

DRAFT

GREENWICH BOARD OF ETHICS

Minutes of 1st Special Meeting held in Executive Session on June 8th, 2022

Members Present: Paul de Bary, Chair, Jennifer Paul Cohen, Secretary,
Robert Grele, Robert Sisca and Rev. Stephanie Johnson

Members Absent: None

Others Present: None

The meeting was called to order at 5:04 P.M. by the Chair, who noted that, a quorum was present and that a notice of the special meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. As a special meeting in executive session, the Chair advised that only items on the agenda and items permitted to be considered in executive session would be considered.

The first order of business was approval of the minutes of two meetings held in executive session on April 6th, 2022. Receipt of the draft minutes by the members was confirmed and the Chair asked if there were any comments or revisions that should be made. It was requested that the minutes of the 1st Executive Session be revised to reflect the fact that a decision was adopted, rather than an advisory opinion. It was also requested that the decision adopted at each of these meetings be reflected as attached to the minutes of the respective meeting as an exhibit. Since the result of the 1st executive session was a finding of no probable cause, the Secretary was directed to seal the minutes and all other official correspondence related to the matter.

As revised, the Secretary moved adoption of the minutes, seconded by Rob Sisca, and they were approved following a roll call vote. Stephanie Johnson abstained as she was not in attendance on April 6, 2022. The Chair directed that a copy of the final minutes as approved be attached as an Exhibit to the minutes of this meeting.

The second item on the agenda was consideration of a report received via voice mail on the Board's hotline. The Chair explained that the report concerned a possible HIPAA violation at Witherell and did not indicate that the action taken related to a financial interest in the matter. He had spoken to the person submitting the report, who confirmed that it was made in error. The Chair confirmed that each of the members had received a copy of the draft decision that had been circulated dismissing the report as failing to describe a violation of the Code of Ethics and asked if there was any discussion of the matter.

There being no discussion, the Chair asked for a motion to approve the decision dismissing the report. The motion was made by Mr. Sisca and seconded by Rev. Johnson and was unanimously approved by roll call vote. The Chair noted that, as the Board had determined that the report it received was not a complaint describing a violation of the Code of Ethics, the minutes of the meeting and all of the Board's records with regard to the matter would now become public records. He therefore directed the Secretary to file the minutes.

Following this the Chair indicated that all matters listed on the agenda had come before the Board and moved to adjourn the meeting which was approved unanimously by roll call vote at 5:09.

Exhibit A

Final Minutes of Special Meetings on April 6th, 2022

DRAFT

**Minutes of
1st Meeting in Executive Session
On
April 6th, 2022**

The minutes and decision of the Board approved at the April 6, 2022 meeting of the Board of Ethics have been sealed in accordance with the requirements of Section 1-82a of the Connecticut General Statutes due to a finding of no probable cause.

GREENWICH BOARD OF ETHICS

Minutes of Executive Session 2 at Regular Meeting held on April 6, 2022

Members Present: Paul deBary, Chair, Jennifer Paul Cohen, Secretary, Robert Grele, Robert Sisca

Members Absent: Rev. Stephanie Johnson

Others Present:

The virtual meeting was called to order executive session at 6:31 PM by the Chair, who noted by rollcall that a quorum was present and that only matters permitted to be dealt with in executive session pursuant to FOIA should be discussed. In accordance with FOIA requirements, he asked the Secretary to keep a list of all those in attendance and include the list in the minutes of the executive session. No persons other than the Board members attended the executive session.

The Chair asked for any final comments on the draft decision dismissing a report, because it was not a matter suitable for the Board to investigate in light of the remedies available.

There being no further comments or amendments to the draft decision, the Chair made a motion for its approval which was seconded by the Secretary. There being no opposition, the decision was unanimously adopted by rollcall of the members present and the Chair directed the Secretary to attach the decision as an Exhibit A to the minutes of the meeting.

Following this discussion, there was no further business before the Board and Executive Session 2 was adjourned by unanimous consent at 6:35 PM.

Exhibit A

to

Minutes of Executive Session 2 at Regular Meeting held on April 6, 2022

Decision 22-02

Decision No. 22-02

Date: 4/6/22

Topics: Substantial Financial Interest, Exertion of Influence, Town Action, Complaint

Code Sections: Section 2(2), Section 4

The Board of Ethics received a report concerning the actions of a member of a Town Commission. The report was not submitted on the formal complaint form recommended in the Board's Statement of Procedures. However, since the Greenwich Code of Ethics does not prescribe the manner in which a complaint is to be made, the Board proceeded with a confidential review to determine if the report alleged a violation of the Code and, if so, whether there should be a preliminary investigation to determine if there was probable cause that the violation had actually occurred.

The first step in any such investigation 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, reading the report in the light most favorable to the person making the report, assumes the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether (a) the report 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.

The Board determined that, as a member of a Town Commission, the respondent was a Town Officer within the meaning of the Code and therefore consideration of the report was within the jurisdiction of the Board.

Information Contained in the Report

The report alleged that the Commissioner had, during meetings of the Commission, participated in discussions at which an application concerning the design of a building on property owned by a neighbor of the Commissioner was being discussed. The report included reported statements by the Commissioner that (i) the Commissioner's input was needed because no one else on the Commission had the necessary expertise to review certain areas of the application under review, (ii) the Commissioner had discussed the matter with a member of the Department of Law and had not been advised that recusal was necessary, and (iii) that the Commissioner had not in fact voted on the matter

and did not intend to do so. The report also indicated that the Commission had no policy under which it could prevent the Commissioner from participating in the discussion or control the manner in which the Commissioner's information was conveyed so that it could be clearly understood as an attempt to inform rather than influence the other Commissioners.

Determination and Decision

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

Section 4 of the Code of Ethics provides that:

"No Town Officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action.

In the absence of a showing otherwise, a Town Officer may be presumed to have a financial interest in an application to a Town Commission concerning the design of a building on a neighbor's property. *Section 4 of the Code not only prohibits voting on the matter, it prohibits influencing the matter.* Absent a showing that a Town Officer has formally disclosed an interest in a matter and has followed strict rules established by non-interested members to ensure that information has been provided only to inform, rather than influence the matter, the Board will assume that any participation in the review or discussion of a matter is an attempt to influence the matter, unless further information proves otherwise. Neither the absence of other members' expertise on the Commission nor the lack of a warning by the Department of Law alters this result.

Accordingly, the Board determined that the report met the criteria for a complaint describing a violation of the Code. Prior to this determination, however, the Board learned that the Commissioner had resigned from consideration for reappointment to the Commission, had no further participation in the matter, and was no longer a member of the Commission. In addition, the Commission had adopted a Conflict of Interest Policy using a template recommended by the Board. As a result, the Board determined that the report no longer involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. It was therefore determined that the submission did not qualify as a complaint that should be investigated under the Code.

Exhibit B

to

**Minutes of 1st Special Meeting held in
Executive Session on June 8th, 2022**

Decision #22-03

Decision No. 22-03

Date: 6/8/22

Topics: Complaints, Sufficiency, Town Officer

Code Sections: Section 8, Subsection 2(3)

The Board of Ethics received a report through a voicemail message on its hotline on May 20th, 2022. The caller was identified as a registered nurse whose mother was a patient at Nathaniel Witherell. In accordance with its Statement of Procedures and Rules of Conduct, the Board proceeded with a review of the report to determine if it alleged a violation of the Greenwich Code of Ethics.

The first step in any such investigation 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 the respondent, who was a member of the staff at Nathaniel Witherell, had publicly posted the results of tests of residents for the Covid-19 virus in manner that allowed them to be personally identified. A concern was expressed that this was a violation of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). A formal acknowledgment of the report was sent to the individual submitting the report, notifying the individual that the report would be reviewed in executive session at the next meeting and encouraging the individual to attend the meeting and/or provide more specific information as to any violation of the Code that may have occurred. The Chair reported that he had also spoken to the person submitting the report, briefly described the provisions of the Code and explained that the Board was authorized only to investigate possible violations of the Code. The caller apologized for being unfamiliar with the Board's responsibilities and agreed that the matter was more appropriate to be reported to other responsible parties.

Determination and Decision

Notwithstanding the acknowledgement of the individual submitting the report, the Board carefully reviewed it 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, as an employee of a Town owned facility, the respondent was a Town Officer within the meaning of the Code. However, it determined that the report neither alleged facts supporting the conclusion that a violation of the Code existed nor involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. The Board made this determination for the following reasons:

- 1) Section 8 of the Code of Ethics requires the Board of Ethics to investigate possible violations of the Code of Ethics.
- 2) The Board determined that the report was not a complaint that it was required to investigate because the report only alleged only a violation of HIPPA rather than violation of the Code.

Accordingly, the Board dismissed the report submitted because it did not qualify as a complaint that should be investigated under the Code.

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

**DATE: JUNE 8TH, 2022
1st Executive Session**

**MOTION/RESOLUTION: (1) TO APPRPVE MINUTES OF
MEETINGS IN EXECUTIVE SESSION ON APRIL 6TH, 2022**

Member	Yea	Nay	Abstain	Absent
Paul de Bary	x			
Jennifer Paul Cohen	x			
Robert Grele	x			
Rev. Stephanie Johnson			x	
Robert Sisca	x			

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

**DATE: JUNE 8TH, 2022
1st Executive Session**

**MOTION/RESOLUTION: (1) TO APPROVE AND ADOPT
DECISION #22-03 IN THE FORM ATTACHED AS EXHIBIT B**

Member	Yea	Nay	Abstain	Absent
Paul de Bary	x			
Jennifer Paul Cohen	x			
Robert Grele	x			
Rev. Stephanie Johnson	x			
Robert Sisca	x			