

TOWN OF NEW CASTLE, STATE OF NEW YORK
BOARD OF ETHICS

In re Matter of Councilwoman Elise K. Mottel

Advisory Op. 1-2014

ADVISORY OPINION

I. Summary

By letter dated July 25, 2014, Councilwoman Elise K. Mottel asked this Board to render an advisory opinion concerning her participation in the deliberations and voting on a rezoning petition submitted to the Town Board by an entity known as Summit Greenfield. The rezoning petition involves the former Readers Digest property in New Castle, which is presently known as Chappaqua Crossing. Summit Greenfield's rezoning petition requests that the Town Board change certain zoning on the property to permit retail development.

For the reasons set forth below, the Ethics Board¹ finds that Councilwoman Mottel may participate in the Town Board's deliberations and voting on Summit Greenfield's rezoning petition, and is not required to recuse herself with respect to such matters on account of certain legal work that her employer previously performed for an affiliate of Summit Greenfield.

¹ Ethics Board member Evan Glassman recused himself with respect to Councilwoman Mottel's request for an advisory opinion and took no part in this matter.

II. Factual Background

Since approximately 2007, the 114-acre Chappaqua Crossing property has been the subject of various land use applications submitted by Summit Greenfield to the Town Board. Of particular note, in 2007, Summit Greenfield submitted a petition to the Town Board for certain approvals necessary to develop 278 residential units on the property. On April 11, 2011, the Town Board adopted a local law changing the zoning on a portion of the property to allow residential development with 111 residential units. On October 11, 2012, Summit Greenfield submitted another petition to the Town Board seeking, among other things, a zoning change that would permit retail development on the property. That petition remains under review and consideration by the Town Board.

As set forth in her July 25, 2014 letter, Councilwoman Mottel recused herself from further involvement in Summit Greenfield's then-pending residential application in March 2010. Councilwoman Mottel explains in her letter that she recused herself upon learning that the law firm where she is employed as a partner was providing legal services to an affiliate of Summit Greenfield. The affiliate was a co-sponsor of an offering plan for a condominium project that was wholly unrelated to Chappaqua Crossing. The affiliate provided funding for the condominium project after the original sponsor experienced financial problems and required a new source of capital.

Since that time, however, facts have changed. Councilwoman Mottel advises that her law firm's representation of the affiliate has ended. All units of the condominium were sold, with the last closing having occurred over a year ago. Councilwoman Mottel further states

that her law firm was paid in full for all legal work performed for the affiliate, and there are no disputes or open issues between her firm and the affiliate. Councilwoman Mottel did not personally work on any matters relating to the offering plan or the affiliate, and she had no attorney-client communications with any representatives of the affiliate. Councilwoman Mottel states that the amount of revenue derived from her firm's work for the affiliate was a very small percentage (less than 1%) of her firm's total revenue.

Additionally, Councilwoman Mottel has informed the Ethics Board that her firm is not performing any legal work for the affiliate at present, and it does not anticipate performing any new work for the affiliate in the future. Similarly, Councilwoman Mottel's firm is not performing any legal work for Summit Greenfield or any related entity at present, and it does not anticipate performing any such work in the future. Her firm has not approached either the affiliate or Summit Greenfield to solicit additional legal work and has no plans to do so. One of Councilwoman Mottel's partners represented an employee of Summit Greenfield in connection with his purchase of an apartment in Manhattan as a personal residence. Councilwoman Mottel did not work on that matter, and she advises that the revenues derived from the representation were *de minimis* relative to her firm's total revenues.

III. Procedural Matters

Earlier this year, Councilwoman Mottel requested an opinion from Town Council as to whether she was still required to recuse herself in connection with Summit Greenfield's pending rezoning application. By Memorandum dated May 6, 2014, Town Council advised

Councilwoman Mottel that she was not required to recuse herself from the deliberations and voting associated with Summit Greenfield's application. At a Town Board public meeting on May 20, 2014, Councilwoman Mottel publicly announced that she had decided to no longer recuse herself on the Chappaqua Crossing matter. She then stated the reasons for her decision for the public record.

By Local Law No. 3 of 2014, enacted on April 8, 2014, the Town Board overhauled its existing Ethics Code by making a number of significant changes to its provisions, including but not limited to creating a new Board of Ethics. The members of the current Board of Ethics were appointed by Resolution adopted by the Town Board on July 8, 2014. The Board of Ethics has received and reviewed copies of relevant legal authorities from Town Counsel, as well as Town Counsel's Memorandum dated May 6, 2014.

IV. Applicable Code/Statutory Provisions

In rendering the instant advisory opinion, the Board of Ethics has reviewed and considered the Town's amended Ethics Code, including but not limited to the following provisions: § 9-2 (Definitions); § 9-3 (Acting in the public interest; appearance of impropriety); § 9-4(A) (Use of position for personal or private gain; use of Town property); § 9-7(A) (Private employment in conflict with official duties); § 9-8(A) (Recusal and abstention); § 9-12 (Confidential information). The Board of Ethics also has reviewed Article 18 of the New York State General Municipal Law, though its provisions have no direct application to the question presented in the instant matter.

V. Discussion

In analyzing the relevant provisions of the New Castle Ethics Code, we begin by observing that “[r]esolutions of questions of conflict of interest require a case-by-case examination of the relevant facts and circumstances.” *Parker v. Town of Gardiner Planning Bd.*, 184 A.D.2d 937, 585 N.Y.S.2d 571, 572 (3d Dep’t 1992). The fundamental ethical rule that may be distilled from New York law insofar as conflicts of interest for municipal officials is this -- a disqualifying conflict of interest is one that is substantial, direct and non-speculative. Two leading cases on the issue of disqualifying financial interests are *Tuxedo Conservation & Taxpayers Ass’n v. Town Bd. of Town of Tuxedo*, 69 A.D.2d 320, 418 N.Y.S.2d 638 (2d Dep’t 1979), and *Zagoreos v. Conklin*, 109 A.D.2d 281, 491 N.Y.S.2d 358 (2d Dep’t 1985). The Board has considered other case authorities as well, including *Parker v. Town of Gardiner Planning Bd.*, 184 A.D.2d 937, 585 N.Y.S.2d 571 (3d Dep’t 1992), and *Dudley v. Town Bd. of Town of Prattsburgh*, 22 Misc.3d 1128(A), 880 N.Y.S.2d 872, 2009 WL 513401 (Sup. Ct. Steuben Cty. 2009), both of which involved business and/or financial interests held by municipal board members.

Applying such authorities here, the Board of Ethics concludes that the past legal representation provided by Councilwoman Mottel’s law firm to Summit Greenfield’s affiliate does not presently pose a disqualifying conflict of interest with respect to Summit Greenfield’s pending rezoning petition. In reaching this conclusion, we have placed significant weight on the fact that the law firm’s representation of the affiliate ended over a year ago, and the firm does not anticipate performing any legal work for the affiliate or Summit Greenfield in the future. Additionally, the revenues generated by the firm’s

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representation of the affiliate were very small relative to the firm's overall income. The firm's representation of an employee of Summit Greenfield in connection with his purchase of an apartment in Manhattan is too insubstantial and isolated to require recusal.

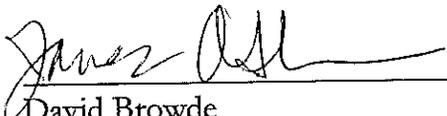
In sum, a disqualifying conflict of interest is one that is substantial, direct and non-speculative. Under the facts presented, we find no basis for finding such a conflict.

VI. Conclusion

Councilwoman Mottel may participate in the Town Board's deliberations and voting on Summit Greenfield's rezoning petition and is not required to recuse herself.

Dated: Chappaqua, New York
October 6, 2014

TOWN OF NEW CASTLE BOARD OF ETHICS

By: 
David Browde
Kyle-Beth Hilfer
Ken Schonberg
James A. Shanman - *Chair*

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