

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

**ETHICS BOARD
MEETING MINUTES
February 5, 2020**

Chairperson Carpenter called the meeting to order at 6:00 P.M.

ROLL CALL: Members Present – Amy Carpenter, Chairperson
Rodney Montgomery, Vice Chairperson
Teresa Funk
Tina Hawthorne, Town Attorney
Jon Minear, Deputy Town Attorney
Lawrence Kavanaugh, Jr.
Amy Kobler, Town Clerk

No absences.

RESIGNATION OF KARL SPENCER

- Chairperson Amy Carpenter announced the resignation of Ethics Board Member Karl Spencer. His resignation is due to health issues. Because of this new vacancy, a new Ethics Board appointment will be needed.

GUEST: WEST SENECA SUPERVISOR GARY DICKSON

Chairperson Amy Carpenter introduced Supervisor Gary Dickson and gave him the floor to offer his thoughts and suggestions to the Ethics Board:

Gary Dickson took a particular interest in the Ethics Board from the start of his involvement in the town. He was supportive of the reinstatement of the Ethics Board for the Town of West Seneca. He feels the new code is an improvement to the last Ethics Code.

The following are his notes and suggestions to the Ethics Board:

1. Be sure to only focus on matters of Ethics
 - Chairperson Carpenter responded to this point saying that the Ethics Board only addresses matters that come before the Ethics Board, rather than seeking out issues. Supervisor Dickson expressed his understanding and gave the example of an open government issue that may come before the Ethics Board. In such case, the Ethics Board should not make a determination because this matter is not related to the Ethics Code.
2. Regarding the Selection of Members, Supervisor Dickson suggests the following amendments:
 - A. Supervisor Dickson thinks the Ethics Board should be as independent as possible from the Town Board. He does not think any town officer should be on the Ethics

Board. The Town Clerk and Town Attorney are currently serve as council to the Town Board and he feels it should stay this way. He does not feel the Town Clerk or Town Attorney should be members to the Ethics Board.

- Vice Chairperson Rodney Montgomery asked why Supervisor Gary Dickson does not think the Town Clerk or Town Attorney should be present at the meetings. Supervisor Dickson replied that the public may view either person as being a representative of the Town Board.
- Chairperson Amy Carpenter mentioned that both the Town Attorney and Town Clerk are not voting members and are present to provide advice and knowledge regarding the workings of the Town of West Seneca. Supervisor Gary Dickson expressed his understanding and said that he is just pointing out the impression that he feels the presence of a Town Attorney and Town Clerk gives the public.

B. Supervisor Dickson pointed out the previous process by which appointments were made to the Ethics Board. Previously, each Town Board Member made an appointment to the Ethics Board. He feels this gives the appearance that the Ethics Board Appointment is beholden to that Town Board Member. Instead, he suggests the Town Board solicit resumes, interview and then select individuals who appear to be most qualified for the position.

- Vice Chairperson Montgomery commented that this method still might make the Town Board reflect negatively, because the Town Board is still "choosing" members to the Ethics Board. Supervisor Dickson said that his suggested method appeared to be successful when it was recently applied to the selection of Planning Board and Zoning Board Members.
- Ms. Theresa Funk asked Supervisor Dickson for clarification on how the individual was finally selected. Supervisor Dickson explained that the Town Board voted on the individual at an open meeting and he personally made a point to give an explanation to the public on why he voted for each appointment. Additionally, they sent out a press release explaining why they appointed each individual and included background on that appointed individual.
- Supervisor Dickson also made the point that he would not be opposed to the Ethics Board appointing someone to their Board. He gave the following example to explain his point: The Town Board would select the first five members and then the Ethics Board would be able to appoint the 6th member.
- Chairperson Carpenter made the point that anyone can be a member of the Ethics Board

3. Supervisor Dickson would like to see more description on how the Ethics Board goes about their investigative procedure. For example, he would like to know how long the investigation is confidential, when the accused become notified of the complaint made against him/her and by whom it was made by.

- Vice Chairperson Montgomery replied that it depends on the case.
- Chairperson Carpenter said that in the case of a Whistle Blower incident, the accuser's name will remain confidential.

- Supervisor Dickson suggested an explanation on if/when the accused can come in to defend him/herself

4. Supervisor Dickson suggested a method by which an individual in the town (like a Town Board Member) can get an immediate ethical question answered, rather than having to wait for a board meeting to take place. He gave the example that this designated person may be the Ethics Board Chairperson or other, who knows and understands the West Seneca Ethics Code. The answered questions could then be publicized on a regular basis so that the public might use this information as a form of education on the ethical lines that exist in the town.

- Vice Chairperson Montgomery said that he does not feel like the Ethics Board would have the ability to offer this form of council.
- Town Attorney Tina Hawthorne expressed her concern in the case that the individual offering advice would be Deputy Town Attorney Jon Minear. She feels that it would be difficult to determine the line regarding legal advice. In this case, Deputy Town Attorney Minear would be giving legal advice to an employee of the town.
- Deputy Town Attorney Minear said that this would be a precarious situation. He feels that a cell phone, hotline, or other dedicated to getting ahold of himself or Town Attorney Hawthorne to give spot legal advice might be difficult to accomplish. He explained that obvious issues like how much value of a gift can an official accept would be easy. However, he presumes that that is not what this service would be used for.
- Town Attorney Hawthorne said that there are advisory teams at the Bar level that she and Deputy Town Attorney Minear can call when they have questions about their professional responsibility. Understanding that this form of service for the town would be at a much lower scale, perhaps HR might be considered.
- Supervisor Dickson said that his suggestion would not have to include an attorney, so long as this individual thoroughly understood the Town Ethics Code. He gave the example of such service that he could call on when working at the federal level.
- Town Attorney Hawthorne suggested the idea of an email with a 24-hour response time. Deputy Town Attorney Minear agreed that this might be a good direction to go in.
- West Seneca Resident mentioned that she is a licensed negotiator and CPM (Certified Purchasing Manager) by the Institute of Supply Management and she is certified in Ethics and Procurement. She was governed by professional ethics, as are attorneys. If someone in the institute had a question about an ethical matter, they could call someone like her. She also had a contact she was able to call for ethical related questions.

5. Supervisor Gary Dickson suggested a small budget for the Ethics Board. This budget should be written in the code and would be used for trainings on the Town Ethics Code for town employees.

- Chairperson Carpenter said that the Ethics Board has discussed this in the past. The Ethics Board was unsure how this would be possible with the current town budget. Funds might be used to research but could be used up very quickly. Ultimately, the Ethics Board felt that if the Town Board thought this budget was necessary, then they would allocate the funds or potentially add it to the code.
- Chairperson Carpenter continued to say that training had also been discussed in the past. A major issue was whether or not this could be done for union members and they have seen pushback with this idea. Chairperson Carpenter thought this might require a negotiation in their contract. The other issue that may incur some budget costs would be the hour that those employees were not doing their job so that they could attend the training.
- Supervisor Dickson mentioned that this training could possibly be done in a half hour and then perhaps a few scenarios would be given. Doing so, would help outline to the responsibilities of a town employee as they pertain to the Town Ethics Code. As Supervisor, he feels like one hour per year, per employee is money well spent.
- Chairperson Carpenter, Ms. Funk, and Vice Chairperson Montgomery agree and said this is something they would like to do. Supervisor Dickson said he would support that effort.
- Ms. Funk asked how they would enforce these trainings, especially for the unions. It was the Ethics Board's impression that there was nothing that could be done with the unions.
- West Seneca Resident suggested the Ethics Board first train the town employees that are non-union employees.
- Ms. Funk said she likes Supervisor Dickson's idea to have a liaison with the unions. She feels that the Ethics Board should find those liaisons and communicate with them on a regular basis.

Discussion continued on topic #4 on how to establish the new process of appointing new Ethics Board members. Nothing definitive was set in place at this point in the meeting. This concluded Supervisor Dickson's guest appearance at the Ethics Board.

COMMUNICATIONS

1. Trainings for Town Employees.

Discussion continued on the topic of trainings for West Seneca Employees on the Town Ethics Code:

- Town Attorney Hawthorne pointed out the issue of having to train employees during the work day (if members of the Ethics Board were hosting the training)
- Ms. Funk mentioned the importance of aiming the direction of the training towards the individuals receiving the training

- Chairperson Carpenter said that the Ethics Board could host the training but then the Ethics Board members would also need additional training

2. Board Composition-Political Parties and Officials.

Town Clerk Amy Kobler began a discussion regarding the composition of the Ethics Board, as it relates to political parties and officials.

- She referenced Erie County's Ethics Code which states that no more than three members on the board can be of the same political party. Members of the Erie County Ethics Board cannot be an elected official, a political party officer, or belong to a political party committee.
- Town Clerk Kobler asked if the Ethics Board can look into this, if they are considering making amendments to the code.
- Ms. Funk mentioned that she researched about 30-40 ethics codes in NYS and almost every code contains something about political party restrictions.
- Town Attorney Hawthorne raised the concern of being discriminatory towards any individuals based on their political affiliation

3. Board Composition-Town Officers.

Ms. Funk lead a discussion on her research regarding the inclusion of the Town Clerk and Town Attorney as ex officio members of the Ethics Board.

A. Town Clerk as an ex officio member.

According to Ms. Funk's research, most Town Codes did not have a Town Clerk on their Ethics Boards, but they were referred to as being the "Record Holder" for the Ethics Board. For example, just as the Town Clerk holds the records for the Town, the Town Clerk would also hold all of the records for the Ethics Board i.e. Disclosure Forms

- Chairperson Carpenter and Ms. Funk agree that the Town Clerk provided a critical point of reference for the Ethics Board as they were first starting out. However, eventually, the Town Clerk's assistance might not be as needed.
- Jon Minear made a clarification that the current discussion was about making the Town Clerk the "Record Keeper of the Ethics Board" rather than an "Ex-Officio Member" later on in the future.

B. Town Attorney as ex-officio member. Most Ethics Boards had either their own attorney or the Town Attorney. It was not the case that they had both the Town Attorney and the Deputy Town Attorney serving on the Ethics Board.

- Town Attorney Hawthorne explained how her legal advice to the Town Board would be confined to the advisory opinion of the Ethics Board if she were not an ex officio member. As the Town Attorney, it would be difficult to give advice if she were not present (as an ex-officio member) to the Ethics Board to be able to fully understand the reasoning of the Ethics Board's Advisory Opinion.

- Vice Chairperson Montgomery commented that Town Attorney Hawthorne's comments were productive and helpful as the Ethics Board was trying to work through matters in the past.
- Deputy Town Attorney Minear noted that the appearance of Town Attorney Hawthorne at the Ethics Board Meetings makes it seem like she is the attorney for the Ethics Board (in addition to her role as attorney for the Town Board, which would be a conflict of interest). However, that it is not the case that Town Attorney Hawthorne is the attorney for the Ethics Board and perhaps this needs to be better clarified.

4. Independent Contractor Form.

Ms. Funk distributed copies of a draft letter to independent contractors from the Ethics Board to be accompanied with the Independent Contractors Form.

- Ms. Funk commented that there may be some revisions to be considered for the Independent Contractors Form. It currently asks questions directed towards individuals rather than corporations.
- There was discussion on who should be signing the Independent Contractor Form. Deputy Jon Minear is going to look further into the matter, as it relates to conflicts of interest. Mr. Lawrence Kavanaugh will research the topic as it relates to financial advice services for municipalities.
- Chairperson Carpenter advised that the town only has until the end of March to turn in completed Independent Contractor Disclosure Forms.
- Ms. Funk made a point that an Independent Contractor Form should go out for any contract renew that comes up.
- Ms. Funk read the draft letter aloud.
- A discussion began on who the contact should be on the letter. Town Attorney Hawthorne suggested adding an email account. Secretary Amelia Greenan will set up a generic email address with I-Evolve that will automatically forward to all the Ethics Board Members.
- Discussion took place on possible amendments to the Independent Contractor Form. Chairperson Carpenter concluded the discussion with the following action items: Ms. Funk will adjust the draft letter to Independent Contractors, Secretary Greenan will create the email account, and Ms. Funk will work with Chairperson Carpenter on the Independent Contractor Form and send it over to Deputy Town Attorney Minear. Mr. Kavanaugh will look more into rules and regulations for disclosure forms.

5. Individuals Required to Complete Disclosure Form.

Chairperson Carpenter passed out a draft list of individuals who may need to fill out the Individual Annual Disclosure Form. Discussion took place on who should be included or taken off of the list.

- Town Attorney Hawthorne said that according to the Town Ethics Code, the list should include: any and all board members, commission members, committee members whether elected or appointed into office.
- Town Clerk Kobler clarified that department heads are also to be included.
- Chairperson Carpenter will edit the list based on the feedback from the discussion and add in members from the Environmental Committee, Zoning Board and Planning Board.
- Town Clerk Kobler will go through the website as well to research who should be added to the list.
- Town Clerk Kobler does not think the forms should come from the Town Clerk's Office and instead, they should come from the Ethics Board. Chairperson Carpenter agreed and added that the Ethics Board can also email all of the individuals who are to receive the Disclosure Form.
- Deputy Town Attorney Minear will send a PDF version of the Disclosure Form.
- Chairperson Carpenter will see what she can do about creating a fillable form.

6. Processing Resignation of Karl Spencer.

Deputy Town Attorney Minear will put Karl Spencer's Resignation on the Town Board's Agenda. Town Clerk Kobler will type it up for Deputy Town Attorney Minear and attach Mr. Spencer's resignation. Secretary Greenan will email Town Clerk Kobler the resignation of Mr. Spencer. Additionally, Chairperson Carpenter will send an email to Supervisor Dickson.

APPROVAL OF MINUTES

Motion by Ms. Funk, seconded by Chairperson Carpenter, to approve the Ethics Board Meeting Minutes from January 8, 2020.

Ayes: All

Noes: None

Motion Carried

EXECUTIVE SESSION

Motion by Chairperson Carpenter, seconded by Ms. Funk to move into Executive Session to review an ethic complaint.

Ayes: All

Noes: None

Motion Carried

Motion by Chairperson Carpenter, seconded by Ms. Funk to table the ethic complaint to next meeting.

Ayes: All

Noes: None

Motion Carried

Motion by Ms. Funk, seconded by Chairperson Carpenter to move out of Executive Session.

Ayes: All

Noes: None

Motion Carried

There was some continued discussion lead by Vice Chairperson Rodney Montgomery, regarding research he conducted pertaining to trainings for the Ethics Board. He will continue to research. Town Clerk Kobler will share some information she has on her recent Ethics Training from the "Association of Towns Ethics Class".


ADJOURNMENT

Motion by Chairperson Carpenter, seconded by Ms. Funk to adjourn the meeting at 8:36 p.m.

Ayes: All

Noes: None

Motion Carried



Amelia S. Greenan
Secretary to the Ethics Board