

TOWN OF WEST SENECA
1250 Union Road
West Seneca, NY 14224

ETHICS BOARD
September 19, 2019

Chairperson Carpenter called the meeting to order at 7:03 P.M. and led the pledge of allegiance. Emergency procedures were announced.

ROLL CALL: Members Present – Amy Carpenter, Chairperson
Rodney Montgomery, Vice Chairperson
Teresa Funk
William Bauer
Jon Minear, Deputy Town Attorney
Karl Spencer
Jacqueline Felser, Town Clerk

Not Present - Tina Hawthorne, Town Attorney
James Lazaros

APPROVAL OF MINUTES

Motion by Ms. Funk, seconded by Mr. Spencer, to approve Board Meeting Minutes from June 12, 2019 to July 30, 2019 and Work Session Minutes from August 28, 2019, at one time in a bundle.

Ayes: All

Noes: None

Motion Carried

REVISION TO PROPOSED ETHICS CODE

Deputy Town Attorney John Minear led a discussion regarding the ethics investigation process as it pertains to the written Ethics Code. In an effort to make a more efficient process, Mr. Minear recommended clearly defining what happens in a situation of noncompliance during an investigation. He also suggested creating “tools” within the code that allow for better reinforcement. Mr. Minear continued the discussion by presenting the Ethics Board with a variety of options that the board can consider implementing.

- Option #1: Set a monetary penalty of \$50/day until an individual is compliant to a reasonable request.
- Option#2: Suspension without pay from town employment

Chairperson Carpenter asked, “If individuals have attorneys and are advised not to speak, will penalties still be applicable?”

- Mr. Minear replied that this is up to the Ethics Board. It is the burden of the

person to bring in an "Article 78 Proceeding Before a Supreme Court Justice" to say that "this penalty is arbitrary and capricious".

Mr. Spencer asked, "If a person does apply an Article 78, will the Town of West Seneca face legal fees?"

- Mr. Minear replied, "No, I would represent this board if the board faced a lawsuit".

Mr. Montgomery asked, "Where would the penalty money go, if it is collected?"

- Mr. Minear explained that he would have to consult with the Town Attorney to ensure penalty funds were placed in the appropriate place.

Mr. Spencer made a suggestion to Ethics Board that we have a suspension without pay because it would be easier to control.

Mr. Funk asked, "As Advisory Board, do we have the power to suspend someone, or is this something that the Town Board will have to support and approve?"

- Mr. Minear explained that limited to the scope of the investigation, if the Ethic's Board has penalty and/or sanction powers written into the Ethics Code, the board can use such powers to complete their investigation. At the conclusion of the investigation, the Ethics Board will advise the Town Board with their Advisory Opinion. Although the Ethics Board is an Advisory Board, they can still enforce their own powers upon town employees during an investigation, as said powers are limited in the code.

Ms. Carpenter asked, "What enforcement options can be available to the Ethics Board if an individual involved with an investigation is not a town employee?"

- Mr. Minear said that the Ethics Board can then apply a monetary penalty upon an individual who is not a town employee. He added that the Ethics Board would have to subsequently enforce that penalty in court if they are not a town employee.

Mr. Spencer asked, "When it goes to court, is the penalty still in effect, or is it suspended during that time?"

- Mr. Minear replied that that is up to the Justice to make that determination.

Town Clerk Felser commented that there may be an issue with what an individual's attorney is advising him/her if the penalty/suspension is in effect.

- Mr. Minear explained that the penalty or suspension is something the individual's counsel will have to consider while offering advisement. The Ethics Board still has an obligation to complete its job and investigation.

Chairperson Carpenter asked, "If an individual being investigated is also being advised by their attorney not to participate, but complies with the investigation anyways, can

that interview be bound as confidential until the court case is completed?"

- Mr. Minear replied that the investigation process, according to the ethics code, is confidential. Therefore, the testimony of an individual is also confidential. However, if a Justice of the Supreme Court signs a subpoena to obtain a transcript of testimony from the Ethics Board, that may be a question for Town Clerk Fleser if we could release that or not.
- Town Clerk Fleser replied that she would have to check with the Committee on Open Government.

Mr. Minear clarified that the testimony is not completely confidential because a subpoena could obtain that testimony. However, it would be protected from foil request.

Mr. Bauer asked if the Ethics Board would we still have to go through the town board for the suspension of town employees

- Mr. Minear replied that if it is in the code, and the Ethics Board felt there was a noncompliance to a reasonable request, then the Ethics Board can use whatever powers that are at the board's disposal.
- Ms. Funk asked if any unions can trump that decision.
- Mr. Minear replied that the unions may challenge it, but they are under that burden to challenge it under a court of law before a Supreme Court Justice.

Mr. Spencer added that he agrees with Mr. Minear that if our code has any significance at all, we need to have some sort of penalty. He referenced an ordinance that protects trees in the town. He said it is a good law but it is being ignored because the penalties are so small.

Motion by Mr. Montgomery, seconded by Mr. Spencer, to add a "noncompliance to a reasonable request penalty" to the Ethics Code. The penalty for a Town of West Seneca Employee is be "suspension without pay". The penalty for an individual who is not an employee of the town is a monetary penalty of fifty (50) dollars per day.

Ayes: All
Carried

Noes: None

Motion

Mr. Spencer asked if the penalty can be changed.

- Mr. Minear replied that the Ethics Board can make changes to the Ethics Code as long as they follow the proper notice requirements and procedures that the Ethics Board has been following so far.

Ms. Funk pointed out a change in the Code of Ethics that is not the same as what was discussed in the last meeting.

- Under standards of conduct, the Ethics Board was going to add an "O" that said "A copy of the Code of Ethics will be made available to every Town Officer or

Employee each year". There should be a "P" that stated "the Ethics Committee Members will complete at least two hours of training per year". "O and "P" should be separate and not one item.

Mr. Spencer asked if there is a requirement for the officers and employees to sign a receipt that they have received a copy of the Code of Ethics

- Chairperson Carpenter replied that would not be possible
- Ms. Funk added that the Code of Ethics is still enforceable whether or not an individual signs a receipt acknowledging that they have received it.

Motion by Ms. Funk, seconded by Mr. Montgomery, to add "O" and "P", as discussed.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Ms. Funk, seconded by Mr. Spencer to adjourn the meeting at 7:42 p.m.

Ayes: All

Noes: None

Motion Carried



Amelia S. Greenan
Secretary to the Ethics Board