

Chairperson Teager called the meeting to order at 6:03 P.M.

ROLL CALL:

Members Present - Michael Teager, Chairperson
Teresa Funk, Vice-Chairperson
Lawrence Kavanaugh, Jr.
Kayla Leonard
Jon Minear, Deputy Town Attorney

Absent - Anna Garvey

MINUTES TO BE APPROVED

Motion by Chairperson Teager, seconded by Mr. Kavanaugh, to approve Minutes of the August 9, 2023, board meeting.

Ayes: All

Noes: None

Motion Carried

COMMUNICATIONS

Chairperson Teager stated a question has arisen following a communication to the Town Board regarding the two complaints that were dismissed by the Ethics Board for not meeting the threshold of Ethics Code violations. The question is whether the parties to a complaint that is dismissed should be informed of the complaint, and whether the Town Board should be informed of the substance of the complaint. The question has now arisen of what the complaints were about, who made them, and were all parties informed, and would that be the process going forward.

Deputy Town Attorney Minear advised the Ethics Board members there is nothing in the Ethics Code that requires any revelation or any type of backup to inform the Town Board of the complaint, the parties, the alleged violation, the substance, etc. Past practice followed the same process where the Town Board was advised that Complaint No. "___" was filed, a short statement, and the verbiage that the complaint was dismissed. Mr. Minear advised the Ethics Board members they may decide how to proceed based on the lack of statute and past practice. Chairperson Teager stated in his experience, the only people that know of the content in a dismissed complaint are the Ethics Board members and the person who filed the complaint; and the complainant was informed it was dismissed.

Chairperson Teager requested input from the Ethics Board members regarding the current questions. Deputy Town Attorney Minear advised the members to ask themselves what benefit there would be to revealing the names of the individuals involved in the allegations and the complaint. Chairperson Teager used the hypothetical scenario that if he filed a complaint against Ms. Funk and it had been dismissed, should the Ethics Board then inform Ms. Funk that a complaint was filed against her, and the Town Board that an allegation of a complaint was made against Ms. Funk, the outcome of which was determined to be not worth merit for any further consideration.

Deputy Town Attorney Minear stated his interpretation of the email was not necessarily to inform the accused. Chairperson Teager stated one person specifically questioned if the subject should know the complaint also. Mr. Minear stated there is no precedent that the Ethics Board has ever informed the accused or subject.

Chairperson Teager stated if the Ethics Board has determined there is not a violation it would be broadcasting a non-issue for the sake of causing trouble. Considering the opposite point of view, Chairperson Teager can understand the Town Board's question regarding the subject and the reason for its dismissal, but that said, that is why the Ethics Board exists. Further, any time an investigation proceeds, the parties are informed.

Ms. Funk questioned if a complaint was investigated and then dismissed, would that be considered dismissal. Deputy Town Attorney Minear stated in the past whenever there has been an investigation, the Ethics Board has provided a written memorandum or decision, and the decision has always been given to the Town Board. The decision refers to Person X because the Ethics Code is very clear that everything is confidential, and the names have never been revealed.

Ms. Leonard questioned why the Ethics Board would reveal names for a complaint that has not even been investigated if names are not given for complaints that are investigated or were withdrawn. Ms. Leonard questioned if the inquiry referred to a recently withdrawn complaint, also. Chairperson Teager stated the he did not read the email as including or omitting withdrawn complaints and that Town Attorney Trapp stated at the county level they inform all the parties.

Mr. Kavanaugh stated he is content with maintaining the current Ethics Board practice.

Chairperson Teager stated there is language in and around the Ethics Code about discretion and confidentiality, and in his opinion the request seems to go against the spirit of discretion by stating a complaint was filed but dismissed and then providing details of the complaint. Chairperson Teager stated the Ethics Code was silent on the matter.

Mr. Kavanaugh referred to the Ethics Board Rules and Regulations adopted in 2015 and the Bylaws adopted in 2022 and questioned if they are separate guidelines. Chairperson Teager stated the 2015 Rules and Regulations predated the current version of the Ethics Board. Ms. Funk stated the Bylaws should govern how the Ethics Board functions as a group. Mr. Kavanaugh stated the Rules and Regulations are much broader than the Bylaws. Deputy Town Attorney stated he will need to review the documents. Mr. Kavanaugh stated neither document addresses the issue at hand and reiterated his support for maintaining the current practice regarding dismissed complaints.

Chairperson Teager stated it would be best to codify the practice for dismissal of complaints. There are two questions to address: does the Ethics Board inform all parties upon dismissal of a complaint and, when informing the Town Board of the dismissal does the Ethics Board attach a copy of the complaint.

Ms. Leonard stated she could understand why a respondent would be informed and some generalities provided but would take issue with sharing the specifics of a dismissed complaint with the Town Board. The Ethics Code language includes discretion and confidentiality, and the Ethics Board should honor this. Ms. Leonard questioned the possibility of the Town Board misconstruing the dismissal of the complaint.

Town Attorney Minear stated his communication to the Town Board regarding recent complaints was very brief: dismissed, withdrawn, dismissed, respectively, and with the complaint numbers next to them. The only time a decision is forwarded is after an investigation and the Ethics Board members agree with the decision and will state an investigation was conducted and what the Ethics Board's decision is. Mr. Minear stated the Town Board may be confused as to whether an investigation was conducted and offered to send another email confirming no investigation was conducted. Mr. Kavanaugh stated this distinction should be made. Ms. Funk agreed and

referred to Supervisor's Dickson questioning the nature and stated the communication should indicate the Ethics Board dismissed the complaint(s) because it did not meet the guidelines of the West Seneca Ethics Code. In the event an investigation was conducted, and the complaint was dismissed, the communication should include this.

Chairperson Teager stated his concern is that this inquiry was not raised when a previous complaint was dismissed the previous year. Town Attorney Minear stated he does not recall the complaint Chairperson Teager is referring to and suggested the Ethics Board enter executive session to discuss this further.

Mr. Kavanaugh suggested using the word declined in place of dismissed. Deputy Town Attorney Minear advised that legal court cases are dismissed, not declined. Mr. Minear suggested the phrase "dismissed without investigation," because if the word "rejected" is used it implies there was some sort of error, and the complainant will refile. "Declined" will also imply a procedural error. The Ethics Board does send letters to each complainant with an explanation and concluded that the complaint was dismissed without investigation because it did not meet elements of the statute.

Ms. Leonard compared this situation to a tort and questioned if there is a duty, for example, could a complainant potentially say the Ethics Code was violated and suggested the phrase dismissed due to nothing in the Ethics Code instead of investigation. Chairperson Teager stated the Ethics Board first determines if a complaint meets a certain threshold, and if the complaint does an investigation would be conducted. Ms. Leonard stated the merits of the complaint are not addressed; the Ethics Board is stating there is nothing in the Ethics Code to prompt an investigation. Deputy Town Attorney Minear suggested the phrase "dismissed without investigation as allegations contained in the complaint do not contain a violation of the Ethics Code."

Chairperson Teager suggested a note that the complaint was considered but because it was not relevant to the Ethics Board it was dismissed, whether the allegation occurred is not governable by the Ethics Code. Deputy Town Attorney Minear suggested the phrase "dismissed without investigation as allegations do not amount to..." Mr. Kavanaugh suggested "the issue is not covered by the Ethics Code." Ms. Funk suggested "dismissed, allegations do not meet any criteria in Ethics Code."

Ms. Funk stated the Ethics Board did notify the complainant that the complaint was dismissed, but the Town Board seems to be questioning why the Ethics Board did not and questioned if the Town Board means both parties. Chairperson Teager stated he understands the email to mean the respondent and the Town Board and by extension the Town Attorney. Chairperson Teager stated the complainants were notified their complaints were dismissed because what was alleged was not a violation of the Ethics Code even if the allegation happened and offered no opinion or judgment on the matter.

Deputy Town Attorney Minear offered the following: "Dismissed without investigation as allegations do not raise a potential ethics violation." The Ethics Board members expressed their approval. Mr. Minear will resend an email to the Town Board adding this language next to each complaint number. Ms. Funk questioned if Mr. Minear should add the language that the complaint has been notified. Mr. Minear agreed. Mr. Kavanaugh suggested including a copy of the correspondence to the complainant. Mr. Minear stated that would provide information about the individual making the complaint and that is a decision the Ethics Board needs to make. Mr. Kavanaugh stated he does not have a problem providing the identity of the person making the complaint and stated when one makes a complaint, they expect some people will know. Chairperson Teager stated he would hesitate to send the letters and should not discuss the case in open session. This action would pass actionable information on a moot point and does not sit well with him. Mr. Kavanaugh stated he will reconsider his statement and suggested the Town Board come back to the Ethics Board if they want this information. Chairperson Teager

