

MUNICIPAL ETHICS BOARD

April 11, 2012

CALL TO ORDER

Ms. Bacon called the meeting to order at 8:00 p.m. in the Council Chambers in the Municipal Complex. Ms. Bacon read the following statement:

“In accordance with Section 5 of the Open Public Meeting Act, Chapter 231, Public Law 1975, be advised that adequate notice of this Meeting of the Municipal Ethics Board of the Township of Franklin, County of Somerset was made by the posting on the bulletin board at the Municipal Complex and transmitted to the officially designated newspapers indicating that this Meeting would take place at the Municipal Complex, 475 DeMott Lane, Somerset, NJ 08873 at 7:00 p.m. on Wednesday, April 11, 2012. In addition, a copy of this notice is and has been available to the public and is on file in the Office of the Municipal Clerk.”

ROLL CALL

Present: Patricia Bacon, Catherine Barrier, Martin Lokomowitz, Agnes Messineo, John Paff,
Cynthia Voorhees
Absent: No One

PUBLIC DISCUSSION

A motion was made by Ms. Barrier to open the meeting to the public. Said motion was seconded by Ms. Messineo and carried unanimously upon voice vote.

There being no comments made by the public at this time, a motion was made by Mr. Lokomowitz to close the public discussion. Said motion was seconded by Ms. Barrier and carried unanimously upon voice vote.

2012 FINANCIAL DISCLOSURE STATEMENTS

The Board reviewed the draft report of the 2012 Financial Disclosure Statements. After a brief discussion, discrepancies were found and the Chair will discuss this matter with the Township Clerk and a final report will be made at the next meeting.

Motion – Amend Agenda

A motion was made to amend the agenda and skip Agenda Item #6 by Ms. Barrier, seconded by Mr. Lokomowitz and carried unanimously upon call of the roll.

NEW BUSINESS

There was no new business to discuss at this time.

EXECUTIVE SESSION

Mr. Galvin read the following resolution:

**RESOLUTION APPROVING EXECUTIVE SESSION
FOR THE
FRANKLIN TOWNSHIP ETHIC'S BOARD**

WHEREAS, NJSA 10:4-12 of the Open Public Meetings Act permits the exclusion of the public from a meeting in certain circumstances set forth in paragraph (b); and

WHEREAS, this public body is of the opinion that such circumstances presently exist;

NOW, THEREFORE, BE IT RESOLVED by the Ethics Board of the Township of Franklin, County of Somerset, State of New Jersey, as follows:

1. The public shall be excluded from the Board's discussions of the hereinafter specified matters.
2. The general nature of the subject matter to be discussed is as follows: ***Matters concerning Complaints 10-01A, 10-03, 11-02, 11-03 and 11-04.*** which may result in disclosure of personal and private information, if the public was not excluded, pursuant to NJSA 10:4-12(b)(3) and ***Matters concerning pending or anticipated litigation with regard to Complaints 10-01A, 10-03, 11-02, 11-03 and 11-04*** wherein the Board is or may become a part, pursuant to NJSA 10:4-12(b)(7).
3. It is anticipated at this time that the above matter will be made public at the conclusion of this matter to the extent as permitted by law.
4. This Resolution shall take effect immediately.

The aforesaid resolution was moved by Mr. Lokomowitz, seconded by Ms. Barrier and carried as follows upon call of the roll:

AYES: Bacon, Barrier, Lokomowitz, Messineo, Paff, Voorhees
NAYS: None

The Board went into Executive Session at 8:30 p.m.

A motion was made by Ms. Voorhees, seconded by Mr. Lokomowitz to come out of Executive Session at 9:15 p.m. Said motion carried unanimously upon voice vote.

Motion – Dismiss Complaint #10-03

A motion was made by Ms. Messineo to dismiss Complaint No. 10-03 as a result of insufficient evidence. Said motion was seconded by Mr. Lokomowitz and carried as follows upon call of the roll:

AYES: Bacon, Barrier, Lokomowitz, Messineo, Paff, Voorhees
NAYS: None

Motion – Dismiss Complaint #11-02

A motion was made by Ms. Messineo to dismiss Complaint No. 11-02 as a result of insufficient evidence and reasonable doubt. Said motion was seconded by Mr. Paff and carried as follows upon call of the roll:

AYES: Bacon, Barrier, Lokomowitz, Messineo, Paff, Voorhees
NAYS: None

A discussion ensued regarding the point in time in a complaint when it becomes public and when to hold a hearing. Ms. Bacon read the confidentiality clause in the Ethics Code and spoke of the Administrative Procedures Act in relation to the Local Finance Board and the Ethics Code.

At this time, Ms. Bacon and Mr. Paff left the meeting as a result of having a conflict with the complaint that is up for hearing.

Motion – Dismiss Complaint #11-03

A motion was made by Ms. Voorhees to dismiss Complaint No. 11-03. Said motion was seconded by Ms. Messineo and carried as follows upon call of the roll:

AYES: Barrier, Lokomowitz, Messineo, Voorhees
NAYS: None
ABSENT: Bacon, Paff

COMPLAINT NO. 11-01 HEARING

It was noted that Dominic DiYanni, Attorney for Fire District #1 and James Wickman, Commissioner of Fire District #1 were in attendance.

Mr. Galvin asked if anyone had a problem with the matter proceeding in public session. It was responded no.

Mr. Galvin stated the following, “Here’s the thing just in case this matter is reviewed by Court. We have given due consideration of this matter. There have been some concerns raised by the Chair about procedures for conducting this in open meeting. I elected to proceed in open. If I am making an error, I feel better to err in an open meeting rather than executive session. In my view it is the open public meeting and ethics law that requires us to apply the Administrative Procedures Act. In this matter we have already received substantial information and made a determination that a cause of

action existed and further based on letters that we received by counsel dated December 9, 2011, it appears that Mr. Wickman has conceded that a violation has occurred. Mr. DiYanni you may proceed to bring Mr. Wickman up.”

Mr. DiYanni spoke to the opportunity of James Wickman being heard and explained facts of the case. It should be noted for the record that comments made by Mr. DiYanni were mostly inaudible as a result of him not being close to the microphone. He asked Mr. Wickman to come forward to make his statement.

Mr. Galvin administered the oath to James Wickman.

Mr. Wickman made the following statement:

“It was important to come here in person to give my side of the course of events (inaudible) on why I voted on the resolution authorizing the settlement. After the fact it was brought to my attention and I asked Dom about this. I don’t know that you require (inaudible) based on the fact that the insurance company from day one advised they would be handling the case and they would advise us on the case.

Cutting to the settlement itself, it was presented to us by the attorney of the insurance company and went into executive session. I am very confident I asked a question ‘Is this the insurance company version of the settlement – does this still need approval of the plaintiff? Has it been agreed upon that both parties are just making sure we are comfortable? The response was to the effect both the insurance company attorney and plaintiff, both parties were ready to sign off on it. I asked if the Board of Commissioners on what settlement is and how to move on.

The first concern for me not just trying to force something to the Board, let’s settle this case at the time it was being settled mutually. It was the understanding of both parties that we were just reviewing (inaudible) for the insurance company. The most important fact that I need to tell everyone from day one of this whole situation, The Board of Commissioners, as a whole, had gone out of its way to ensure the plaintiff, Debbie Nelson, was being taken care of properly and all actions were an attempt in her best interests whether in the end all parties agree to that or not. I can say personally that obviously our number one priority was the best interests for Fire District #1. That was (inaudible) tell us what to do. With that being an employee of Fire District #1, our highest priority is making sure our employees are being taken care of properly satisfied, happy and hopefully putting this to rest so that everyone could move on and continue the business of the Fire District.

With that said, the third part, part of the settlement, I believe it may have been in the first paragraph too and clearly communicated to us that the individual named Commission I was the only sitting Commissioner at the time...the two other people were former Commissioners. I was still sitting on the Board, named as a member of the Board, also named personally. And my question was how this settlement agreement affects us. In no part of the process did the individual named persons have any say in the process. It was being handled by the insurance company. Everybody was covered and represented by the insurance company attorney and they were hammering out an agreement for the plaintiff and all parties involved and it was made clear to me that stipulation #1 or 2 on the list was any

and all claims and charges against individual's names were dismissed without prejudice. Basically, we were removed personally from the situation. We were now discussing the Fire District. Everybody agreed that this was in the best interest of everyone to settle this issue. We came out of executive session and made a motion and I voted on the motion.

My understanding at the time was I was not voting on a resolution that involved me personally. It was clear that the settlement – I was personally removed...that was my understanding. It looks as if I was incorrect in that understanding but that was my understanding. We were not voting on a Fire District issue versus a Jim Wickman issue and not voting on getting myself off a lawsuit (inaudible). It was my understanding of the time we were not dealing directly with a district issue. So that's how I came to that – no part of that process was I advised by any legal counsel and this is not an excuse when somebody mentioned it to me earlier at no time was I advised by anyone that you should recuse yourself from voting. I should have thought of that myself.

And the third and final part that kind of covers how we got to that point, my decision making process at that time. The other point I need to make clear because now this is personal that person who had... The final thing from a personal perspective is I feel is important for this body to know and the public for that matter. I have no problem I tell you right now any and all of this discussion and/or decision and whatever becomes of this be made public. I am comfortable in my decision process at the time. If it was wrong, so be it. I am comfortable about why I did what I did but it is important to know that Mr. Carter since the settlement has filed over a hundred OPRA requests to the Fire District and that is costing the taxpayers of the Fire District tens of thousands of dollars and I will say that I have been the focus of a vast majority of his requests. So my opinion that this is a personal vendetta by Mr. Carter to tarnish my reputation and to cause harm to me whether it's financial, my reputation, it doesn't matter. My personal opinion that this is just another step to Carter's path of trying to ruin me personally, professionally and I am glad to have the opportunity to come here and speak about it because it has been overwhelming to our Fire District, the taxpayers of the Fire District.

The citizens depend on our service to protect them. We have spent \$10,000s a year defending OPRA requests at the GRC as complaints. Dozens of GRC complaints based on OPRA requests. In one week, he submitted 30 OPRA requests. We don't have a full-time paid stall to handle this. These requests are handled by the Clerk of the Board – we have full-time jobs. This is a point situation and he purposely did that. Not a single one of his OPRA requests (over 100), not a single one had turned up any wrongdoing by the Board. His only issue in his GRC complaints are based on the fact that a) we were late handing over 100s of pages or we missed several pages of 100s of pages. When asked if we could sit down to discuss and settle this with him, the answer was no and see you at the GRC. This is a targeted attacked by Mr. Carter not only the Fire District, me personally. I will not stand for that and will not let that go quietly and if I have my say on that – requests any and all discussion on this be public. That is all I have to say. Thank you very much.”

Mr. Galvin asked if there was anything else. Mr. DiYanni requested that the decision be suspended and a remedy be made available. He thanked the Board for giving him and his client the opportunity to speak and appreciated the time taken.

Mr. Lokomowitz asked for his status at the Fire District. Mr. Wickman replied that he has been a Commissioner for 9 years and is an active firefighter.

Ms. Barrier questioned why he thought it was a personal vendetta, asking if it was the volume of the requests.

Mr. Wickman replied the following: "The volume is number one and there was no specificity of requests, the mass majority ask for any and all information on as well as the other individually named Commissioners. In my opinion, there is a pattern of the slew of OPRA requests. I am the Commissioner responsible for Purchasing and requests came in for quotes, multi-quotes, bid procedures, specifications, anything I was doing was requested through OPRA. The sad thing is that much information OPRA requested by him is information the State deems readily available. He could have walked in the office where his sister works and the claimant in this case is his sister. He could have walked in and said I would like for example all the oaths of office for all Commissioners for the past ten years. He can walk in and get vouchers...immediately accessible...the meeting minutes...immediately accessible...anything financial...immediately accessible. He could walk in the office and in give minutes be handed them but my contention that the volume of work involved in the years worth of paperwork he requested. He did not request specific vouchers or specific documents. He asked for any and all documents from 2001 to the present."

Mr. Lokomowitz asked if he thought it was improper or if it gave the appearance of being improper to vote on something that would benefit you.

Mr. Wickman replied, "In hindsight, yes I do, but that is why I wanted to come there tonight given the circumstances at the time and being under the pressure of understanding that the very first part of the settlement was me personally. I was being removed from the discussion to the parties names, personally were removed from the settlement and now it's my understanding it's not correct. It is my understanding now we are discussing settlement of city commissioners and plaintiff with the understanding James Wickman and two other persons have been removed from discussion and they are no longer part of this suit.

Ms. Barrier asked was that communicated to him orally or indicated in writing in the settlement.

Mr. Wickman replied "I believe it was the first bullet point of the settlement...personally named individuals without prejudice."

Ms. Barrier asked if that was something he read before the voting...or if it was something pointed out and shown to you.

Mr. Wickman replied "That's what we discussed in executive session. Yes, one of the items just went over the agreement if there was anything that jumped out...except one very early things in the agreement packet...personally these people are being removed and not the subject is the Fire District versus the plaintiff."

At this time the hearing concluded and Mr. Wickman stepped down.

Mr. Galvin stated he was thinking of how the Board should proceed and asked how they want to proceed. Ms. Barrier asked if they could discuss it in executive session. Mr. Galvin replied he was trying to figure that out and find his way. He stated he needed to research this before providing an answer and recommended the board reserve the decision to a later date. He apologized to Mr. Wickman and Mr. Diyanni for not having a definitive answer at this time.

Motion – Reserve Decision on Complaint #11-01

A motion was made by Mr. Lokomowitz to reserve the decision on Complaint #11-01. Said motion was seconded by Ms. Barrier and carried as follows upon call of the roll:

AYES: Barrier, Lokomowitz, Messineo, Voorhees
NAYS: None
ABSENT: Bacon, Paff

Ms. Bacon returned to the meeting.

Mr. Galvin updated Ms. Bacon on the actions taken at the meeting on the three other complaints and that the Board reserved their decision on Complaint No. 11-01.

A discussion ensued regarding Ms. Bacon's concerns regarding the hearing process on complaints. She cited from the state statute. Mr. Galvin stated he would research this and have an answer to the Board's questions and concerns regarding hearings by the next meeting.

The Board chose the date of the next meeting as April 30, 2012 at 8:00 p.m.

ADJOURNMENT

A motion to adjourn the meeting at 10:20 p.m. was made by Mr. Lokomowitz, seconded by Ms. Barrier, and carried unanimously upon voice vote.

Approved: *As Amended*

Date: *June 20, 2013*

Ann Marie McCarthy, Township Clerk