

Village of Mamaroneck Office of the Mayor
State of New York

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In the Matter of

CYNTHIA GREER GOLDSTEIN,

Respondent.

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**DECISION OF THE MAYOR
REGARDING RECOMMENDATION OF REMOVAL**

Introduction

On November 29, 2019, the Ethics Board of the Village of Mamaroneck issued a Decision and Recommendation in the matter of Village Planning Board member Cynthia Greer Goldstein in which the Ethics Board concluded that she had violated the disclosure and recusal requirements of the Village Code of Ethics with respect to two applications before the Planning Board. The Ethics Board recommended that she be removed from the Planning Board. Under New York Village Law § 7-718(9), a village mayor has the authority to remove a planning board member for cause after a public hearing. Accordingly, I held a public hearing on May 27, 2020 to consider whether to adopt the recommendation of the Ethics Board.

The Decision and Recommendation of the Ethics Board sets forth clear violations of the disclosure and recusal requirements of the Village Code of Ethics. The question before me is whether the violations found by the Ethics Board rise to the level at which removal is the appropriate disciplinary action. New York courts have held that ethical violations can be a basis for removal of a municipal board member; however, removal of a board member is an extreme measure that should be reserved for cases involving unscrupulous conduct, gross dereliction of duty, or a pattern of misconduct and abuse of authority. Although ethical violations may be a basis for removal, Ms. Goldstein's violations of the Code of Ethics in this case do not rise to that level.

Given the nature of the violations in this case and the long record of civic service by Ms. Goldstein, I have concluded that removal of Ms. Goldstein from the Planning Board is not warranted for the violations at issue and would not be in the best interest of the Village. This decision does not lessen the importance of adherence by all board members and Village employees to the Code of Ethics, and any future violations of the Code of Ethics by Ms. Goldstein may demonstrate a pattern of conduct that could be a basis for removal.

In reaching my decision I have reviewed and considered the Decision and Recommendation of the Ethics Board, the administrative record of the Ethics Board proceedings from 2019, the testimony and argument presented at the May 27, 2020 public hearing, the public comments received during and after the public hearing, the written submissions from Ms. Goldstein including the memorandum of law in support of her Article 78 proceeding challenging the decision of the Ethics Board, Ms. Goldstein's post-hearing memorandum of law, a memorandum from the Ethics Board dated June 10, 2020, and Mr. Leventhal's June 11, 2020 letter in response to the Ethics Board memorandum.

Factual and Procedural Background

Cynthia Greer Goldstein was appointed to the Village Planning Board on December 10, 2018. This matter involves two applications that were considered by the Planning Board during her tenure: the application of Hampshire Recreation LLC for subdivision and other approvals related to the proposed development of 105 homes at the Hampshire Country Club property, and the application of Last Home LLC for a wetlands permit in connection with the demolition and replacement of a home at 203 Hommocks Road. Ms. Goldstein actively participated in both applications in 2018-2020 while a member of the Planning Board. The factual and procedural

background of the Ethics Board is provided in the Decision and Recommendation and is summarized here as follows.

Hampshire Recreation LLC

Ms. Goldstein resides at 5 Oak Lane, purchased in June 2017, which is either next to or very close to the Hampshire Country Club. During her tenure as a member of the Village Harbor & Coastal Zone Management Commission (HCZMC), Ms. Goldstein reviewed and commented on the Draft Environmental Impact Statement for the Hampshire project as a member of the HCZMC. Following her appointment to the Planning Board, Ms. Goldstein participated in meetings on December 12, 2018 and January 9, 2019 during which the Hampshire permit application was discussed. In January 2019, the Ethics Board received information suggesting that Ms. Goldstein may have violated the disclosure and recusal requirements of the Code of Ethics when she participated in the consideration of the Hampshire application.

After the Ethics Board contacted Ms. Goldstein regarding its concern that her participation in the application of Hampshire Recreation LLC could be an issue, two members of the Ethics Board met informally with Ms. Goldstein on March 12, 2019 to discuss the potential that her recusal could be required. At that meeting, the Ethics Board members sought her input and sought to gather information from Ms. Goldstein to determine if there were any factors in addition to the location of her property relative to Hampshire that were relevant for the Ethics Board's consideration. Among other factors, the Ethics Board viewed the proximity of the Goldstein property and Ms. Goldstein's participation in consideration of the Hampshire application as giving rise to the question of whether a conflict of interest existed. Ms. Goldstein and her attorney again met with members of the Ethics Board on July 2, 2019 and August 12, 2019 to discuss her potential recusal with respect to the Hampshire application.

Last Home LLC

On March 27, 2019, Ms. Goldstein participated at a Planning Board meeting considering an application to demolish and replace a house at 203 Hommocks Road. In connection with the proposed work, the owner planned to extend a public sewer line down Hommocks Road to approximately the intersection of Hommocks Road and Oak Lane (the road on which Ms. Goldstein resides) to permit connection of his home to the public sewer. Extending the sewer line would make it substantially less expensive to add sewer service to nearby residents, whatever the source of funding, and specifically to Oak Lane where the Goldsteins live. Ms. Goldstein's husband, Steve Goldstein, was a vocal proponent of having a public sewer line extended down Oak Lane, which would have provided the benefit of public sewer to the Goldsteins at a reduced cost.

As of the March 27, 2019 Planning Board Meeting, Ms. Goldstein knew that her husband had been working for many months to get his neighbors and the Board of Trustees to support his efforts to get a sewer line extended down Hommocks Road to Oak Lane. In emails to his neighbors, at three appearances before the Board of Trustees and in letters to the Village, Mr. Goldstein consistently touted the economic and environmental benefits of adding the sewer line. In fact, after hearing the news of the outcome of the March 27, 2019 Planning Board meeting in

which his spouse participated, Mr. Goldstein wrote the Board of Trustees on March 31, 2019 encouraging the Village to support extension of the sewer to include Oak Lane. The history of Mr. Goldstein's extensive efforts in this regard is detailed in the Decision and Recommendation.

The Hommocks Road sewer line and its potential extension down Oak Lane were specifically discussed before the Planning Board. The applicant's architect stated that the sewer line was an integral part of the application. Matt Gironda, P.E. of Bibbo Associates, whom Ms. Goldstein knew her husband had hired (as had the applicant) to design the Oak Lane sewer line extension, spoke in detail about the sewer line and its capacity to service an Oak Lane extension and was questioned about it at length by Planning Board member Kathleen Savolt.

Shortly after the Planning Board met on March 27, 2019, the Ethics Board received information suggesting that Ms. Goldstein may have violated the disclosure and recusal requirements of the Code of Ethics when she participated at that meeting in the consideration of the Hommocks Road application. As with the Hampshire matter, the Ethics Board contacted and met with Ms. Goldstein and her counsel.

On June 14, 2019, Ms. Goldstein sent a letter addressed to the Mayor and Board of Trustees, the Village Manager, the Chairman of the Planning Board, the Chairman of the Ethics Board and the Village Attorney regarding the concerns raised by the Ethics Board. In the letter, Ms. Goldstein identified the sewer line issue but characterized her potential benefit from the installation of the sewer line as “speculation” because she would not be able to tie into the sewer “without considerable costs.” While specifically denying that that recusal was necessary, Ms. Goldstein nonetheless stated that she would recuse herself from further participation in the Planning Board’s consideration of the application of Last Home LLC.

Ultimately, on July 10, 2019 the Planning Board voted 4-0 (Ms. Goldstein having recused herself) to approve the application.

Charges with Respect to Last Home LLC

On July 31, 2019, the Ethics Board provided notice to Ms. Goldstein that it was charging her with violating the Code of Ethics by failing to recuse herself from acting on the application of Last Home LLC at the Planning Board meeting on March 27, 2019 and by failing to disclose her direct or indirect interest in the outcome of the application. The specific charges provided to Ms. Goldstein by notice on July 31, 2019, include in relevant part:

1. Village Code § 21-4(C)

Village Code § 21-4(C)(1) requires that every member of a Village board “recuse himself/herself from acting on a matter before the Village when acting on the matter, or failing to act on the matter, may benefit the persons listed in § 21-4A, financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.” Among the persons listed in § 21-4(A) are the board member and “[a] member of his or her household.”

On or about February 28, 2019, Last Home LLC applied to the Planning Board of the Village of Mamaroneck for a wetland permit with respect to premises located at 203 Hommocks Road in the Village of Mamaroneck. The application included the construction of a sewer line to be constructed in Hommocks Road to serve the premises at 203 Hommocks Road. If the sewer line were extended, it would also have the capacity to serve Ms. Goldstein's residence at 5 Oak Lane in the Village of Mamaroneck. At or about and/or prior to that time, Ms. Goldstein's husband, Mr. Steven Goldstein, had discussed with the principal of Last Home LLC constructing the sewer line so that the sewer line could also serve the Goldstein residence and the residences of other neighbors. Mr. Goldstein appeared before and sent letters to the Board of Trustees of the Village of Mamaroneck in or about that time to advocate for a special improvement district to construct the sewer line.

Ms. Goldstein is a member of the Planning Board. On or about March 27, 2019, Last Home LLC appeared before the Planning Board in connection with its application for a wetland permit. Ms. Goldstein was aware of the proposed sewer line prior to that meeting, was aware of Mr. Goldstein's appearances before and letters to the Board of Trustees with respect to the proposed sewer line and was aware that if the proposed sewer were built at the expense of Last Home LLC, as a condition of its wetland permit, Mr. and Mrs. Goldstein would benefit from the construction of the sewer line because it would reduce the cost of providing public sewer service to their residence and might enhance the value of their property. Ms. Goldstein was also aware at the March 27, 2019 meeting, as a result of statements made at that meeting, that the sewer line project would continue. Despite this knowledge, Ms. Goldstein did not recuse herself with respect to the application of Last Home LLC, participated in the consideration of, and acted on, the Last Home LLC application as a member of the Planning Board at the March 27, 2019 meeting.

By failing to recuse herself before acting on the application of Last Home LLC before the Planning Board and acting on the matter as a member of the Planning Board, Ms. Goldstein violated Village Code § 21-4(C)(1).

2. Village Code § 21-4(N)

Village Code § 21-4(N) provides that “[t]o the extent that she/he knows thereof, any Village officer, board member and/or employee with respect to matters in which she/he participates or in which her/his board is involved in the decision-making process, shall specifically and fully disclose on the official record of the Board of Trustees at a regular public meeting thereof the nature and extent of any direct or indirect interest in legislation or official action pending before the Village.”

For the reasons stated above, Ms. Goldstein had a direct or indirect private interest in the application of Last Home LLC before the Planning Board and

participated as a member of the Planning Board in the decision-making process with respect to that application. Ms. Goldstein did not specifically and fully disclose the nature and extent of that interest on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees.

By failing to specifically and fully disclose the nature and extent of her interest in the application of Last Home LLC on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees, Ms. Goldstein violated Village Code § 21-4(N).

Charges with Respect to Hampshire Recreation LLC

On September 16, 2019 the Ethics Board provided notice to Ms. Goldstein that it was bringing charges against her with respect to the application of Hampshire Recreation LLC. The charges against Ms. Goldstein with respect to Hampshire Recreation LLC are that that she violated the Code of Ethics by failing to recuse herself from acting on the application and by failing to disclose her direct or indirect interest in the outcome of that application. The specific charges include, in relevant part:

1. Village Code§ 21-4(C)

Village Code § 21-4(C)(1) requires that every member of a Village board “recuse himself/herself from acting on a matter before the Village when acting on the matter, or failing to act on the matter, may benefit the persons listed in § 21- 4A, financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.” Among the persons listed in § 21-4(A) are the board member and “[a] member of his or her household.”

Hampshire Recreation LLC has applied to the Planning Board of the Village of Mamaroneck for subdivision approval and various other approvals with respect to its premises at 1025 Cove Road in the Village of Mamaroneck. The application proposes the construction of 105 residences. Ms. Goldstein resides at 5 Oak Lane in the Village of Mamaroneck. A reasonable person could perceive that the location Ms. Goldstein's property at 5 Oak Lane in relation to proposed development on the Hampshire Recreation LLC property at 1025 Cove Road is such that the construction of the proposed Hampshire subdivision will necessarily impact Ms. Goldstein and the value, use and/or enjoyment of her property and, therefore, gives the reasonable appearance of a conflict of interest or impropriety. Ms. Goldstein may also benefit, financially or otherwise, from acting or not acting on the application.

Ms. Goldstein has participated, and continues to participate, as a member of the Planning Board in the consideration of the Hampshire Recreation LLC application. By failing to recuse herself from acting on the application of Hampshire Recreation LLC before the Planning Board, Ms. Goldstein violated Village Code § 21-4(C)(1).

2. Village Code § 21-4(N)

Village Code § 21-4(N) provides that “[t]o the extent that she/he knows thereof, any Village officer, board member and/or employee with respect to matters in which she/he participates or in which her/his board is involved in the decision-making process, shall specifically and fully disclose on the official record of the Board of Trustees at a regular public meeting thereof the nature and extent of any direct or indirect interest in legislation or official action pending before the Village.”

For the reasons stated above, Ms. Goldstein had a direct or indirect private interest in the application of Last Home LLC before the Planning Board and participated as a member of the Planning Board in the decision-making process with respect to that application. Ms. Goldstein did not specifically and fully disclose the nature and extent of that interest on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees.

By failing specifically and fully disclose the nature and extent of her interest in the application of Last Home LLC on the official record of the Board of Trustees at a regular public meeting of the Board of Trustees, Ms. Goldstein violated Village Code § 21-4(N).

After the Ethics Board provided Ms. Goldstein with its notice of charges in the Hampshire matter, Ms. Goldstein continued to participate in Planning Board meetings at which the Hampshire matter was considered. On May 6, 2020 the Planning Board ultimately voted unanimously to deny Hampshire’s application. The vote of the Planning Board was 4-0, with Ms. Goldstein joining in the vote and Planning Board member John Verni having previously recused himself.

Decision and Recommendation of the Ethics Board

The Ethics Board held a hearing over four days in October and November 2019 to determine whether or not Ms. Goldstein violated the disclosure and recusal requirements of the Code of Ethics. Ms. Goldstein was represented by counsel, at the Village's expense, throughout the four-day hearing. Ms. Goldstein was provided the full opportunity to call witnesses, to examine witnesses called by the Ethics Board, to submit evidence and to present arguments.

Following the hearing, on November 29, 2019, the Ethics Board submitted a Decision and Recommendation to the Mayor and Board of Trustees. As detailed in the Decision, the Ethics Board unanimously found that Ms. Goldstein's participation as a member of the Planning Board in the consideration of the applications of Hampshire Recreation LLC, regarding the development of the Hampshire Country Club, and Last Home LLC, regarding the property at 203 Hommocks Road, constituted multiple violations of the Code of Ethics. The Ethics Board concluded that overwhelming evidence was adduced at the hearing that Ms. Goldstein committed

each of the charged violations of the recusal requirement of Section 21- 4(C) and the disclosure requirement of Section 21-4(N) of the Code of Ethics.¹

In light of all of the facts and circumstances surrounding those violations, including what it concluded was a pattern of behavior concerning violations of the conflict of interest rules, the Ethics Board recommended that Ms. Goldstein be removed from the Planning Board.

Mayor's Public Hearing

After reviewing the Ethics Board Decision and Recommendation and the administrative record of the Ethics Board hearing, I held a public hearing in this matter on May 27, 2020.² The purpose of the hearing was to provide an opportunity for Ms. Goldstein to present her case as to why she should not be removed from the Planning Board and to hear from interested members of the public. At the outset of the public hearing, I made clear that as Mayor, I do not have the power to overturn the decision of the Ethics Board. Rather, the question before me is whether the violations found by the Ethics Board rise to a level that requires removal.

At the hearing, Ms. Goldstein's attorney Steven Leventhal was allowed unlimited time to present arguments on her behalf, including reiterating those raised in her Article 78 memorandum of law challenging the Ethics Board Decision and Recommendation, without opposition from the Ethics Board. The Ethics Board was not asked to and did not participate in the hearing.

Mr. Leventhal argued that there was no legal cause for removal, because the violations found by the Ethics Board did not involve a failure of character or neglect of duty on the part of Ms. Goldstein that would warrant removal, and that to the contrary, Ms. Goldstein's character and record of service to the community should weigh against removal. Mr. Leventhal also argued that the Ethics Board's Decision and Recommendation was made in violation of lawful procedure, was affected by errors of law, was arbitrary, capricious, and an abuse of discretion, and that the conflict of interest provisions in the Village Code of Ethics are unconstitutionally vague and do not give sufficient notice of the conduct which they claim to prohibit.

With regard to the Hommocks Road matter, Mr. Leventhal argued that the only actions taken by Ms. Goldstein prior to her recusal were ministerial and, because they did not involve the exercise of discretion, by definition they could not give rise to a conflict of interest. He further argued that the potential benefit to Ms. Goldstein from the Hommocks Road application was entirely speculative, as the costs to connect to the proposed sewer line were prohibitive, and because all attempts by Ms. Goldstein's husband to persuade the Village and his neighbors to share the costs had failed.

With regard to the Hampshire matter, Mr. Leventhal argued that the alleged basis for the conflict of interest was not private or personal to Ms. Goldstein, and that mere proximity to the

¹ Having reached a decision on the charges under these sections, the Ethics Board concluded that it did not need to reach a decision as to whether Ms. Goldstein had violated § 21-5(C).

² The public hearing was held remotely via Zoom due to Governor Cuomo's Executive Order 202.1 restricting in-person gatherings and Executive Order 202.15 allowing public hearings to proceed by video during COVID-19.

Hampshire project was not sufficient grounds for disqualification, particularly when hundreds of other members of the community live close or closer to the project, and would experience the same or greater impacts from the proposed development.

Finally, Mr. Leventhal argued that the Ethics Board failed to adhere to its own precedents in conducting its hearings and issuing its Decision and Recommendation, that the Ethics Board's denial of Ms. Goldstein's motion to disqualify one of its members was arbitrary and capricious, and that "ad hominem attacks" against Ms. Goldstein in its Decision and Recommendation were caused by animus and bias against Ms. Goldstein and were inconsistent with due process.

Discussion

Purpose of the Village Code of Ethics

The Village adopted its current Code of Ethics in 2009 with the express purpose to "establish high standards of ethical conduct for officers, board members and employees of the Village so as to promote public confidence in the integrity of local government. It is the purpose of this chapter to afford officers, board members and employees of the Village clear guidance on ethical standards, to require public disclosure of interests that may influence or appear to influence the actions of Village officers, board members and employees and to provide for the fair and effective administration of this chapter, including the protection of those who make good faith disclosure of suspected unethical or wrongful conduct."³ Requiring disclosure of interests that may influence or appear to influence the actions of officials is central to the purpose of the Code of Ethics.

The Village's Code of Ethics goes beyond the requirements of the State Ethics Codes in that it requires recusal in situations where there may be the appearance of impropriety. The State Ethics Code defines "interest" as only "a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves"⁴ and, unlike the Village's Code of Ethics, does not mandate recusal for "the reasonable appearance of a conflict of interest or impropriety."⁵ The Village Code specifically provides that to the extent it is inconsistent with the provisions of § 808 of the General Municipal Law, the more restrictive provision applies.⁶

Standard for removal

Under N.Y. Village Law § 7-718(9), "the mayor shall have the power to remove, after public hearing, any member of the planning board for cause." Thus, the only statutory requirements pursuant to N.Y. Village Law are for a public hearing, and that some cause for removal exists. *Kern v. La Guardia*, 264 A.D. 627, 630 (1st Dep't 1942), *aff'd*, 289 N.Y. 776 (1943). It is longstanding law in New York that "when charges have a real basis or foundation, are made in good faith, and not as a mere pretext for removal, and they are of a substantial

³ Village Code § 21-1.

⁴ Gen. Municipal Law § 800(3).

⁵ Village Code § 21-4(C)(1).

⁶ Village Code § 21-2.

nature, showing some neglect of duty on the part of the officer, or something which materially affects his official acts, or his standing and character, and the officer is given an opportunity to explain away the charges, which explanation is received and acted upon in good faith, then the sufficiency of the proof and the propriety of the removal under the statute rest entirely with the removing officer.” *People ex rel Lathers et al. v. Raymond, Mayor, et al.*, 129 A.D. 477, 482 (2d Dep’t 1908). In the present case, the removing officer is the Mayor, and therefore after an assessment of the evidence and recommendation presented by the Ethics Board, and the opportunity for Ms. Goldstein to be heard, it is within the Mayor’s discretion to determine whether good cause for removal exists.

Good and sufficient cause for removal is not to be limited to misconduct or inadequacy. McQuillin, *The Law of Municipal Corporations* (hereinafter “McQuillin”) § 12:330 (Sufficiency of cause) (December 2019 Update). Removal of a municipal board member is warranted for cause which affects the proper administration of the office involved and is restricted to something of a substantial nature directly affecting the rights and interests of the public. *Id.* See also *Kern*, 264 A.D. at 628. (“The cause for removal must be substantial, and not trivial. It must have some relation to the fitness of the commissioners to perform their duties as public officials, and there must be sufficient evidence to support the charges. The courts are not justified in interfering with removal if these legal requirements are complied with.”) (citing *People ex rel. Guiney v. Valentine*, 274 N.Y. 331; § 1296, Civil Practice Act).

Under Public Officers Law Section 36, which allows for removal by petition to the courts in cases of misconduct, maladministration, malfeasance or malversation in office, New York courts have held that a board member or municipal official’s conflict of interest can rise to the type of unscrupulous conduct sufficient to warrant removal under Public Officers Law Section 36. “To warrant removal of a public officer for a town or village for unscrupulous conduct, gross dereliction of duty, or conduct that connotes a pattern of misconduct and abuse of authority, an official’s misconduct must amount to more than minor violations and must consist of self-dealing, corrupt activities, conflict of interest, moral turpitude, intentional wrongdoing, or violation of a public trust.” *Greco v. Jenkins*, 127 A.D.3d 1269, 1270-71 (3d Dep’t 2015) (emphasis supplied). Participation in a board decision in which the member’s interests were affected can provide the basis for removal for cause. McQuillin § 25:302.

Violations of the Code of Ethics

The Decision and Recommendation of the Ethics Board presents a clear violation of the disclosure and recusal requirements of the Code of Ethics, particularly with respect to the Hommocks Road application. The March 27, 2019 Planning Board meeting at which Ms. Goldstein took action on the Hommocks Road application took place in between the March 25, 2019 appearance of her husband before the Village Board requesting that the Village approve the extension of the sewer line and the March 31, 2019 letter From Mr. Goldstein to the Village Board highlighting the Hommocks Road application before the Planning Board and the commitment of the applicant to extend the public sewer down Hommocks Road. Ms. Goldstein should have disclosed her family’s interest in the project and recused herself before taking action on the project.

With respect to the Hampshire application, there is no question that Ms. Goldstein is situated differently from other Village residents with respect to the potential impacts from the proposed project on her enjoyment of her property. The only route from her home to Boston Post Road was also proposed to be used for thousands of construction truck trips for the project (as many as 200 to 280 truck trips per day on Hommocks Road during portions of the construction period, according to one estimate). Although Ms. Goldstein argues that there is no impact on the value of her home, her own expert testified before the Ethics Board that the impacts of the construction phase would be “bad” for her home value. At the very least, Ms. Goldstein should have disclosed the proximity of her home to the project and discussed on the public record why she believed recusal was not warranted, before participating in Planning Board discussions and actions regarding the project.

I am not persuaded by Ms. Goldstein’s arguments that the Code of Ethics provisions are so vague that she could not understand them and comply with their requirements. Members of the Ethics Board and the Planning Board discussed their potential conflict of interest concerns with Ms. Goldstein directly on several occasions. Whether Ms. Goldstein agreed with their interpretations of the conflict of interest provisions, this is not a case in which Ms. Goldstein’s well-meaning but uninformed actions led to a “gotcha” violation of the Code of Ethics. It is clear from the record that Ms. Goldstein understood the basis for the potential conflict of interest as it was explained to her by members of the Ethics Board and that she disagreed with the Ethics Board that a conflict of interest existed with respect to either Hampshire or 203 Hommocks Road.

Ms. Goldstein has argued that the “appearance of impropriety” standard is problematic and potentially unconstitutional, despite the continued use of this standard in the New York ethical rules for judges. However, the violations at issue do not involve the mere “appearance of impropriety.” Rather, Ms. Goldstein and her husband had a direct or indirect financial interest in having the sewer line approved. Without the Planning Board wetlands permit, the Hommocks Road project and accompanying sewer line on Hommocks Road would not proceed. The installation of the Hommocks Road sewer line would make it significantly less expensive for Oak Lane homeowners, including the Goldsteins, to connect to the public sewer line. It is clear from the record that this interest was important to the Goldsteins and one that Mr. Goldstein was actively pursuing before the Village Board at the time that Ms. Goldstein participated in the March 27, 2020 Planning Board discussion and vote on the 203 Hommocks Road application.

Removal Is Not Warranted in this Case

Although a violation of the Village’s conflict of interest rules can provide cause for removal of a Planning Board member, removal is a drastic measure that should not be imposed lightly, and must be considered on a case-by-case basis. Here, the removal of Ms. Goldstein from the Planning Board is not warranted for the violations at issue and would not be in the best interest of the Village. The primary factors weighing against removal are Ms. Goldstein’s long record of volunteerism and civic service and the nature of the Planning Board actions in which Ms. Goldstein participated.

The comments made on Ms. Goldstein's behalf by members of the public and by current and former members of the Village Board of Trustees, Planning Board, HCZMC, and Zoning Board of Appeals highlighted the many valuable contributions that Ms. Goldstein has made and continues to make to the Village as a member of the Planning Board. Village land use board members commented that Ms. Goldstein has been an asset to the Planning Board and HCZMC by consistently and diligently preparing for board meetings, serving as a mentor, and educating and assisting other members, and that Ms. Goldstein has served the Village with integrity. In addition to her service on Village land use boards, Ms. Goldstein has long been involved in volunteer community service activities in the Village, a fact that was correctly recognized by the Ethics Board in its Decision and Recommendation.⁷

Although Ms. Goldstein should have disclosed her potential conflict of interest and recused herself from the 203 Hommocks Road matter earlier than June 2019 and should not have participated in the March 27, 2019 Planning Board actions on the application, Ms. Goldstein's limited participation did not have an impact on the outcome of the Planning Board's vote to classify the application as a Type II action under the State Environmental Quality Review Act (SEQRA). While Ms. Goldstein incorrectly characterizes the Planning Board's SEQRA decision as "ministerial,"⁸ there is no doubt that the Planning Board would have classified the action as Type II with or without Ms. Goldstein's participation. Ultimately, Ms. Goldstein recused herself in June 2019 and the Planning Board approved the application unanimously by a vote of 4-0.⁹

Likewise, the Planning Board unanimously denied Hampshire's permit application and it does not appear that Ms. Goldstein's failure to disclose and/or recuse herself from participation in the matter affected the ultimate outcome. I am mindful of Ms. Goldstein's argument that recusing oneself is not a neutral act and that a board member should seek to discharge her duties where possible so that a quorum can be maintained. That consideration was also reflected in a July 17, 2019 memorandum from the Ethics Board to the Board of Trustees.¹⁰ In the Hampshire matter, one of the five Planning Board members had already recused himself and there are no alternative Planning Board members, opening the possibility that a quorum could not be reached to act on the application. Although Ms. Goldstein should have disclosed her proximity on the record, it is not clear that recusal was warranted under the circumstances, or that the location of Ms. Goldstein's home led her to treat the application differently than she would have if she lived further away from the project.

Finally, in issuing this decision I wish to make it clear that my determination not to remove Ms. Goldstein was not taken lightly, and should not be interpreted to condone violations of the disclosure and recusal provisions of the Code of Ethics. Repeated violations of the Code of Ethics could indicate a "pattern of misconduct" that may provide a basis for removal that is not present today.

⁷ Decision at 4.

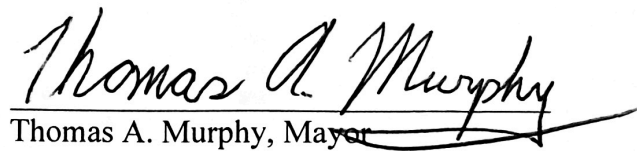
⁸ Type II classifications on permitting decisions are discretionary actions and routinely subject to challenge in Article 78 proceedings. *See, e.g., Town of Bedford v. White*, 204 A.D.2d 557, 559 (2d Dep't 1994) (overturning Type II classification as arbitrary and capricious). I also reject Ms. Goldstein's proffered interpretation that the conflict of interest provisions in Sections 21-4(C) and 21-4(N) apply only to discretionary actions.

⁹ Decision at 19.

¹⁰ Goldstein Hearing Exhibit 30.

I would like to thank the Board of Ethics for performing a very difficult task under trying circumstances. They were publicly attacked at the May 27, 2020 hearing, unjustly in my view, simply for applying a law that they were sworn to enforce. I have never seen volunteers so maligned in my years of public service. While I have not agreed with the disciplinary action that the Board of Ethics has recommended, I do support their findings. I thank them for their service.

Dated: July 10, 2020
Mamaroneck, NY


Thomas A. Murphy, Mayor