

DRAFT

GREENWICH BOARD OF ETHICS

Minutes of Regular Meeting Held on June 8th, 2022

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

Members Absent: None

Others Present: Joe Williams, Deputy Director, Greenwich Library and Joseph Siciliano, Director of Parks and Recreation, and (from 5:41 on) Jackie Budkins, Town Clerk, and Pat Sesto, Director of Environmental Affairs

The executive session was called to order at 5:11 P.M. by the Chair, who noted that a quorum was present. The Chair welcomed the participants and indicated that this was a regular meeting of the Board and an agenda for the meeting had been posted on the Town bulletin board and in the Agenda and Minutes pages on the Town website in accordance with FOIA requirements.

The first order of business was approval of the minutes of the Board's regular meeting on April 6th, 2022. The Chair confirmed that all members of the Board had received copies of the draft minutes and asked if there were any comments or corrections. There were no comments or corrections. The Secretary then moved adoption of the minutes and the minutes were adopted unanimously, with the exception of Rev. Johnson abstaining because she had not attended the meeting. The Chair directed that a copy of the final minutes as approved be posted in the Agenda & Minutes Center on the Town Website, attached as an Exhibit to the draft minutes of this meeting when filed with the Town Clerk and posted to replace the draft minutes for the April 6th Meeting in the Agenda and Minutes Center.

Chair then reported that he would be sending a reminder notice to Town Officers to file disclosure statements by the end of July that a draft of a presentation containing a flow chart describing the Board's procedures that had been prepared by Board member Jennifer Paul Cohen. The draft presentation had been circulated to all the members for review. The Chair asked each of the members to comment. After a brief discussion, there was a consensus that it would be useful to post the presentation among the Board of Ethics pages on the Town website. On behalf of all the members, the Chair thanked Ms. Paul Cohen for her excellent work.

The Chair then reviewed the progress made by the various Board members in surveying Town Officials to get a better understanding of the Town's practices with respect to referrals and recommendations. He summarized the Board's results thus far as finding a broad consensus with respect to an unwritten policy not to make specific referrals and

recommendations. Necessary exceptions had been found, however, in relation to public health and safety emergencies. In some cases, such as the Police Department's duty wrecker assignments, procedures were formalized, but it was appropriate to recognize that in emergency situations, Town representatives needed the freedom to make the decisions they thought practical to address the issue at hand. In addition, an exception was needed for situations where Town employees or agents were used to perform public health and safety functions that were best contracted and paid for by the persons most directly benefitted. There were also situations in which the Town was expected to serve as a resource for information and provide guides and listings, such as the resource guide for seniors prepared by the Commission on Aging or the recent list of vaccination and testing sites for Covid-19 prepared by the Health Department in response to inquiries.

The Chair then thanked the liaisons who were present for attending the meeting and asked for any feedback from them. Mr. Williams indicated that the Library considered it part of its mission to recommend books of topical interest to Town residents and to sponsor book talks and other informational events. Ms. Sesto confirmed that the public expected the Town to assist them, particularly in regard to making applications and seeking approvals. A discussion of the various approaches used by different departments ensued and the question of whether a Town-wide policy would be useful to establish a framework that could protect the Town from possible liability. Ms. Budkins reported that the Clerk's office provided a listing of Constables and Justices of the Peace on its web pages, but did not otherwise make referrals or recommendations. The Chair noted that interagency referrals to other Town departments, as well as federal and state agencies and certain non-profit social services providers, was another exception to the general rule that the Board saw a need for.

After receiving and discussing these comments, the members of the Board thanked the liaisons present for their input and promised to keep them informed about the progress of the project.

The Chair then indicated that all matters listed on the agenda had come before the Board and moved to adjourn the meeting which was approved unanimously at 6. Following the Board's review and discussion of these matters, there was no further business to be dealt with in executive session and the executive session was adjourned by unanimous consent at 6:03 P.M.

DRAFT

Exhibit A

**Minutes of Regular Meeting
On
April 6th, 2022**

**GREENWICH BOARD OF ETHICS
Minutes of Regular Meeting on April 6, 2022**

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

Members Absent: Rev. Stephanie Johnson

Others Present: Aamina Ahmad, Assistant Town Attorney
Richard Neuman, Chair, Town Services Committee

The virtual meeting was called to order at 5:31 P.M. by the Chair, who noted that a quorum was present and that an 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 began with approval of the minutes. The Secretary had distributed a draft of the minutes of the Board's regular meeting on February 2, 2022. After review, there were no further revisions requested to the draft minutes. The Chair then moved for adoption and the minutes of the Board were unanimously approved. The adopted final minutes are attached to these minutes as Exhibit A.

The Chair then reported on an effort to review the Board's Statement of Procedures and create a presentation for training of future Board members which might also inform Town Officers, and other Town entities. The Secretary had prepared a draft presentation illustrating the Board's Procedures which the Chair had reviewed. The Chair will circulate suggested changes and updates to the Board's Procedures, and the Secretary

will circulate the draft presentation to the Board so that both documents may be reviewed by the full Board at the next regular meeting on June 8th, 2022.

The Chair then reported on progress in furtherance of the 1st Selectman's request for recommendations concerning referrals by Town entities and officers. The Secretary reported on her meetings with the Chair of the Board of Nathaniel Witherell, and the Director of the Health Department indicating that both entities recognized the issue of referrals from the public and had developed processes and policies in response. The Chair reported on his meetings with the Chief of Police and the Fire Marshall and summarized their input on how requests from the public were being handled. Bob Grele reported on his meeting with the Assistant Town Attorney from the Law Department and the Director of the Department of Human Resources and relayed how the Law Department referred requests for attorneys. Robert Sisca will contact a representative from Planning & Zoning and the Town Clerk's Office. The general consensus from outreach thus far is that the development of a Town-wide policy is supported.

At 6:06 PM Richard Neuman and Aamina Ahmad both joined the meeting, and the Chair moved to the draft Advisory Opinion regarding service on a RTM Committee with oversight and budget responsibility over a former employee's Department. The Chair solicited comments on the draft Advisory Opinion which had been circulated to the Board as well as to Richard Neuman and Mark Kordick. Richard Neuman had no changes to the draft Advisory Opinion and thanked the Board for its thorough analysis of the issues. After confirming there were no additional comments from the Board, the Secretary moved to approve and adopt the draft Advisory Opinion. Robert Sisca seconded the motion, and it was unanimously adopted and is attached as Exhibit B. The Chair indicated that a copy of the Advisory Opinion would be sent to Richard Neuman and Mark Kordick. Responding to a request from Mr. Neuman, the Chair suggested the Advisory Opinion be circulated to all members of the Town Services Committee.

At 6:15 Richard Neuman left the meeting.

The Chair then moved to the decision 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 6:15 PM a motion to adjourn into Executive Session 1 was made by the Chair and unanimously approved. At 6:28 PM the Board returned from Executive Session 1.

At 6:28 PM Aamina Ahmad left the meeting.

The Chair then moved to the decision regarding the evaluation of a reported violation of the Code. 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 the report should be dismissed or that there is probable cause to believe that a violation of the Code has occurred. Accordingly, at 6:31 PM a motion to

adjourn into Executive Session 2 was made by the Chair and unanimously approved. At 6:35 PM the Board returned from Executive Session 2.

The Chair noted that since the Board had determined to dismiss the reported violation because it was not a matter that was suitable for the Board to investigate in light of the remedies available, the minutes of the Board's executive sessions evaluating the report should now be made public together with the decision adopted. The Chair indicated that the decision would also be posted in the library of opinions and decisions that can be accessed from the Board's web pages on the Town website.

The Chair then returned to the discussion of referrals and indicated that he will be assigning Board members additional Departments to contact and sharing notes from his meetings with Town Departments. Board members should put together and share their own notes and provide contact names, email addresses and numbers for the liaison members from each department. In preparing notes, it will be useful to think about categories and distinctions regarding requests from the public in anticipation of a discussion at the next meeting of the Board in June and the formation of a working group. The working group will be able to use the notes to compile a draft of the portion of the Board's report that summarizes the outreach findings.

Following this discussion, there was no further business before the Board and the meeting was adjourned by unanimous consent at 6:50 P.M.

EXHIBIT A

To Minutes of April 6th, 2022 Meeting

The Minutes of the Regular Meeting on February 2, 2022 were finally approved on April 6th and have not been included here to avoid endless duplication and repetition of minutes of prior meetings

EXHIBIT B

GREENWICH BOARD OF ETHICS

Advisory Opinion No. 22-01

Date: April 6, 2022

Topics: Substantial Financial Interest, Transaction, Conflict of Interest; Improper Influence: RTM Committees; RTM Subcommittee; Disclosure of Financial Interests

Code Sections: Section 2(2); Section 2(4); Section 4; Section 5

Statement of Facts:

A member (the Member) of the Representative Town Meeting (RTM) has accepted a position as an alternate member on a standing Committee (the Committee) of the RTM that has operational and budgetary oversight over several Town departments. The Member is a former employee of one of these Town departments. The Member has brought a lawsuit against the Town of Greenwich and against current and former Town officials, in their individual capacities. The lawsuit alleges discipline or discharge on account of the exercise of constitutional rights, tortious interference with a contract, and invasion of privacy, and seeks damages in excess of \$15,000, including claims for lost wages and benefits.

As a result of the Member's lawsuit, members of departments for which the Committee has budgetary and operational oversight responsibilities may be called to provide testimony and/or documentation concerning the circumstances of the Member's discipline and dismissal. In addition, the circumstances of the discipline and dismissal may be an issue with respect to the current and future operations of the departments involved and members of other departments, of the Board of Estimate and Taxation, and various other committees of the RTM may be involved in discussions of the Town's strategy in the litigation, including settlement considerations.

The Committee on which the Member serves is designed as the penultimate step in the approval of the Town's budget as it proceeds from the First Selectman's Office, through the BET, and finally to a full RTM vote. The purpose of the Committee is to gather and review information so as to make a recommendation to the RTM on the soundness of the budgets of various departments of the Town of Greenwich. The Committee is made up of 24 members, comprised of two members (a Delegate and an Alternate) from each of the 12 voting Districts in Greenwich. It has operational and budgetary oversight for 13 departments of the Town of Greenwich including Police, Fire, GEMS, the First Selectman's Office, Human Resources, and the Board of Ethics. In order to perform the substantial work of evaluating 13 department budgets, the Chair of the Committee forms smaller subcommittees (known as Subgroups) assigned to specific departments. Members of the Committee who accept assignments to Subgroups are tasked with attending meetings at the

Departments to which they are assigned. At these meetings, the Heads, Chiefs, and Chairs of the departments present their yearly budgets and any current updates to operating procedures and policies. The members of the Subgroup query and review the budget requests and the policy drivers behind any changes to the budgets. Once the members of a Subgroup have completed these meetings, they report back to the Committee as a whole as well as to the Districts they represent and indicate how they will be voting on the budgets. The entire Committee then votes on the budgets and makes its recommendations to the RTM.

The Member has requested an Advisory Opinion.

Questions Presented:

1. As a plaintiff in ongoing litigation with the Town, does the Town Officer have a substantial financial interest, within the meaning of Subsection 2(2) of the Code of Ethics, in any action to be taken by the Town or in any transaction with the Town?
2. Since the Committee has operational and budgetary oversight over departments whose officers or employees may be involved in the litigation brought by the Member, is the acceptance of an assignment as an Alternate on the Committee an attempt to use the office of an RTM member to exert influence on a Town action or transaction within the meaning of Section 4 of the Code?
3. Where a Subgroup of the Committee has operational and budgetary oversight over a department whose officers or employees may be involved in the litigation brought by the Member, would the acceptance of an assignment to the Subgroup be an attempt to use the office of an RTM member to exert influence on a Town action or transaction within the meaning of Section 4 of the Code?
4. Does a claim for damages in a lawsuit constitute a substantial financial interest in a transaction with the Town that requires disclosure under 5 of the Code?

Discussion:

Litigation as a Substantial Financial Interest

The question of whether a person bringing a lawsuit against the Town seeking money damages has a “substantial financial interest” in a Town action or transaction has not been previously addressed by the Board and will of course depend on the particulars of the lawsuit and the nature of a Town Officer’s involvement in the lawsuit. Section 2(2) of the Code of Ethics defines a substantial financial interest as follows:

“Substantial Financial Interest shall mean any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the Town.”

Accordingly, a determination that a Town Officer bringing a lawsuit has a substantial financial interest in a Town transaction or action involves an analysis of the dollar amount of the interest,

whether it is directly or indirectly held by the Town Officer, and whether it is unique to the Town Officer. In this case, all three criteria are met. The Member's lawsuit seeks damages that are more than nominal, i.e. in excess of \$15,000. The Member is the plaintiff in the lawsuit and thus has a direct interest in the claim for damages. As a personal claim it is an interest not common to other citizens of the Town.

Arguments may be made that the Member has no current financial interest since the receipt of damages is conditioned upon the future success of the lawsuit in Court and that the lawsuit is not a Town "transaction" or "action" within the meaning of Section 4 of the Code. However, the Code clearly does not require that a contract be entered into for a substantial financial interest to exist. This is evident in that Section 4 prohibits influencing a "transaction" with the Town and Subsection 2(4) includes an "offer" within the definition of "transaction." Under long established principles of contract law, an offer must be accepted in order for a contract to exist. Thus, as defined in the Code, a transaction, clearly includes non-contractual activities.

In Advisory Opinion No. 20-01, for example, the Board considered a bid proposal to the Town for a contract that had not yet been awarded to be an offer and an interest in it to be a substantial financial interest. In this instance, the Member's lawsuit seeks money damages for services that must be presumed to still be offered. Had the Member quit voluntarily or no longer be willing to provide the service of employment by the Town, there would be no claim for damages for lost employment.

The Member emphasizes that the Member's employment with the Town has ceased. Indeed, when evaluating the existence of a substantial financial interest, the Board has reviewed many fact patterns involving a Town Officer who receives a salary from the Town, or has a spouse who is an employee of the Town, or who is a party to a contract for services with the Town. However, the Board has also determined that a substantial financial interest exists absent an employment or other goods and services contract with the Town. These include a Town Officer's management role in a non-profit organization that may lease property from the Town (Advisory Opinion No. 02-03) or a Town Officer's ownership of property in a district affected by an assessment (Advisory Opinion No. 04-03).

Moreover, the Code prohibits influencing Town "actions" as well as transactions. It is an inevitable consequence that the Member's lawsuit will prompt numerous actions to be taken by the Town. These actions will include: fact gathering involving persons in the departments over which the Committee has oversight, pretrial discovery in departments over which the Committee has oversight, the scheduling or giving of depositions, documents or testimony, and legal and practical strategy sessions and settlement discussions involving the Law Department and members of the BET as well as other departments over which the Committee has oversight. At all times, there is of course the possibility of the Town taking action to offer or agree to a settlement and this will require actions to be taken to negotiate a settlement and obtain approvals from the Claims Committee and the RTM.

Accordingly, as a plaintiff in a pending lawsuit seeking damages against the Town, the Board believes that the Member has a substantial financial interest as defined in Section 2(2) of the Code.

Committee and Subcommittee memberships as an attempt to exert influence.

Determining that the Member has a substantial financial interest both in a Town transaction and in actions to be taken by the Town is not a determination that the Code has been violated, however. Section 4 of the Code only prohibits certain actions by Town Officers who have such an interest:

“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.”

Accordingly, the Board must consider the ways in which the Member may be seen as exerting influence through the Member’s role as an Alternate on the Committee and a potential member of a Committee Subgroup.

All RTM members are prohibited from exerting influence over any matter over which a member has a substantial financial interest – whether it concerns a general vote or discussion at an RTM meeting or at a committee or subcommittee of the RTM. As stated in Advisory Opinion No. 09-03, “the Code appears to be quite explicit that an RTM member with a substantial financial interest in a matter may not vote on or “exert influence” on the matter either at the larger RTM meetings or at the smaller committee meetings.” This opinion noted, however that there were special circumstances where an RTM member’s obligations in representing constituents might permit discussion of or voting on a matter.

Such special circumstances might occur where the member advocates a position in the interest of constituents that is arguably against the member’s own personal interest or where a member votes on an overall Town budget that includes line items that the member has a personal interest in, but took no role in reviewing or discussing. The Board has recognized the fact that the RTM is a large body and that expressions of opinions by a member can be more informative than influential, as long as the member’s personal interest had been properly disclosed and considered by those conducting a debate. Accordingly, in Advisory Opinion No. 09-03, the Board outlined safe-harbor procedures under which members could participate, at general meetings of the RTM, in discussions certain matters in which they had an interest without being considered to have used their office to exercise influence. We understand that the member is aware of and expects to follow those guidelines when participating in general meetings of the RTM.

There are special considerations, however, that must be taken into account when it concerns a member’s responsibilities on a committee of the RTM. Committee and subcommittee members are more influential than the rest of the RTM because they are called on to make recommendations that the other members rely on when casting their votes. They may also be given privileged access to information and processes as a basis for making those recommendations. With respect to standing committees that have operational and budget oversight responsibility, there is necessarily a process that is influential both in shaping the views of the RTM members that are being reported back to, and also in shaping the behavior of the Town officials and employees that report to the committees and subcommittees.

Two prior Advisory Opinions shed light on the distinctions at issue here. Advisory Opinion No. 07-01 involved a Town Officer who was an employee of the Town as well as a member of the RTM. The Town Officer sat on a committee of the RTM that engaged in extensive discussion and debate on matters relating to the department for which the Town Officer worked and had also volunteered to serve as liaison between the committee and the board that had oversight responsibility for the department.

The Board expounded on the heightened involvement membership in this committee required as well as the special weight given to committee recommendations and votes as opposed to a general vote as a member of the RTM.

“While any member of the RTM may testify before a committee, actual participation as a member of the committee is both a privilege and a responsibility that every member does not share. The establishment of a committee recognizes the need for a heightened degree of involvement in the issues that the committee is chartered to deal with, and presumes that the recommendations of the committee will be given special weight by the general membership of the RTM. *Thus, the very act of accepting a position on the committee may be seen as placing a member of the RTM in a position to exercise heightened influence over the matters that the committee is responsible for.*” (Emphasis added.)

In Advisory Opinion No. 09-03, a member of the RTM served as an alternate on the RTM’s Budget Overview Committee during the time when the member’s wife was a Town employee. In that case the committee assignment involved reviewing the budget and policy drivers related to the Department employing the member’s wife.

In distinguishing committee work from general RTM responsibilities, the Board wrote:

“[T]he Board feels that there needs to be a much stricter scrutiny at the committee level than with respect to the RTM as a whole. As there are many fewer members at committee meetings, each vote proportionally is more influential on the result and participating in discussion of matters in which a member has an interest in the committee setting is fraught with potential peril. Committee members can influence other members with non-verbal cues, some of which they may not even be aware they are giving. A raised eyebrow, an impatient sigh and many other cues are picked up by other committee members during a discussion and may influence how they vote. In addition, the role of a committee is to forward its findings to the larger RTM. It would be difficult to inform the members of the full RTM of the degree of influence that a particular member who had a financial interest in an issue might have had on the outcome of the committee’s votes. As a whole, the RTM has the right to rely on unbiased decision making at the committee level. Therefore, the Board believes that the best way to ensure that members with a financial interest do not exert undue influence on committee deliberations is for such members to refrain both from active debate and voting on issues in which they have an interest at the committee level.”

The subtle nature of influence detailed above is particularly applicable to the facts giving rise to this Advisory Opinion. There will inevitably be a chilling effect on Town personnel when they are involved in a lawsuit and know that someone who has interests that may be adverse to the Town or the department they work for is reviewing their action. Regardless of the intent of the person with the interest, others may be influenced simply by knowing that the person is tasked with budgetary and operational oversight.

In considering the current request, the Board has spoken with the Member and the Chair of the Committee. We appreciate that there are a number of departments that the Committee has operational and budget oversight of that appear to be uninvolved in the lawsuit. These would seem numerous enough that the Member could play a productive role in the Committee's activities even while scrupulously avoiding involvement with departments that may be involved in the lawsuit.¹ We also appreciate that the Member has reviewed the Board's prior decisions and appreciates the need to avoid discussions relating to matters in which there may be a financial interest both outside the Committee meetings and by not being present when such matters are discussed in Committee meetings. Accordingly, we cannot find that the mere acceptance of the assignment to serve as an Alternate member of the Committee is an attempt to influence a matter in which the Member has an interest.

The departments involved in the Member's lawsuit will most certainly be called upon to take multiple actions, however, as outlined above. They are likely to be involved in reviews of training, employment, and severance policies, which may also result in budgetary changes. A Subgroup meeting with members of the department involved with the lawsuit may involve reviewing and voting on such changes. Therefore, the Board does not expect the Member to accept a position on any Subgroup charged with operational and budgetary oversight of any departments whose personnel may be involved with or affected by the lawsuit. In this case, the Board believes that the very act of accepting a position may be seen as using the position of being an RTM member to influence matters that the Member has a substantial financial interest in.

Financial Disclosure Reports

Section 5(1) of the Code requires that, "Any town officer having a substantial financial interest in one or more transactions with the town totaling two hundred dollars or more each in a fiscal year, shall file a written statement disclosing said position..." The Code defines a transaction in Section 2(4) in the following terms:

"Transaction shall mean and include the offer, sale or furnishing of any real or personal property, material, supplies or services by any person, directly or

¹In a number of past Advisory Opinions, the Board has suggested procedures to avoid a violation of the Code where a member of a board, commission or committee has a financial interest in a matter, but takes no part in matters relating to the action or transaction in which the member has an interest. See particularly Advisory Opinion No. 09-04. In addition, the Board has adopted a template for a safe harbor conflict of interest policy. This outlines procedures that could be adapted to fit the Committee's specific needs and that the RTM may find useful in implementing Committee assignments generally.

indirectly, as vendor, prime contractor, subcontractor or otherwise, for the use and benefit of the town for a valuable consideration...”

Every lawsuit against the Town is not necessarily a transaction with the Town within the meaning of the Code. However, in this instance the Complaint seeks damages consisting of “lost wages and back pay”, “future lost wages and front pay” and “lost benefits” among other claims. As discussed above, a lawsuit that includes a claim of damages for wrongful termination implies an offer of reinstatement or at least an offer to exchange a payment in lieu of compensation for services that are able to be provided. Accordingly, the Board recommends that the Member file a financial disclosure statement with regard to the litigation in each year during which it is pending.

Conclusions

After careful consideration of the factors involved, the Board finds as follows:

- (a) The Member will have a substantial financial interest in a Town transaction as long as a claim for wrongful termination is maintained because such a claim implicitly involves an offer to accept payment in lieu of compensation for services.
- (b) So long as the claim for wrongful termination is maintained, the Member will have a substantial financial interest in the actions of any Town officer or employee involved in the litigation as a defendant, potential witness, provider of information or manager of any department involved in the circumstances or management of the litigation.
- (c) Notwithstanding having a substantial financial interest in certain committee matters, the Member may serve as an alternate member of a standing RTM committee with operational and budgetary oversight over the departments involved in the litigation without violating the Code of Ethics. However, the Member must take appropriate steps to avoid influencing the litigation as outlined in previous opinions of the Board and its published safe harbor procedures. In making this determination, the Board has been given reason to believe that there is ample opportunity for the member to contribute to the Committee’s work without being involved in the oversight of departments involved with the litigation. If not, the Member’s District will want to consider if the assignment is productive.
- (d) Although the Member may accept appointment to the Committee, the Member may not accept an appointment as a member of a Subgroup with specific oversight responsibilities for Departments whose officers or employees may be involved in the lawsuit brought by the Member. The Board believes that acceptance of such a direct oversight role over operations and budgets of the departments involved will necessarily exert influence, intentionally or not, over Town actions in which the Member has a substantial financial interest.

The Board recognizes that final determination of the proper role of the Member on the Committee is a matter for the discretion of the Chair of the Committee, not the Board. With extreme care, it may be possible for the Member to serve on a Committee that oversees a department involved in the litigation without influencing it. However, in the Board’s estimation, the Member’s service on the Committee is better directed to oversight of departments that are not involved in the Member’s lawsuit. Moreover, despite the care that the Member may take in service on a Subgroup the

oversees a department involved in the litigation, the Board believes that the mere decision to accept the Subgroup assignment will influence a matter that the member has a substantial financial interest in. Once the Member's lawsuit is resolved, this financial interest will be removed, and the Chair may determine that appointment to such a Subgroup is appropriate, even if the Member's judgements have been influenced by the circumstances of the litigation.

**See Related: AO-20-01; AO-09-04; AO-09-03; AO-07-01; AO-04-03;
AO-02-03**

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 executive session was called to order at 6:31 PM by the Chair, who noted 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.

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 or the minutes of the prior meetings at which the matter was reviewed in executive session.

There being no further comments or amendments to the draft decision or the minutes, the Chair made a motion for its approval which was seconded by the Secretary. There being no opposition, the draft decision was unanimously adopted in the form shown in Attachment 1 and the minutes as Attachment 2.

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

ATTACHMENT 1

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 not be viewed as an attempt to influence rather than inform 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.

ATTACHMENT 2

**MNUTES OF EXECUTIVE SESSIONS
RELEASED DUE TO DISMISSAL OF REPORTED VIOLATION**

GREENWICH BOARD OF ETHICS

Minutes of Executive Session at Meeting held on December 8th, 2020

Members Present: Paul de Bary, Chair and Secretary for the meeting and Robert Sisca

Members Absent: Robert Grele, John Margenot

Others Present: None

The executive session was called to order at 6:18 P.M. by the Chair, who noted that a quorum was not present and that only matters permitted to be dealt with in executive session pursuant to FOIA should be discussed. In accordance with FOIA requirements, the minutes of the executive session would show a list of all those in attendance.

The only item on the agenda for this executive session was a report that had been received concerning a Commissioner participating in discussions of a matter while having an interest in it. In the absence of a quorum the members present agreed that the Chair should follow up with the complainant and verify a report that the Commissioner had resigned. It would also be considered appropriate for the Commission to adopt a conflict to interest policy in light of the confusion that seemed to exist over how to handle the situation. The Chair promised to report back to the Board at a subsequent meeting.

Following the Board's review and discussion of these matters, there was no further business to be dealt with in executive session and the executive session was adjourned by unanimous consent at 6:12 P.M.

GREENWICH BOARD OF ETHICS

Minutes of Executive Session at Meeting held on April 6th, 2021

Members Present: Paul de Bary, Chair, Rev. Stephanie Johnson and Robert Grele

Members Absent: John Margenot, Robert Sisca

Others Present: None

The executive session was called to order at 6:24 P.M. by the Chair, who noted 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, the minutes of the executive session would show a list of all those in attendance.

The only item on the agenda for this executive session was the status of the Chair's inquiries concerning a report that had been received concerning a Commissioner participating in discussions of a matter while having an interest in it. The Commissioner had resigned and the Chair of the Commission had indicated that it was considering adopting a conflict of interest policy modeled on the Board's Safe Harbor Conflict of Interest Policy. Chair reported that he had spoken with the Chair of the Committee and he had indicated that copies of the Conflict of Interest Policy template had been distributed to the members of the Commission and it would be considered at its next meeting.

Following the Board's review and discussion of these matters, there was no further business to be dealt with in executive session and the executive session was adjourned by unanimous consent at 6:28 P.M.

GREENWICH BOARD OF ETHICS

Minutes of 2nd Executive Session During Regular Meeting on May 11th, 2021

Members Present: Paul de Bary, Chair and Secretary of the Meeting, Robert Grele,
Rev. Stephanie Johnson and Robert Sisca

Members Absent: John Margenot

Others Present: None

The members unanimously agreed to convene a second executive session at 7:21 P.M.

The only order of business was an update from the Chair with respect to a matter discussed in executive session at its December 2020 meeting. As the Chair expected to have additional information shortly, the Board deferred further consideration until its regular meeting in June.

Following these discussions, the executive session was adjourned by unanimous consent at 7:23 P.M. and the members reconvened the regular meeting.

GREENWICH BOARD OF ETHICS

Minutes of Executive Session at Meeting held on June 8th, 2021

Members Present: Paul de Bary, Chair and Secretary of the Meeting, Robert Grele,
Rev. Stephanie Johnson, John Margenot, Robert Sisca, Fred Camillo, *Ex Officio*

Members Absent: None

Others Present: None

The executive session was called to order at 5:48 P.M. by the Chair, who noted 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, the minutes of the executive session would show a list of all those in attendance.

The only item on the agenda for this executive session was the status of the Chair's inquiries concerning a report that had been received concerning a Commissioner participating in discussions of a matter while having an interest in it. The Commissioner had resigned and the Chair of the Commission had indicated that it was considering adopting a conflict of interest policy modeled on the Board's Safe Harbor Conflict of Interest Policy. Chair reported that he had exchanged email's with the Chair of the Committee and he had indicated that the Commission was still intending to adopt the policy, but had been having difficulty fitting it in on the agenda.

The Board then discussed how to encourage the commission to take action without breaching the confidentiality of the investigation. Mr. Camillo suggested involving the Law Department to make some discreet inquiries.

Following the Board's review and discussion of these matters, there was no further business to be dealt with in executive session and the executive session was adjourned by unanimous consent at 6:12 P.M.

GREENWICH BOARD OF ETHICS

Minutes of Executive Session at Meeting held on September 14th, 2021

Members Present: Paul de Bary, Chair and Acting Secretary, Stephanie Johnson and Robert Sisca

Members Absent: Bob Grele, John Margenot

Others Present: None

The executive session was called to order at 5:36 P.M. by the Chair, who noted 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, the minutes of the executive session would show a list of all those in attendance.

The only item on the agenda for this executive session was the status of the Chair's inquiries concerning a report that had been received concerning a Commissioner participating in discussions of a matter while having an interest in it. The Commissioner had resigned and the Commission had indicated that it was considering adopting a conflict of interest policy modeled on the Board's Safe Harbor Conflict of Interest Policy. Chair reported that he had spoken with the Chair of the Committee and he had indicated that the Commission was generally disposed to adopt the policy, but wanted to see what other land use agencies were doing.

The Board then discussed how to involve other land use agencies. The chair indicated that he had reached out to several of the agencies and was in the process of organizing a presentation to members of these agencies with regard to the Board's recommended policy.

Following the Board's review and discussion of these matters, there was no further business to be dealt with in this executive session and the executive session was adjourned by unanimous consent at 6:56 P.M.

GREENWICH BOARD OF ETHICS

Minutes of Executive Session at Meeting held on December 7, 2021

Members Present: Paul deBary, Chair, Jennifer Cohen, Secretary, Robert Sisca, Rev. Stephanie Johnson

Members Absent: Robert Grele

Others Present:

The executive session was called to order at 6:26 P.M. by the Chair, who noted 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.

The Chair then asked the Board to review the status of a report of a possible violation of the code by a Commissioner of a Commission.

The Chair expressed his understanding that by February 2022, the Commission will have adopted the Safe Harbor policies regarding conflicts of interest. If the Commission has not adopted said policies, the Chair stated that the Board will need to consider going forward with an investigation.

Following this discussion Following this discussion, there was no further business before the Board and the executive session was adjourned by unanimous consent at 6:32 P.M.

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

**DATE: JUNE 8TH, 2022
Regular Session**

**MOTION/RESOLUTION: (1) APPROVAL OF MINUTES OF
REGULAR MEETING 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			