

Village of



Mamaroneck

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BOARD OF ETHICS

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REPORT OF THE VILLAGE OF MAMARONECK BOARD OF ETHICS DECEMBER. 4, 2020

Introduction

This report of the Village of Mamaroneck Board of Ethics (the “Ethics Board”) is being supplied to the Board of Trustees (the “BOT”) in satisfaction of the Ethics Board’s obligation to make an annual report, and to the Ad Hoc Ethics Code Review Committee in the hope of stimulating policy solutions to the recent politicization and denigration of the ethical environment in the Village of Mamaroneck. This report will focus on the activities of the Ethics Board and lessons learned since we last discussed such matters with the BOT. It will also provide legislative proposals (some of which were previously recommended to, but not acted upon by the BOT) and others that stem from the recent experience of the Ethics Board in the application of the Village of Mamaroneck’s Code of Ethics (the “Ethics Code” or the “Code”).

The Ad Hoc Ethics Code Review Committee formed by the BOT has been charged to “review the Village’s current Code of Ethics to identify its strengths, limitations and opportunities for improvement” and report back to the BOT (the “Ad Hoc Committee”). The Ethics Board welcomes the involvement and has met with the Ad Hoc Committee and provided it with a number of suggestions. We hope this report helps the Ad Hoc Committee understand the dynamics and challenges of implementing an Ethics Code in the Village and leads to constructive legislative proposals.

The Ethics Board would also like to thank the Village staff. Whether acting as sources of information, called as witnesses or providing administrative support, the Ethics Board has found the staff to be unwavering in their dedication to the Village and to high standards of ethics as called for in the Ethics Code.

This report also addresses and corrects certain misunderstandings and incorrect public statements related to the Ethics Code and how it has been implemented generally and in the Cindy Goldstein case, as well as provides comments on the overall ethical environment in the Village.

Summary of Ethics Board Activity Since Mid 2019

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| 1. Meetings | 33 |
| 2. Investigations | 1 (3 others in last 5 years) |
| 3. Hearings | 1 (1 other in last 5 years) |
| 4. Subpoenas Issued | 2 (the only 2 in last 5 Years) |
| 5. Annual Filings Reviewed | Approximately 70 |
| 6. Formal Complaints Received | 4 (4 others in last 5 Years; of the 8 referenced, 1 resulted in finding violations, 4 were referred to another authority, one dismissed for lack of jurisdiction and 2 dismissed). |
| 7. Cases in which Violations Found | 1 (1 additional in last 5 years) |
| 8. Non-routine Disclosure Deficiencies | 0 (3 in last 5 Years-1 elected official; 2 appointed (each resolved without formal action pursuant to 21-12 B.) |
| 9. Informal/Formal Advisory Opinions | 3 (Multiple additional over 5 years) |

Legislative Proposals and Requests

Previous Proposals/Requests Not Acted Upon by the BOT

1. **February 2017**-Ethics Board Requests Updating of Village Personnel Required to File Annual Disclosure Forms
2. **June 2018**-Ethics Board Requests Village Attorney Assistance in Fulfilling Training and Educational Requirements of the Code, and Requests Assistance in Getting BOT to Review and Update List of Required Filers of Annual Disclosure Forms
3. **July 2018**-Ethics Board writes Mayor Regarding the Ethics Code's Training & Educational Requirements
4. **July 2018**-Ethics Board Requests BOT to Update List of Village Personnel Required to File Annual Disclosure Forms and Requests BOT Meeting to Discuss Legislative Proposals.

5. **October 2018**-Ethics Board Issues Memorandum on Code Changes and Compliance Specifically Addressing Ongoing Disclosure Requirements to Code.
6. **January 2019**-Ethics Board Proposes Changes to Recusal, Gifts and Ongoing Disclosure Requirements, Again Requests Update of Disclosure Filers List and Specifically Requests Resources in Connection with These Suggestions.
7. **July 2019**- Ethics Board Proposes Specific Legislation Related to Recusal and Appointment of Alternate Members of Land Use Boards.

Additional Proposals Based on Recent Experiences of Ethics Board

1. Prohibit any person subject to the Ethics Code from taking acts or encouraging others to take actions that impede or impair the activities of the Ethics Board.
2. Provide consequences for failing to timely file annual disclosure forms including public report of non-filers at 30 days, suspension at 45 days and disqualification at 60 days provided filers receive form by January 15, and reminder on March 15.
3. Section 21-6 of the Ethics Code requires the BOT to update the list of persons required to file annual disclosure forms in January of each year. The list has not been updated for many years, despite numerous requests by the Ethics Board. The Ethics Board proposes amending Section 21-6 to require the Village Manager to make recommendations each year to the BOT with regard to updating the list of persons subject to annual disclosure.
4. Require sanctioning authority to act on an Ethics Board recommendation within 60 days of decision.
5. Ethics Code should state that a violation of the oath of office, or giving false testimony before any board, constitutes a violation of the Ethics Code.
6. Assign an independent attorney to work directly with the Ethics Board. Since the Ethics Board's work necessarily involves potential violations or compliance efforts with elected officials, appointed board members and Village employees, there is a significant risk that the Village Attorney will be conflicted on sensitive matters. It is simply unrealistic to believe that any attorney could represent all parties in Village positions in ethics matters and the current arrangement puts the Village Attorney in an untenable position.

Cooperation With Ad Hoc Committee

In recent months, a number of elected officials and volunteers have suggested that the Ethics Code be reviewed and potentially revised, which review the Ethics Board fully supports. However, in doing so, many cited incorrect facts as the basis for such reform, including misconceptions about the actual conduct of investigations. In the public interest, the Ethics Board will correct these misconceptions.

The Ethics Board disagrees with those who suggest a move towards a less restrictive Code, particularly in light of recent events, the current state of ethics in the Village or when based on incorrect information. We respectfully suggest that public confidence in the integrity of Village

officials and employees is best achieved through adherence to the spirit of the Ethics Code, actual compliance and accountability, and not a relaxation of standards and enforcement mechanisms.

First and contrary to the comments of public officials, there has been no widespread use of investigations; only 1 investigation has been undertaken by the currently comprised Ethics Board; a second was opened and then referred to the proper outside agency. Similarly, public officials have incorrectly stated or implied that the Board of Ethics subpoena power is being used inappropriately, whereas in fact only 2 subpoenas have been issued in the last 5 years, both in one case to secure testimony or physical evidence.

In its meeting with the Ad Hoc Committee and subsequent communications, the Ethics Board has reported that it has found the present Ethics Code to be a good and workable set of thoughtful ethical standards designed to be stricter than the state law in certain areas like disclosure and recusal. The Ethics Board has also suggested that the BOT make a number of changes to the Ethics Code based on its actual experience in implementation and to address several policy issues not addressed in the Ethics Code that have not been acted upon. Other reforms for the consideration of the Ad Hoc Committee and BOT are included above.

Goldstein Investigation and Hearing

In addition to the routine activities of the Ethics Board over the last 18 months detailed above, the Ethics Board devoted a substantial amount of time to the investigation, hearing and post-hearing proceedings arising out of Cindy Goldstein's participation in two matters before the Planning Board which, following a full hearing, the Ethics Board concluded violated the Ethics Code's recusal and disclosure requirements.

The fall of 2019 was focused on the complexities of holding a full hearing ensuring that all aspects of a fair and due process were present, conducting the hearing at which Ms. Goldstein was represented (at the Village's expense) by the attorney of her choosing, reviewing over a thousand pages of evidence, and rendering a decision and recommendation. Her counsel had the unfettered right to and did call and cross examine witnesses, and to make and submit any statements and information he wished as part of the hearing record.

Much of the first half of 2020 was focused on issues of first impression for the Ethics Board based on the requests of the BOT in connection with the confidentiality of the Ethics Board's hearing and the sanctioning hearing in the Goldstein matter, as well as working with the Village Attorney in defending the Article 78 suit brought by Ms. Goldstein against the Village, Ethics Board, BOT and the Village Manager.

Denigration and Politicization of Ethics in the Village of Mamaroneck

The Ethics Board is designed to be apolitical, allowing no more than two members of a single party to serve and the Ethics Code requires that members of the Ethics Board be chosen for their independence, integrity, civic commitment and high ethical standards. The members of this Ethics Board had no significant professional or social affiliations with each other, and some had never met one another.

In determining whether a complaint or “tip” warrants further inquiry, the Ethics Board strives to make prudent judgements about those matters to protect against claims that are not fact based. The Ethics Board has received allegations of violations that, upon review, were baseless and perhaps grounded on partisan, political or personal motivations.

Perhaps most troubling, the Ethics Board has regularly received confidential reports from Trustees, appointed officials and staff regarding potential violations by appointed and elected officials, but a consistent reluctance to file a complaint or to formally testify out of fear of political or employment retribution or reprisal.

Another example related to the appointment process for the Ethics Board, itself, in 2019. The terms of two of the members of the Ethics Board were scheduled to expire in December 2019 and both were eligible for reappointment. As the Ethics Board was finalizing its opinion in the Goldstein case in late November 2019, it learned that those two members would not/might not be reappointed. This created an undue level of pressure on an appointed Board as it was within days of completing a 9-month investigatory and hearing process. Appointment of members of the Board of Ethics should be conducted in a manner to avoid any appearance of trying to impact a Board of Ethics’ opinion.

In addition, members of the Ethics Board have been targeted and pressured by activists and officials intending to thwart the Ethics Board’s activities and to attempt to shield their friends and political allies from application of the Ethics Code.

Correcting Public Statements Regarding the Activity of the Board of Ethics

The Ethics Committee is deeply concerned that public confidence in the Ethics Code and ethics in the Village more generally is being severely undermined by mischaracterizations by elected and appointed officials. There have also been orchestrated efforts to shape public opinion and pressure the Ethics Board not to pursue information brought to it that it has the obligation to evaluate to ensure Village personnel are honoring their ethical obligations. Among the more damaging comments have been speculative and groundless attacks regarding the number, scope and subjects of the Ethics Board’s investigations, all of which are false. As detailed in this memo, the Ethics Board’s investigative actions have been very limited.

The following data is intended to give the BOT, the Ad Hoc Committee and the public the facts needed to properly evaluate the operation of the Ethics Code and to provide a factual basis to guide any changes to the Code.

- **Investigations:** At multiple public meetings, elected officials, appointed board members, party leaders and others accused the Ethics Board of conducting numerous far-reaching investigations and misusing its subpoena power. While the Ethics Code requires the Ethics Board to keep much of its work confidential, the Ethics Board feels it is important to set the record straight.
 - Aside from the Goldstein matter, the presently constituted Ethics Board has not conducted any investigations or hearings. It has received four complaints which it referred to the appropriate authority as statutorily provided.
 - The Ethics Board has only used its subpoena power in two rare instances in the last 5 years, both in the Goldstein matter to obtain evidence the Ethics Board feared might otherwise not have been forthcoming.
 - The Ethics Board does not regularly review various boards' meetings and never "trolls" actual meetings in progress, although its activities are regularly "trolled."
 - The Ethics Board has not commenced any investigation other than based on credible information that was proactively and voluntarily supplied to it by concerned Village officials or staff.
 - Of the 4 investigations by the Ethics Board in the last 5 years, all but one was initiated by a sworn complaint by a third party. The Goldstein matter was initiated by the Ethics Board after receiving multiple "tips" and confirmation by some of the Village's most senior officials and staff within days of the alleged conduct.
- **Targeting:** At the May 27, 2020 public hearing on the Goldstein matter, an allegation about the Board of Ethics was made which deserves specific attention in this report. Former Mayor and Current Planning Board Chairperson Kathy Savolt (who led the enactment of the present Code) speculated under oath that the Ethics Board targeted women. She made a vague reference to five women who have been the subject of inquiry but cited no specific evidence of her assertion. The facts are as follows:
 - Three of the four investigations conducted by the Ethics Board in the last 5 years involved male subjects and only one involved a female subject.
 - Of these 4 investigations, only 2 resulted in a finding of a violation, one of a male and one of a female official. The other two were "dismissed."

- In reviewing Annual Disclosure Forms, the Ethics Board or the Village Clerk's office has routinely requested changes to incomplete filings and attempted to get officials to file on a timely basis as detailed below:
 - Each year, numerous Village board members are late in filing the Annual Disclosure Form as reported to the BOT. Ethics Board's reminders have always resolved this without inquiry, investigation or a hearing, with one exception.
 - Over the last 5 years, out of a pool of hundreds of Annual Disclosure filings, only one filing by one male BOT member in one year required more than the routine reminder letters, emails or calls to gain compliance; that matter was resolved by an amended disclosure adding additional names to the list of the filer's clients.

- Over the past 5 years, the Ethics Board has contacted two (2) land use Board members related to compliance with the ongoing disclosure requirements (e.g., transactional, applicant, etc.), which are complex and which the Ethics Board has suggested to the BOT be simplified. Both were female. One of these two instances was easily and professionally resolved pursuant to Code Section 21-12 B after the board member was contacted, and the overly complex statute was explained. The other situation required multiple emails with the board member who reacted adversely and accusatorily to being asked/required to file when all that was required was a several sentence disclosure.

- **The Santoro Case Was Not Ignored as Precedent for Finding That Ms. Goldstein Violated the Ethics Code:** In connection with the Goldstein case, a number of people have incorrectly pointed to a prior ethics matter related to former Trustee Lou Santoro, suggesting his conduct was analogous to Ms. Goldstein's and accusing the Ethics Board of not following precedent. The statements are wrong on two fronts. Unlike the finding the Goldstein matter, Mr. Santoro was not warned/requested to recuse in advance, witnesses stated that his participation appeared spontaneous and unplanned, he did not vote on the matter and expressed genuine remorse at his mistake. And the Board of Ethics did find that Mr. Santoro had violated the Ethics Code's recusal provision, but did not recommend removal as in Goldstein given the very different circumstances just outlined. The Ethics Board found that Goldstein had been asked to consider recusal in advance of her ongoing participation, Goldstein (in one of the matters) made a misleading declaration from the dais, voted on the matters and never acknowledged that her conduct was in violation of the code, in addition to other distinguishing circumstances.

Lessons Learned On Confidentiality And Transparency

Over the past year, the Ethics Board has, with the assistance of the Village of Attorney, addressed in detail the confidentiality requirements in the Ethics Code on a series of issues. These issues have highlighted the importance of honoring and protecting the Ethics Code's confidentiality requirements. It is simply not possible to implement the Code, encourage compliance and reporting of violations and to protect whistleblowers without strong confidentiality provisions.

The records and proceedings of the Ethics Board include highly sensitive and potentially damaging and sometimes incorrect information about elected officials and volunteer board members. Confidentiality provides the ability to find the facts without harming the reputations of witnesses and those accused, sometimes incorrectly.

The Ethics Code states very clearly:

All documents and hearings relating to the investigation and hearing of any alleged violation of this chapter shall be confidential and not available for public inspection or open to the public, except as otherwise required by state or federal law or by this chapter. All dispositions, including negotiated dispositions, in which the Ethics Board finds a violation of this chapter, shall be available for public inspection and copying.

The current Ethics Code balances the policies of protecting legitimately private information about Village personnel with the public's right to know. That balance is seen in the protections the Ethics Code provides to people who seek advisory opinions, people who witness potential violations of the Ethics Code and people who may have violated the Ethics Code.

Protection of Whistleblowers and Witnesses

It is vital that whistleblowers and witnesses feel safe bringing potential violations to the Ethics Board. The Ethics Code rightly protects them from retribution and public attacks. As the Village considers changing the Ethics Code, it is critical these protections are kept and potentially expanded.

- **Protection from Retaliation.** If whistleblowers could not provide the Ethics Board information confidentially, there is a real danger employees and board members with important information that should be reviewed and investigated would be too afraid to bring the information to the Board of Ethics. There is good reason to believe that serious matters are currently not being reported after recent events in the Village. That is an ethical tragedy.
- **Subpoenas – Access to Critical Information:** Although only used twice during the Goldstein investigative process, the Ethics Board's subpoena

power played an important role in protecting witnesses and securing critical evidence. A number of people the Board of Ethics spoke to during its investigation or who testified at the hearing were concerned about retribution or being criticized by more senior officials. By telling those people they had an affirmative duty to cooperate under Section 21-13 of the Code and/or could be subpoenaed, the Ethics Board was able to alleviate some of those concerns. Some witnesses in the investigation also indicated they would prefer to be subpoenaed to avoid leaving the impression they were volunteering to testify at the hearing. Again, out of fear of retaliation.

Protection of Subjects of Investigations and Hearings: Right to Face Accuser Not Same as Source of Original Tip.

In order to protect subjects and witnesses, the Ethics Code requires that the hearing record be completely confidential, not available to the public. However, and importantly, Ethics Board opinions that find a violation of the Code are public. This statutory protection is clearly designed to protect the subject of the investigations and witnesses.

A number of comments made at and after the Mayor's May 27 hearing on the Goldstein matters claimed that Ms. Goldstein should be entitled to know who made the initial tips that led to the investigation and eventually the hearing – suggesting she was somehow deprived of a right to face her accusers.

First, there was no specific accuser or sworn complaint; the Ethics Board investigations concerning Ms. Goldstein were commenced after multiple senior officials brought information regarding what were ultimately found to be violations of the Ethics Code to the Ethics Board. It is long recognized that the colloquially named “right to face one's accuser” exists in the hands of the accused in a criminal case, but this was not a criminal case. And, a finding of a violation may be supported with evidence provided by other than the original confidential informant. Moreover, the law has long recognized that whistleblowers and confidential informants can and should be protected.

Second, any information the Ethics Board considers at a hearing into potential violations is made available to the respondent. Ms. Goldstein – like any other respondent at an Ethics Board hearing – was not only allowed to hear all of the testimony against her and see any other evidence against her, she was given the opportunity to be represented by the counsel of her choice at the Village's expense, have her counsel question all witnesses, have her counsel call fact and expert witnesses, submit her own evidence and to submit any legal authorities, summaries, arguments and other information she wanted the Ethics Board to consider.

Unique Circumstances and Ms. Goldstein's Consent Led to the Record from Her Hearing Being Made Public.

A number of questions have been asked regarding why the record from the Ethics Board hearing on the Goldstein matter was released just two days before the Mayor's May 27, 2020 hearing. Some inquired why the record was made public at all. Others suggested it should have been released to the public earlier.

As described below, the record of the Goldstein matter was made only public due to a number of unique considerations, including the nature and timing of the requests to make the record public.

After the Ethics Board issued its Decision and Recommendation, the Mayor and BOT requested the record from the Ethics Board's hearing, stating they needed the record to consider the Ethics Board's recommendation. In order to assure Ms. Goldstein would have the fairest possible hearing -- by allowing the persons potentially responsible for acting on the Ethics Board's Recommendation to review the full record -- while honoring the Ethics Code provisions calling for the record to be kept confidential and not provided for public inspection, the Ethics Board released the record to the Mayor and Board of Trustees after the Mayor and Board of Trustees agreed via Official Resolution to keep the record confidential to themselves and not to provide it to anyone else.

At this point the BOT and Ethics Board had both agreed, as shown by the Resolution, that the hearing record would not be supplied to the public.

For five months, no one asked to have the hearing record made publicly available. On May 15, the Mayor requested a waiver of the relevant provisions of the Ethics Code to allow him to post the record on the Village website. The Ethics Committee met on the earliest possible date under the Open Meetings Law (May 18) to consider this new request. After getting further advice from the Village Attorney, the Ethics Board met again on May 22 and agreed to issue a written waiver allowing the record to be made public if, and only if, Ms. Goldstein agreed to have the record posted on the Village website.

Ms. Goldstein's counsel took the position that the record should only be posted on the Village website if documents he filed in connection with a lawsuit Ms. Goldstein filed against the Ethics Board, the Village Manager, the BOT and the Village itself were also published on the Village website. In the interest of transparency, and the unique circumstances of the case, the Ethics Board agreed to Ms. Goldstein's request and the record was posted on the Village website.

In summary, hearing records are required by the Code of Ethics enacted by the BOT to be kept confidential and not available for public inspection. The records from Ms. Goldstein's hearing were only made available due to the unique circumstances of the case and her consent. The Ethics Board agreed to the BOT request with great reluctance given credible concerns for the witnesses, including staff and appointed officials.