

TO: GREENBURGH TOWN BOARD

**BOARD OF ETHICS ANNUAL REPORT TO TOWN BOARD,
PURSUANT TO SECTION 11G OF CODE OF ETHICS, FOR YEAR 2008**

I. OVERVIEW

The Board of Ethics was reconstituted during the Year 2007. During 2008 the reconstituted Board of Ethics continued the process of developing institutionalized processes for the Board of Ethics; developing informational materials on ethics for Town officials and the public; and issuing formal opinions to form a framework of guidance for Town officials and the public. The Board of Ethics also began a project to study and recommend refinements to the new Code of Ethics adopted in July 2007. The Board of Ethics has been hampered in its work by the absent of a full complement of members and the lack of independent counsel.

II. SUMMARY OF ACTIVITIES IN 2008

A. Institutionalizing and Publishing Procedures and Ethical Materials

In April 2007, the Board of Ethics adopted and published an initial set of Internal Rules and Regulations to provide for the efficient working of the Board. In 2008, after several months of public meetings, the Board of Ethics revised the Internal Rules and Regulations to add general procedures for handling requests for advisory opinions and resident verified complaints.

The Board of Ethics published guidelines concerning Section 6 of the Code of Ethics (which prohibits use of Town property for personal or political gain).

With the assistance of the Town's Webmaster, the Board of Ethics has established a "Board of Ethics page" on the Town's website. The "page" includes Board of Ethics Opinions, Internal Rules and Regulations, and Guidelines; ethical educational and reference materials; information on gifts and contributions to Town officials; suggested form for resident submissions to the Board of Ethics; a link to the Town's Code of Ethics; and the Board of Ethics meeting schedule and agendas.

B. Legislative Matters

As recommended in the Annual Report for 2007, the Board of Ethics began a statutory refinement project in the second half of the year. This resulted in two meetings with the Town Board in the early part of 2009 and also receiving comments from the public. This project is ongoing.

C. Opinions

In March 2008, the Board of Ethics issued *Opinion 2008-1*, responding to a request of a Town Board member as to whether she/he should recuse her/himself from a vote on a particular proposed contract.

In May, the Board of Ethics issued *Opinion 2008-2*, responding to a request of the Town Board regarding whether conditions should be attached to the proposed appointment of a Town official.

In October, the Board of Ethics issued *Opinion 2008-3*, responding to a Town official's request for an advisory opinion relating to what communications were permissible under a new provision of the Code of Ethics (Section 4L(4)) applicable to members of the Town Board with respect to applications pending before the Town's Planning and Zoning Boards.

All of the opinions of the Board of Ethics are filed with the Town Clerk pursuant to Section 11C of the Code of Ethics.

D. Annual Financial Disclosure Statements

The Board of Ethics received 100% response to the Annual Financial Disclosure Statement Forms send out in 2008 for the preceding year. Pursuant to Section 8E of the Code of Ethics, "the Town Board shall determine the list of persons who are subject to the disclosure requirements" of the Code of Ethics. In 2008, the Town Board deferred acting on this and the Forms were sent to those individuals to whom they had been sent in the past.

III. MEMBERSHIP; COUNSEL

The Greenburgh Town Code states that the Board of Ethics is to be composed of five members. Since its reconstitution in 2007, the Board of Ethics has never had five fully participating members. At present, the Board of Ethics has four fully participating members. Under NYS law (General Construction Law, Section 41; Opinion, NYS Committee on Open Government, Oct. 30, 1997), an absolute number of members of the whole board (not counting vacancies, recusals and absences) is required to constitute a quorum and for a vote. Thus, three members are required to constitute a quorum of, and to vote on behalf of any action of, the Board of Ethics. In some instances a Board of Ethics member recuses her/himself and occasionally a member is absent from a meeting due to scheduling conflicts or family or business emergencies. Additionally, from July 2007 - January 2009, one member attended only two of the approximately 20 meetings during that period. Even without the special circumstance of a non-participating member, the combination of recusals and absences makes it impossible at times to muster a legal quorum, much less a vote on an action.

The Board of Ethics does not have independent counsel. A member of the Town Attorney's Office serves as counsel and has been extremely helpful to the Board of Ethics to the extent he can participate in its activities, but experience has shown that he has recused himself from most investigations since they involve activities of a member of the Town Board (who appoint and set the compensation of Town Attorneys) or a senior-level Town official (who members of the Town Attorney Office interact with on a professional basis). Recusal leaves the Board of Ethics without counsel. Having counsel is a requirement of NYS law. NYS Law (General Municipal Law Section 802(2)) states that a municipal board of ethics "shall have the advice of counsel employed by the board." Although (at present) three members of the Board of Ethics are lawyers, being a member of a municipal board and undertaking the professional legal obligations of acting as counsel for a client (e.g., a municipal board of ethics) are different things, as the duties of a board member are quite different from the duties of being counsel.

IV. RECOMMENDATIONS

A. Disclosure Form for Applicants. The Board of Ethics recommends that the Town Board adopt a disclosure form to be submitted by applicants when it/she/he files an application with any Town agency. The Board of Ethics submitted a proposed form to the Town Board in June 2008. The Board of Ethics will restudy the proposed form and resubmit it to the Town Board.

B. Membership.

(i) The Board of Ethics recommends that a full complement of members be appointed.

(ii) It is also important that members fully participate in the activities of the Board of Ethics. As previously communicated to the Town Board, it is recommended that, before final appointment, a candidate be asked to attend several meetings of the Board of Ethics so that she/he can become familiar with the Code of Ethics, the work of the Board of Ethics, and the time involved (which is significant) with being a member of the Board of Ethics.

C. Counsel. The Board of Ethics recommends that the Town Board authorize the Board of Ethics to employ independent counsel.

V. BOARD OF ETHICS INTENDED EMPHASIS FOR 2009

The Code of Ethics is an important and integral part of Town government and of relations of Town officials with Town citizenry. The Board of Ethics believes that steps to prevent potential problems are in the interest of good government and the goals of the Code of Ethics. The Board of Ethics believes that it is crucial that guidance be available for Town officials and the public through published opinions, guidelines, standards, forms and procedures so as to provide guidance in advance to Town officials, prevent misunderstandings in the public domain regarding the reach and scope of the Town's Code of Ethics, and help facilitate the fairness goals of the Code of Ethics. The Board will continue to focus both on these goals and on the statutory refinement project to make salutary amendments to the Code of Ethics.

May 23, 2009

Respectfully submitted,

GREENBURGH BOARD OF ETHICS

Jack McLaughlin, Chair Statutory and Rules Committee

Mike Sigal, Chair

Walter Rivera, Secretary

cc: Town Clerk

Eric Scott, new Board of Ethics Member as of May 2009