

DRAFT

GREENWICH BOARD OF ETHICS

Minutes of Regular Meeting on February 8, 2023

Members Present: Paul de Bary, Chair, Jennifer Paul Cohen, Secretary, Robert Sisca, Ken Greenberg and (via telephone) Rev. Stephanie Johnson

Members Absent:

Others Present: Ty Anderson, Harbor Management Commission (as shown)

The hybrid meeting was called to order at 5:57 P.M. by the Chair, who noted that a quorum was present and that the agenda for the meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. The Chair also noted that Robert's Rules of Order would be suspended in the interest of efficiency, subject to being reinstated in the interest of an orderly discussion.

The first item on the agenda was approval of the minutes from the December 7, 2022, meeting of the Board. The Secretary had distributed drafts of the minutes prior to the meeting. There were no further revisions requested to the minutes. The Secretary then moved for adoption of the minutes, Rob Sisca seconded the motion, and the minutes from the meeting of the Board were approved in the form attached to these minutes as Exhibit A.

The Chair then noted the re-appointment of Rev. Stephanie Johnson to the Board and welcomed Ken Greenberg to his first meeting as a member of the Board. The Chair discussed plans for a Board orientation meeting followed by a social gathering to honor Bob Grele's contributions to the Board. Stephanie suggested Monday, March 20, 2023, at 5:30 PM at St. Paul's Episcopal Church in Riverside.

At 6:04 P.M. Ty Anderson, a Town Officer, was joined to the telephone conference with Rev. Johnson to discuss two advisory opinions. One concerned the adoption of an advisory opinion by a commission that he was a member of and the other dealt with disclosure of financial interests. Mr. Anderson stated his concerns with a draft of the first advisory opinion that had been circulated to the members of the Board, Mr. Anderson and the person requesting the opinion. He felt that it did not reflect prior discussions about safe harbor status, his understanding of it at the time it was adopted and what he believed was the understanding of the other commissioners about it. His belief was that the opinion did not provide a full safe harbor because it did not expressly give safe harbor treatment to persons who disclosed the existence of an interest, without providing details about the nature of the interest and then successfully recused themselves from the action or transaction in question. The Chair

apologized to Mr. Anderson for any miscommunication and expressed regret and responsibility if any of the members of the Commission felt misled. The question before the Board, however, remained was what was best for the Town and the Commission.

The Chair indicated that in his prior discussions with Mr. Anderson he had agreed to a change in the policy that would not require members of the commission to disclose the nature of their interest as long as they completely recused themselves from the action or transaction in question. The Chair indicated to Mr. Anderson that he believed the Board would consider this favorably because it did not require people to disclose details if they felt that they could successfully recuse themselves without doing so. Moreover, successful recusal would avoid a violation of the Code and therefore the need for the safe harbor procedure provided for in the policy.

Discussions ensued where members of Board expressed the view that the draft advisory opinion in fact intended to indicate that the policy as a whole was considered a safe harbor policy, but that where the existence of an interest was disclosed, without providing details, and complete recusal was achieved, there was no reason for the policy to provide for safe harbor treatment, since there would be no violation of the Code as a result of the recusal. Mr. Anderson was not convinced by this, but felt that he had expressed his concerns as best he could, so he left it to the Board to continue to work on the draft opinion.

Mr. Anderson also discussed the second advisory opinion regarding the applicability of the Code to Town Officers' investment interests of a de minimum percentage of outstanding shares in publicly traded companies that may be involved in transactions with the Town. The Chair advised him that the Board expected to prepare a draft opinion for its April meeting and would share it with him in advance.

At 6:33 PM Mr. Anderson left the meeting. The Board then continued its review of the first draft Advisory Opinion that had been discussed with Mr. Anderson. In light of Mr. Anderson's expressions of concern, the Board made a number of revisions intended to clarify that the Board was not rejecting safe-harbor treatment for commissioners who disclosed the existence of an interest and completely recused themselves, rather that no safe-harbor procedure was necessary in that circumstance.

The request for an advisory opinion regarding disclosure of investment interests in publicly traded companies was also briefly discussed, and it was agreed that a draft opinion should be circulated to members of the Board in advance of its next regular meeting.

The next item was a review and preliminary investigation of reports concerning possible violations of the Code of Ethics. Under State law and the Board's Statement of Procedures, such considerations are required to be done confidentially until the Board makes a determination that there is probable cause to believe that a violation of the Code has occurred. Accordingly, at 7:25 PM a motion to adjourn into executive session was made by the Secretary, seconded by Ken Greenberg and unanimously approved.

At 7:45 PM the Board returned from executive session and reconvened in regular session.

The Secretary then moved to adopt Advisory Opinion 23-01 in the form attached to these minutes as Exhibit B. Mr. Greenberg seconded the motion which was approved unanimously by roll call. Advisory Opinion 23-01 is attached to these minutes as Exhibit B.

At 7:47 Rob Sisca left the meeting.

A Report on Board Records and a discussion on proposed changes to the Safe Harbor Policy template were tabled until the next regular meeting of the Board.

The Chair then asked if there were any further items that members of the Board wished to consider. Hearing none, the Chair moved to adjourn, the Secretary seconded the motion, and the meeting was adjourned by unanimous consent at 7:58 P.M.

GREENWICH BOARD OF ETHICS

Minutes of Regular Meeting on December 7, 2022

Members Present: Paul de Bary, Chair, Jennifer Paul Cohen, Secretary, Robert Sisca

Members Absent: Rev. Stephanie Johnson

Others Present: None

The in-person meeting held in the Cone Room at Town Hall was called to order at 5:32 P.M. by the Chair, who noted that a quorum was present and that the agenda for the meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. The Chair also noted that Robert's Rules of Order would be suspended in the interest of efficiency, subject to being reinstated in the interest of an orderly discussion.

The first item on the agenda was approval of the minutes from the September 7, 2022, meeting. The Secretary had distributed drafts of the minutes. The Secretary asked for comments and hearing none, moved for adoption of the minutes. With no opposition, the minutes of the Board were approved unanimously in the form attached to these minutes as Exhibit A. The Chair directed the Secretary to certify the minutes and file them as so approved.

The Chair's Report began with a formal, heartfelt acknowledgment of the passing of Bob Grele, the longest serving member of the current Board of Ethics. The Chair praised Bob's critical role on the Board as a gentleman and member who was always diligent, prepared, wise, and one who sought and achieved consensus. Bob understood that arguments were a means to reaching a productive agreement for both sides. Rob Sisca praised Bob's long legal career in Greenwich as well as his depth of knowledge of Town government and institutions. The Board benefitted from Bob's leadership in numerous ways, and he will be sorely missed.

The Chair suggested a special meeting to formally recognize Bob Grele's service, to which Bob's wife, Sue, and others might be invited to attend. FOIA permits an exception for a "purely social meeting" which might be held after the special meeting.

Bob had notified the Selectmen that he could no longer serve as soon as he realized that he would not be able to serve another term, but not in time for an immediate replacement. Ken Greenberg has been nominated by the Selectmen to serve as Bob's replacement and is

currently awaiting RTM Committee interviews with confirmation expected in January 2023. He has been given the meeting schedule for 2023 and confirmed that he has no conflicts.

The Town Services Committee interview for Rev. Johnson has been delayed due to scheduling issues. It is hoped that confirmation of her re-appointment will be on the same schedule as Ken Greenberg.

The Chair then reported that there has been no word on the adoption of the policy the Board recommended to the Selectmen in its report on referral and recommendation practices finalized by the Board of Ethics at the September 7, 2022, meeting. The Chair reported that a copy of the report had been sent to each of the Selectmen.

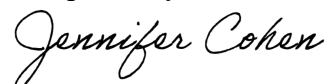
The Chair reported that no formal complaints or requests for advisory opinions have been received since the last meeting. However, the Board received a message on its hotline from a person complaining about being stalked by a Town Officer. Members of the Board had received copies of the Board's correspondence with the individual who left the message. The Chair distributed a draft decision describing the Board's efforts to ascertain if the individual wanted to report a violation of the Code and dismissing the individual's report for failure to do so. The Chair asked if there were any comments on the draft or any further discussion. The Secretary moved that draft Decision No. 2023-01 be adopted. Rob Sisca seconded the motion which was unanimously approved. The Decision is attached hereto as Exhibit B.

The Chair then addressed the schedule for regular meetings for 2023, a draft of which which had been previously distributed. The chair had moved the September meeting to one week later at Rob Sisca's suggestion. FOIA requires that the Chair file the schedule with the Town Clerk. With no objection, the schedule will be so filed. The Schedule is attached hereto as Exhibit C.

The Chair then addressed to the consideration of a report regarding a possible violation of the Code of Ethics. Under State law and the Board's Statement of Procedures, such considerations are required to be done confidentially until the Board makes a determination that there is probable cause to believe that a violation of the Code has occurred. Accordingly, at 6:32 PM a motion to adjourn into Executive Session was made by the Chair and unanimously approved. At 7:07 PM the Board returned from Executive Session.

Following this discussion, there was no further business before the Board and the meeting was adjourned by unanimous consent at 7:09 P.M.

Respectfully submitted,



Jennifer Cohen, Secretary

Exhibit A
to 12/7/22 Minutes

Minutes of the Regular Meeting on September 7, 2022

were approved in final form at a previous meeting and are not included to avoid duplication.

Decision No. 2023-01

Date: 12/07/2022

Topics: Sufficiency of Complaint

Code Sections: Sections 4 and 8(a)

The Board of Ethics received a report by email message on its hotline on October 3rd, 2022. In accordance with its Statement of Procedures and Rules of Conduct, the Board proceeded with a confidential review to determine if the report alleged a violation of the Greenwich Code of Ethics. The first step in any such review is for the Board to evaluate whether the report alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the information contained in the report and assumes the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether the report (a) makes a complaint that should be further investigated or (b) should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction or involves issues or circumstances that are not appropriate to be addressed by the Board in light of the remedies available.

Information Contained in the Report

The report alleged that a member of a Town board had been upset when the person making the report had complained about receiving “spam emails and texts” from the member’s spouse and that the Town board member had found and “post[ed] my private information on the internet, including my full name, phone number and address.” The message also alleged that the member had made a veiled threat that the person should: “change my address.” The report also complained that the person making the report did not know if the Town position had been used “to gain access to my information” but alleged that “it is in violation of the DOJ rules and regulations and right to privacy laws” and that clearly the member “lacks judgement and is unethical in her dealings with the public. Whether or not she is an elected official, the town of Greenwich has a fiduciary responsibility for [...] aberrant and illegal actions. Please step up and take responsibility.”

The Chair of the Board responded to the message explaining that the Board was responsible to investigate only alleged violations of the Code of Ethics and asked if the person making the report could provide specific information about that. The message would be considered at the Board’s next meeting, which the person making the report was invited to attend. The person making the report responded by voicemail to the Board’s hotline, explaining that it would be difficult to attend the meeting, but expressing the hope that the “unethical” behavior of the Board member would be addressed, indicating that complaints had been made to Senator Blumenthal and the DOJ and stating that they agreed that the member should not continue to hold a Town office. The message ended with an offer to provide any additional information that the Board might need. The Chair acknowledged the message by email and indicated that, as indicated in the previous message, unless specific information about a violation of the Code of Ethics was provided, the report could not be considered a complaint that the Board was required to investigate. In response the Chair received a request for a copy of the Code. The message stated that “if it allows for conflicts of interest, stalking, and harassment of a private citizen by an elected town official on behalf of a related politician, then no further action is required.” The Chair sent a copy of the Code to the person making the report five days prior to the meeting and received no further communication in response.

Determination and Decision

Under the Board's Statement of Procedures and Rules of Conduct, the report submitted by the complainant was examined to determine if 1) it described a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation and 2) it involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available.

The Board determined that the respondent was a Town Officer within the meaning of the Code. It also determined that that the report did not allege facts supporting the conclusion that a violation of the Code existed. The Board made this determination because the report did not describe the use of a Town office to influence any transaction with the Town or action to be taken by the Town in which the Town Officer had a substantial financial interest. Such use and influence is necessary in order for there to be a violation of Section 4 of the Code. Under Section 8 of the Code, the Board of Ethics is only authorized to investigate violations of the Code.

Accordingly, the Board determined that the submission did not qualify as a complaint that should be investigated under the Code.

Town of Greenwich

Board of Ethics

Regular Meeting Schedule for 2023

The Board of Ethics has adopted the following meeting schedule for its regular meetings during the 2023 Calendar Year:

February 8th, 2023

April 12th, 2023

June 7th, 2023

September 13th, 2023

December 6th, 2023

Regular meetings of the Board of Ethics are usually held at 5:30 P.M. at Town Hall. In accordance with the Board's Statement of Procedures and Rules of Conduct and the Connecticut Freedom of Information Act, however, meetings may be conducted electronically or as hybrid in-person and electronic meetings. For specific information concerning the location and time of each meeting, please consult the Town Facilities Calendar. Special and emergency meetings of the Board of Ethics may be scheduled upon notice to the Town Clerk, which will be posted in accordance with the requirements of the Connecticut Freedom of Information Act. That Act requires notices for special meetings to be filed with the Town Clerk and posted on the meeting page of the Town's web site at least 24 hours before the meeting, but does not require notice of emergency meetings where the emergency is justified. In compliance with the Act, notices, agendas and minutes for regular and special meetings will be filed in the office of the Town Clerk and posted on the Agenda and Minutes Center on the Town website.

Electronic copies of notices, agendas and minutes may be subscribed to on the Town's website for no charge. Any person who files a written request, and agrees to pay reasonable charges as described below, will be sent copies of notices and agendas for regular and special meetings at the time they are filed with the Town Clerk. Any such request must specify the e-mail, fax or physical mailing address to which the copy of the notice is to be given and will be effective for one year from the date of filing. A renewal request may be filed during January of each year. The cost of this service will be: 1) for e-mail notification - \$50, 2) for fax notification - \$100, or 3) for 1st class mail notification - \$200. Persons making such requests should enclose a valid check drawn on a solvent account and made payable to "Town of Greenwich" for the required amount with the request sent to the Town Clerk. The request should be mailed or delivered to the Town Clerk at Town Hall, 101 Field Point Road - Greenwich, CT 06830. A copy of the request should be sent to the Secretary of the Board of Ethics at the same address.

Advisory Opinion No. 23-01

Date: February 8th, 2023

Topics: Financial Interests, Transactions, Disclosure, Recusal

Code Sections: Section 4

Statement of Facts:

The Chair of a Town commission (the “Commission”) requested an advisory opinion with respect to the adoption of a Conflict of Interest Policy by the Commission. The Commission had used the template approved by the Board of Ethics as an initial draft of the policy but had worked with members of the Board to implement changes that members of the Commission felt were more consistent with the operations and character of the Commission.

Modifications to the policy dealt with the scope and applicability of the policy and did not affect the procedure for review of the matter by non-interested members and the making of recommendations concerning proper management of the matter by such non-interested members, which are the fundamental provisions that the policy is based on.

Questions Presented:

1. Does the disclosure of an interest in a Town action or transaction and complete recusal from involvement in discussion or voting on the action transaction avoid a violation of Section 4 of the Code, which prohibits Town Officers from “exerting influence or voting on” a transaction in which a Town Officer has a substantial financial interest?
2. Where a Town Officer is a member or staff of an entity that has adopted a conflict of interest policy discloses an interest in a Town action or transaction, describes the details of such interest and follows the recommendations of independent reviewers of the transaction, will the Town Officer be entitled to safe harbor treatment by the Board of Ethics?

Discussion and Conclusion:

Consistent with the decision of the Connecticut Supreme Court in *Senior v. Zoning Commission*, 146 Conn. 531, 2, 153 A.2d 415 (1959), the Board has on numerous occasions indicated that Town Officers can avoid a violation of the Code of Ethics where they disclose the existence of an interest in a Town action or transaction, and take appropriate steps to avoid influencing the transaction. The steps the Board has

recommended in this regard include disclosure of the existence of the interest, avoiding voting on and discussing the issue with other persons involved in the action or transaction and avoiding continuing involvement in the matter after the approval of the action or transaction is given.

These steps have been articulated in a general sense in various advisory opinions of the Board and in many cases can be implemented without much difficulty in a way that avoids any appearance of impropriety. Therefore, they have been incorporated into the recommended template for a conflict of interest policy adopted by the Board. There are a number of circumstances, however, in which it isn't clear how these guidelines should be applied. Statements made by a Town Officer prior to becoming aware of his or her involvement in the matter may be viewed as an attempt to influence the matter unless the record is clarified. Or Town Officers may become officially involved in a matter for some time before becoming aware of the fact that they have a financial interest in it. The Town Officer may also find that, even if they avoid involvement in the initial approval of an action or transaction, they will have the potential to influence it during the period when it is being implemented. Complete non-involvement in a transaction may also seem impractical when the Town Officer has a duty to represent constituents or provide necessary expertise that is not reasonably available elsewhere.

In these circumstances, obtaining an advisory opinion from the Board of Ethics may not be feasible because of time or other constraints and the need for the Board to educate itself about the relevant operational and other issues involved before it is in the position to render a thoughtful opinion. This is why the Board has taken the position that it will allow a Town Officer to rely on the recommendations of uninterested reviewers in determining how to avoid a violation of the Code. The Board is confident that a Town Officer who reveals the details of their interest in a transaction and is willing to follow the recommendations of uninterested reviewers is not intentionally violating the Code. If a complaint is made in such circumstances, the Board will inquire into whether the interest was properly reported and reviewed and whether the recommendations to implement recusal were properly followed. If it finds that a violation of the Code did occur when these procedures were implemented in good faith, it will not find that the violation was intentional.

Whether or not a conflict of interest policy has been adopted, where an interest is reported and complete recusal is achieved, the Board will not find a violation of the Code by virtue of the successful recusal.

The Commission has adopted a conflict of interest policy that follows the Board's recommended template with respect to review and recommendation procedures following a detailed reporting of the nature of the transaction. Therefore a Commissioner who discloses an interest in a Town action or transaction, describes the details of such interest and follows the recommendations of independent reviewers of the transaction, will be entitled to safe harbor treatment by the Board of Ethics in accordance with this advisory opinion.

See Related: A09-03, A09-04, A12-01, A14-01, A17-01, A20-01

**BOARD OF ETHICS OF THE TOWN OF GREENWICH
RECORD OF VOTES BY THE BOARD**

DATE: FEBRUARY 8, 2023

**MOTION/RESOLUTION: (1) MOTION TO ADOPT MINUTES
FROM DECEMBER 7, 2022, REGULAR MEETING**

Member	Yea	Nay	Abstain	Absent
Paul de Bary	X			
Jennifer Cohen	X			
Ken Greenberg			X	
Rev. Stephanie Johnson			X	
Robert Sisca	X			

**BOARD OF ETHICS OF THE TOWN OF GREENWICH
RECORD OF VOTES BY THE BOARD**

DATE: FEBRUARY 8, 2023

**MOTION/RESOLUTION: (2) MOTION TO GO INTO EXECUTIVE
SESSION**

Member	Yea	Nay	Abstain	Absent
Paul de Bary	X			
Jennifer Cohen	X			
Ken Greenberg	X			
Rev. Stephanie Johnson	X			
Robert Sisca	X			

**BOARD OF ETHICS OF THE TOWN OF GREENWICH
RECORD OF VOTES BY THE BOARD**

DATE: FEBRUARY 8, 2023

**MOTION/RESOLUTION: (3) MOTION TO ADOPT ADVISORY
OPINION 23-01**

Member	Yea	Nay	Abstain	Absent
Paul de Bary	X			
Jennifer Cohen	X			
Ken Greenberg	X			
Rev. Stephanie Johnson	X			
Robert Sisca	X			