission dated August 17th, were circulated to the members in advance of the meeting. A copy had also been provided to the respondent. The Chair first invited the Complainant to summarize and further explain the submission. Next the respondent was given an opportunity to respond and to answer questions from the Board. The Chair and Mr. Grele asked follow up questions to clarify certain issues, but Fr. Jeremiah did not participate in the discussion.

The Chair then advised the parties that the first step in its investigation would be to determine if the submission contained sufficient information to form the basis for a complaint of a violation of the Code. Following this, Ms. Klein and Mr. Brower left the meeting. At the beginning of the executive session, Fr. Ian disclosed that he had not participated in the discussion of the matter after learning information that might result in him having a conflict of interest. After consideration, Fr. Ian decided that it would be best to recuse himself. There being no quorum at this point, the remaining members of the Board determined to continue discussion of the submission at a special meeting to be arranged by the Chair.
Exhibit A

Submissions dated June 15th and August 29th
Town of Greenwich, Connecticut
Board of Ethics

Complaint

Section 2.12(n) of the Code of Ethics requires the Board to investigate complaints of violations of the Code by any Town Officer, which includes any official, employee or agent of the Town, any consultant to the Town or any member of any board, department, commission, committee, legislative body or agency of the Town, whether elected or appointed.

Name and phone (optional): Norma Kerlin 203 637 8166

Address (optional): 5 Palmer Island (26 South End Court) Old Greenwich, CT 06870

(You may submit an anonymous complaint, but the Board's ability to investigate the complaint may be limited because it will not be able to contact you for clarification of any questions concerning the complaint. The Connecticut Freedom of Information Act requires all complaints filed with the Board to be made available to the general public upon request in the event that a determination of probable cause is made following a preliminary investigation of the complaint.)

Concisely, but in reasonable detail, please describe the violation you are concerned about below, or attach a statement describing it. If possible, please include the name and position of the Town Officer(s) involved and give the details of any votes, actions or transactions involved and their financial interest in the matter or thing of value accepted by the Town Officer which might influence their behavior. Include dates, places and corroborating witnesses or documents, if any.

Please see attached statement and GIS map

NOTICE

No complainant, respondent, witness, designated party or Board member may disclose to any third party any information learned from the investigation of a complaint without the consent of all respondents named in the complaint, unless a finding of probable cause is made following a preliminary investigation. By filing a complaint, the complainant agrees not to violate this requirement.
Statement Regarding a Possible Violation of Greenwich's Code of Ethics

This statement addresses the conduct of Eric Brower, Vice Chair of the Town's Conservation Commission. Notwithstanding his leadership position with the Conservation Commission, Mr. Brower is currently representing a developer (Tim Muldoon, Palmer Island LLC.) before both the Planning and Zoning Commission and the Planning and Zoning Board of Appeals in connection with development of a property, 10 South End Court, located in an ecologically fragile coastal environment in Old Greenwich. His client seeks a subdivision of the property, one variance and approval of two coastal site plans. To date, Mr. Brower has been the sole spokesman for the client.

I lack details regarding his compensation and/or other emoluments, but I do not believe that his is a pro bono effort.

The Conservation Director (who reports to members of the Conservation Commission - including Mr. Brower) is mandated to work with other town departments on open space protection and management issues. Palmer Island LLC, represented by Mr. Brower, plans to set aside an open space area of over 20,000 square feet in connection with its subdivision application. As shown by the accompanying GIS document, the proposed open space "recreation area" is a tidal wetland between four and six feet in elevation and subject to high tides of over 9 feet. (Today, for example, - 6/15/18 - we expect a high tide of 9.09 feet). Mr. Brower has not specified what sorts of recreation his client envisions for this area, but whatever it is, any plausible kinds of activities stand to seriously damage a coastal environment that offers significant flood protection to surrounding properties. The conservation staff has not spoken directly to this issue, and it's understandable, given the identity of the Commission's vice chair.

Mr. Brower has failed to address other material town regulations governing subdivisions, including a statement as to how the layout of the two proposed lots - each to contain a large dwelling - will protect the coastal environment; any factual basis for contending that the two proposed dwellings will not aggravate a flood hazard; and identification of existing natural features on the low lying property and how such features will be preserved.

All of the foregoing are issues that Conservation Commission staff, given the Commission's mandate, should feel comfortable commenting on. In fact, staff should feel obligated to do so. But they have not so commented in any material way, and I believe that Mr. Brower's presence as an officer of the Commission - even if he might have recused himself from participation in the 10 South Court issue - has stymied those mandated efforts. It is not a stretch to say that Mr. Brower's position and conduct has jeopardized the safety and well-being of all residents of the areas close to and adjacent to 10 South End Court.

Norma Kerlin
June 15, 2018
This map was produced from the Town of Greenwich GIS. The Town expressly disclaims any liability that may result from the use of this map. Basemap: 4/2/08. Parcels: 10/1/12.

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Palmer Island  
26 South End Court  
Old Greenwich, CT 06870  
August 29, 2018

Paul A. deBary  
Chairman, Board of Ethics  
Town of Greenwich  
25 West Elm Street  
Greenwich, CT 06830

Re: Kerlin Submission to Board of Ethics Regarding Eric Brower

Dear Mr. deBary,

Thank you for your letter dated August 7, 2018. I appreciate the opportunity to supplement my June 15, 2018 submission to Board of Ethics regarding Eric Brower.

Eric Brower is a town officer as defined in Section 2(3) of the Code of Ethics of the Town of Greenwich. Specifically, he is Vice-Chair of the Town of Greenwich Conservation Commission, one of Greenwich’s three land use commissions. Upon information and belief, he also serves on the Town’s Open Space Committee and has participated in preparation of the Town’s Plan for Conservation and Development.

Since approximately July 2017 Mr. Brower has also represented Palmer Island LLC, which, in connection with that Corporation’s recently acquired property at 10 South End Court (Palmer Island) in Old Greenwich, has filed with the Greenwich Planning and Zoning Commission [P&Z] applications for approval of two Coastal Site Plans and for a Coastal Subdivision Plan. Mr. Brower represents and is the chief spokesperson for Palmer Island LLC regarding these applications.

Mr. Brower is the principal of Eric V. P. Brower AICP, a business organization which – since 1996 – has engaged in professional land planning services in the Town of Greenwich. When Tim Muldoon, the principal of Palmer Island LLC, met with the five Palmer Island homeowners (including me) on August 18, 2017, he identified Mr. Brower as his representative. And, indeed, on several occasions, Mr. Brower has represented Palmer Island LLC before P&Z – and before the Zoning Board of Appeals. P&Z files show that he has met and corresponded with numerous other individuals and officials in connection with the development of the Palmer Island property. I do not know the nature or amount of any compensation or other consideration that Mr. Brower is receiving or will receive, but I am confident that he is not working gratis. In sum, the above-described work is of a nature corresponding to Mr. Brower’s principal occupation, and he plainly has a substantial interest in the 10 South End Court transactions.
Because 10 South End Court is located in tidal wetlands, both the Site and Subdivision Plans are subject to review under the Town’s Coastal Area Management [CAM] regulations in order to ensure compliance with applicable law.

P&Z, the land use agency responsible for reviewing Coastal Site Plan applications, currently lacks a staff person with academic training and/or expertise in identifying and determining CAM issues. In addition, no P&Z commissioner possesses documented training and/or expertise in this area. Accordingly, P&Z relies on other agencies, principally the Conservation Commission, for the expertise it lacks.

Town Conservation Commission staff apparently have expertise in CAM and, indeed, one staff member has submitted memos addressing CAM aspects of the subject applications presented by Mr. Brower. Mr. Brower has provided no meaningful response to these memos except to defer any CAM response or possible analysis to the developer’s subsequent submissions seeking approval of two separate Site Plans. However, if the pending application for a Coastal Subdivision Plan is approved, the ability to restrain development of the two resulting coastal lots in accordance with CAM requirements will have been mostly lost.

Neighbors, including myself, have expressed concern that Mr. Brower’s conflicting roles as 1) principal advocate for the developer and 2) Vice-Chair of the Conservation Commission not only present a conflict but have egregiously stymied full and fair Conservation Commission staff comments and/or objections to both the Site Plans and the Subdivision Plan respecting CAM issues. Also, since our detailed written request made directly to Mr. Brower on January 2018, we have hoped for – but never received - a point-by-point discussion of the developer’s compliance with CAM regulations, particularly since the developer’s latest Application for Review of Coastal Site Plan dated May 25, 2018 lacks complete coastal resources and project plans and contains only conclusory assertions. In addition to the developer’s seven month refusal to materially address CAM issues raised in the January letter, I would also point out that DPW’s own Scott Marucci has repeatedly declined to approve the requested Coastal Subdivision, noting, most recently on July 14, 2018, that the CCMA policy “to manage coastal hazard areas so as to insure the development proceeds in such a manner that hazards to life and property are minimized” has not been satisfied.

I believe that Mr. Brower’s concurrent and conflicting roles as 1) a developer’s advocate for a sizable development in a CAM area and 2) Vice Chair of the Conservation Commission, the land use agency which is in the best position to evaluate the developer’s adherence to CAM regulations, constitutes a genuine conflict of interest – one that should have counseled him to refuse the development role. At the very least this dual status constitutes an egregious appearance of impropriety, but more probably a direct conflict of interest.

Finally, upon information and belief, Mr. Brower has failed to comply with Section 5 of the Code of Ethics, which requires him to submit a written statement disclosing
his position as a town officer, the nature of his interest in the Palmer Island LLC transaction(s) and the total amount of money or other consideration received from this (and other) transactions during the Fiscal Year July 1, 2017 to June 30, 2018.

Thank you for your consideration of this matter.

Sincerely yours,

Norma Kerlin

Norma Kerlin