

**EAST HAVEN BOARD OF ETHICS
SPECIAL MEETING MINUTES
MONDAY, AUGUST 22, 2016**

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TOWN CLERK

The East Haven Board of Ethics held a special meeting Monday, August 22, 2016, at 7:00PM at the East Haven Town Hall, Mario Giaimo Room, 250 Main Street, East Haven, CT 06512.

Chairwoman Marlene Asid calls the meeting to order at 7:00PM.

Item #1

Roll Call-all 3 members present- Marlene Asid, Anthony Naclerio and Joseph Polio.
Also present- Town Attorney Joseph Zullo.

Item #2

Pledge of Allegiance.

Item #3

Approval of the minutes from the August 11, 2016 Special Meeting.

Commissioner Polio makes a motion.

Commissioner Naclerio seconds the motion.

Voice vote: all in favor-none oppose-none abstain. Motion carries.

Item #4

To consider and act upon a Hearing for complaint dated June 1, 2015
(Complainant: Capone, Frank)

- Chairwoman Asid explains that the Board of Ethics received the complaint last year and unfortunately it has taken them a while to adjudicate the matter. They also received a follow up note from Jan Cianelli in September of last year. Chairwoman Asid asks how she shall proceed.
- Town Attorney Joseph Zullo explains that under the new standing rules each side gets an opportunity to make an opening statement if they want and the complainant can present and the respondent can respond. So long as each side is afforded the opportunity to present all of the evidence and testimony they would like, the Board would be in compliance with the standing rules.
- Mr. Capone explains that he submitted this complaint last year based on a conversation he overheard. He went in and pulled field cards and checked to see if what he had heard was correct. In looking at the field cards and the appeals

notice and everything that was within the file, he felt that what transpired was at least highly unethical and he submitted his complaint with all of the forms that the Board should have, and hopefully they have looked it over. He adds that it has taken so long for this to come to fruition so he had an opportunity to go back in and check through the records and found that there were other properties that were given reductions and he has a copy of that he would like to submit.

- Chairwoman Asid determines that this is a separate matter, which is something they would need to deal with at a different time. She doesn't think they can use this case to talk about every case that Jan as the Chair has approved. Going forward to the appeal regarding the property on Short Beach Road, they have received attachments and the issue is that they filed an appeal to the Board of Assessment Appeals which was signed off on and as the complainant is saying, the person who applied was the Chairwoman's daughter so he feels it was unethical that she signed off on it when she should have recused herself. They also received a follow up letter from Jan with some attachments.
- Mrs. Cianelli explains that the Board is a three-member board and there are three signatures at the end of the applications. What they have done for the past 20 years is have a Commissioner hear the cases. In the past she had told her daughter to apply to the Board to have her taxes appealed because they went up astronomically at the reevaluation and come to find out she filled out an appeal when her girlfriend came in and she didn't even know she was appealing. She says she mentioned to Bob Falcigno and Ed Wnek before the hearing that it was her daughter and she knew she couldn't hear her. She says the way they do the hearings because they have so many in one night is that she and Ed Wnek hear them and make a decision on their own and then they put them on the counter and sign them. She notes that on this application, Ed Wnek is the one that heard the appeal; the person who hears the appeal is always the first signature. Since this transpired, she was in a complete Police investigation where they found nothing criminal was done because of this. She provides copies of other vacant pieces of properties along with the acreage and adds that Mr. Capone's daughter actually appealed her taxes and they were lowered. What the Board does is hear people's appeals to taxes for various reasons where something changed or transpired during that year. When their taxes change or they get a letter in the mail, they come in and appeal it to the Board. After the Police investigation, they suggested to the Board that they act differently and have a night where everyone talks about them and an alternate was put on so that if anyone knew someone the alternate could sign off on it.
- Chairwoman Asid says living in the Town you will know a lot of people within the Town but if they have a relative that is applying then they should probably recuse themselves.
- Mrs. Cianelli says they never knew prior to the meeting who was coming before the Board that night. She signed off on it because there was nobody else there to sign it.

- Chairwoman Asid asks what the process is.
- Mrs. Cianelli says that Ed Wnek heard her and has enough knowledge of the process; her taxes went up so high in the revaluation year 2011 when everyone else's taxes went down. They were acting on 2011 and the land was \$30,000 or \$40,000, which went up to \$80,000 for a reason she does not know because it is a vacant, landlocked, wetland piece of property. The big thing that was said is that it wasn't landlocked, there is a driveway but people have tried to build back there and were denied because of access issues.
- Chairwoman Asid says she believes in what was provided by Jan in attachments it says that the access is through an address, which is her address so she has access to it.
- Mrs. Cianelli says it is a rear lot which our Town has no provisions for rear lots. She says it is a right of way which if anything changed down the road it would be taxed differently.
- Chairwoman Asid says aside from what the assessed value is, what they are also looking at here is the process, which was previously alluded to. At the time when this happened, each of the members heard cases and then the person who heard the set of cases would either approve or deny and then send that along to the other two members to sign off on.
- Mrs. Cianelli says yes, especially during revaluation they are very busy so now they have incorporated another night where they all sit and discuss the cases.
- Chairwoman Asid asks since this, have they determined that signing off on each other's things without reviewing them is not proper for the new process.
- Mrs. Cianelli says with the new process the case will be brought up and four people will sit around instead of three so that if someone needs to recuse from signing they can.
- Commissioner Polio asks if her residence is adjacent to this property, which Mrs. Cianelli says yes. Commissioner Polio asks how many pieces of property are there which Mrs. Cianelli says five.
- Mrs. Cianelli explains that they are six generations in the Town, her grandmother sold in the 1970's and the person was going to build a house for someone who then passed away and she has a letter from him saying he would try to get ingress and regress another way so the right of way is through what was her grandmother's property that is now owned by her husband and her. Kim has a right of way over her property, as well as her other two daughters.
- Commissioner Polio asks what the original assessment was to which Mrs. Cianelli explains it was \$57,000 which is 70% of the assessed value, which comes out to the \$82,000. She shows examples of appraised values for other properties with different acreages to indicate that she is not by any means under what she should be paying; it was \$27,000 before it went up to \$82,000. At the end of the packet she shows a piece of vacant land owned by Mr. Capone at 164 Foxon Road, which has an appraisal for .86 acres and comes out to less.

- Mr. Capone says it is wetlands, inaccessible and unusable.
- Mrs. Cianelli says her case is that Mr. Capone is not paying enough or her daughter is still overpaying.
- Commissioner Polio asks if both properties were adjusted.
- Mrs. Cianelli says his was not adjusted, hers was and it is still higher than what he is paying.
- Mr. Capone says he did not appeal this particular piece.
- Chairwoman Asid asks if her research determines that his property had stayed the same and hers increased.
- Mrs. Cianelli says yes.
- Commissioner Naclerio says he thinks they are getting off the topic; they could be talking politics when they need to discuss the facts.
- Town Attorney Joseph Zullo says it is relevant to some extent what the valuations were but the issue here is really the process, which is what was being talked about previously.
- Mrs. Cianelli says the process was the same process they had for 20 years she doesn't know if anyone else has known someone and signed off, if they happen to know or be personally related to the person they would not hear the case.
- Chairwoman Asid says but she signed off on it and she thinks that is the issue, her signature is on there. Could it have been tabled, she is surprised it has never been an issue. Maybe there is the question of intent there, maybe she didn't intentionally do it but the process itself needs to improve. Now they have a fourth person so in the case where a relative comes in and wants a reduction then someone needs to recuse themselves so the uninvolved party can take over the role so that person's signature is not on there signing off on it. The other thing she noticed is that in part of the appeals process, which was updated, there is also an appraisal form that she did not see included with this one.
- Mrs. Cianelli said at the time they didn't have to do that, people would come in with pictures or their field card or tax bills and that was all that it was. They have updated and upgraded the process because of this, which she is glad. They now also tape all of their conversations.
- Chairwoman Asid says she really thinks aside from all of the comparatives, the main concern is the process and what the process was last year when this was done has since been changed. If there isn't something in the rules now that says when it is a family member there must be a recusal then they should add that.
- Mrs. Cianelli said she did what they usually do; she let them know she was a relative so they knew when they sat down with her. At the end, he made his decision and they just sign off. She says she had told her four years ago to apply but she didn't until then due to a change in her financial situation, she says she didn't even know that she had applied at that time, now they get a list before the meeting.

- Chairwoman Asid says she encouraged her to apply which may also raise some of the questions.
- Mrs. Cianelli says why wouldn't she do that when she knew her bill was so high, she adds that there is no monetary value at stake for her, her daughter pays her own bills.
- Commissioner Naclerio asks what would have happened with the process if she didn't sign it.
- Mrs. Cianelli says she doesn't know.
- Attorney Zullo explains that, as the person who re-wrote the regulations, he can say that it was Mike Milici's understanding that all three people had to sign off. They had never had an instance where it didn't happen. He doesn't think that Mike understood and he doesn't think any of the Board members understood they were like every other board; they didn't keep minutes or agendas and this is going back through administrations back to the Messina Administration. After he researched and explained it to them and developed these rules they now understand what they have to do and now they have multiple opportunities to recuse themselves. First, they have the actual substantive hearing when the decision is made on whether something should go up down or stay the same and secondly, on the night to actually vote on those results those same people have the same opportunity to recuse themselves. In addition, it has been explained to them that they don't need a unanimous vote; a simple majority 2-0 or 2-1 would suffice.
- Chairwoman Asid asks if he is saying that if her signature wasn't on there it would have gone through anyway.
- Attorney Zullo says it would have gone through but he doesn't believe anyone knew that, but he can't give that testimony they would have to ask that question to her and determine whether or not they believe it.
- Mr. Capone asks if that is under the new guidelines.
- Chairwoman Asid says she believes he is saying it has always been that way but according to what Jan is saying they were under the impression that all three signatures had to be on there. From what she understands in this instance with Kim's property, all three signatures are on it; even though Jan didn't hear the case she felt she had to sign off on it to have the three signatures. She didn't hear the case because it was her daughter and they had the other two signatures to approve it so she didn't need to sign it, which probably would have made it more ethical for this type of case.
- Commissioner Polio says so technically if two people say yes and one says no, it would still be a yes.
- Attorney Zullo says that is correct, but he doesn't believe anyone knew that.
- Mr. Cianelli explains that he has been on Boards and Commissions for 42 years and when they know someone or do anything with Zoning, they state that before a hearing but the only way to recuse themselves is if they are part of the hearing;

if they are partners with the LLC or something of that nature. If they had to recuse themselves from everything that came before them they would get no volunteers for these Boards.

- Chairwoman Asid says that is what she said also, but in the case of a relative they should recuse themselves, people are going to know one another in the Town and she gets that.
- Mr. Capone says this wasn't just a case of someone she knew, it was a relative.
- Chairwoman Asid says but what she is saying is that she did not hear the case, the person who heard the case was the person whose name appears first which is Ed Wnek and Mr. Falcigno was the second party to sign off and Jan signed off as the third person according to what they thought the process was.
- Commissioner Polio asks how the Chief of Police got this complaint.
- Mrs. Cianelli says she has no idea, Mr. Cianelli added that she resigned as the food pantry treasurer when this investigation came about.
- Mr. Capone says this is as far as he has gone; it was not him who reported it.
- Mr. Polio asks Mr. Capone if all of this started over an overheard conversation and then he pulled the cards, what was his motivation to do that.
- Mr. Capone says he felt that something was done unethically based on what he had heard.
- Mr. Polio asks if he has ever done this with anyone else.
- Mr. Capone says if he felt anyone else had done something he felt was unethical, he would have done the same thing. He was attending the meetings, a resident of the Town and is still a large taxpayer and he felt that he would like his taxes reduced also.
- Chairwoman Asid says he can go through the appeal process also, it is going to be open in March, it is on the website.
- Mrs. Cianelli says during the revaluation they get 300 people.
- Chairwoman Asid says the signature on there for her daughter gives the appearance of impropriety.
- Commissioner Naclerio says now that they know they only need three people it can be done differently.
- Mrs. Cianelli says before they used to sign it the night of the hearing and only three people were there, now they go in for an extra night with four people to sit and discuss it in case someone has to recuse.
- Commissioner Naclerio asks if now they only need 2 signatures.
- Attorney Zullo explains they still need to do the extra night, but it can actually pass by simple majority, it can pass 2-0, 2-1 or 3-0.
- Chairwoman Asid says when this was done she didn't hear the case and didn't have to sign off on the case in actuality. Going forward, they need to ensure that the entire Board of Assessment Appeals is aware of the process and if there is a family member before the Board, the Board member should recuse and not be part of the voting or hearing process.

- Attorney Zullo says not only is that a policy, it is actually a policy under their new standing rules that they adopted that they have to do so a week before any hearings are even done. It is not something that can be forgotten the night of, they have a full week in advance to review and decide if they need to recuse.
- Commissioner Polio says he feels the appearance of impropriety is obvious, but whether it constitutes an unethical act where someone is receiving a monetary benefit, the only thing he sees is an adjacent property and because someone has an adjacent property it doesn't necessarily mean they will get a benefit from it. In looking at it, he thinks this is a lesson that should go across every Board to let them know that this is wrong. It may not be unethical because they are acting in good faith; the question is how they prove bad faith. To prove bad faith, he would think they would need a little more than they have for it to be an ethical violation.
- Mrs. Cianelli says unfortunately for 20 years this is the way they have always done it; you sign 20 of them in a row on the Board. It is rectified now with the new guidelines, they never had guidelines before.
- Mr. Polio says he doesn't know if this can or should be done but can this same request be brought up to the Board again to see if three out of the four people will sign off on it.
- Attorney Zullo says that every homeowner has the right to do that in March of next year.
- Chairwoman Asid asks if they can request that it be reevaluated or reassessed.
- Attorney Zullo says no, they are not the homeowner or the aggrieved party. Only the person in interest can do it. They can't force someone to do it either.
- Commissioner Polio says he wouldn't do that, his thought was in order to make it right rather than her signing off on it they hear it again.
- Attorney Zullo says every October 1st Mike Milici has the right to unilaterally adjust the assessment, which he does sometimes.
- Mrs. Cianelli says they get a lot of people that come back because everything they change, he changes back.
- Attorney Zullo says he can change it back. If he does change this back, he would imagine it would come back before the Board.
- Commissioner Polio says he feels this is about the appearance of impropriety versus a willful ethical violation to somehow gain a financial interest.
- Commissioner Naclerio says he agrees, it appears that way but if it has been this way for 40 years.
- Commissioner Polio asks if she lives on the property.
- Mrs. Cianelli says her property abuts it and she has been telling her to incorporate it into her house so it isn't a separate piece.
- Chairwoman Asid says it sounds as though they want to move forward with closing the case, as there is not an ethical violation just the appearance of such, with a warning recommendation to follow and abide by the rules where in the case of relatives they recuse themselves and do so without signing off on it. She

asks Mr. Capone if he is satisfied with this and says if he has his own property assessment he would like evaluated he can go through that process as well.

- Mr. Capone says it is a case of ignorance of the law. Just because someone is ignorant of the law and they break it- can someone say they were speeding but didn't know that the speed limit was and get off on it.
- Commissioner Polio says the question first of all is if it is a law. There are specifications under the Charter but does ignorance constitute criminality? He gives a scenario of someone running in front of a car and being hit, did they intend to hit them, no but maybe they weren't paying attention. So the question is whether there are other civil ways to deal with it given they didn't intend to hit the person. He thinks it would be nice for anyone on a Board/Commission to be able to read every word of the Charter to understand it but sometimes people are remiss to having knowledge of everything. This isn't the first time it has come up where someone didn't do something in bad faith but it had the appearance of impropriety.
- Mr. Capone says if the question is whether he is a happy camper, not really but they are making a decision and it is their decision.
- Chairwoman Asid says she thinks the feeling is that there was not an ethical violation enough to remove Jan from the Board, but they will issue a warning for future that they need to follow the new rules and processes and if there is a family member present, they would need to recuse themselves from both the hearing and the sign off process so something like this won't come about.
- Mrs. Cianelli says the new process affords her that opportunity which she wasn't afforded before.
- Commissioner Polio asks if this happened after this incident, did this incident actually propel the change.
- Mrs. Cianelli says yes, if nothing else he helped her and something good came out of it to make it easier and more workable.
- Commissioner Polio says the raising of the issue helped streamline the process and what may have been a negative thing changed the outlook of the Town for all of the Boards to look at their processes so he thanks him for that.

Commissioner Polio makes a motion that there is not an ethical violation, there may have been the appearance of impropriety but it doesn't constitute an ethical violation. Commissioner Naclerio seconds the motion.

Voice vote: all in favor-none oppose-none abstain. Motion carries.

- Chairwoman Asid says they will consider the issue closed.
- Commissioner Polio apologizes for the length of time that it took.

Item #5

Adjournment.

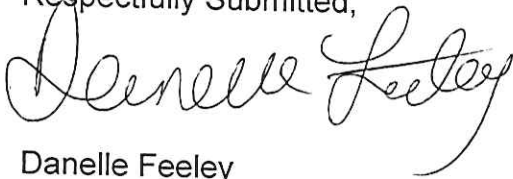
Chairwoman Asid makes a motion to adjourn.

Commissioner Naclerio seconds the motion.

Voice vote: all in favor-none oppose-none abstain. Motion carries.

Meeting is adjourned at 7:45PM.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Danelle Feeley". The signature is written in black ink and is positioned to the right of the typed name.

Danelle Feeley
Clerk, Board of Ethics