

To: Greenburgh Town Supervisor

Greenburgh Town Council

Greenburgh Town Clerk

ADVISORY OPINION 2014 - 8

BACKGROUND

This advisory opinion addresses a question received in an e-mail from Town Supervisor Paul Feiner regarding a request to accept a one million dollar donation stemming from an agreement between the developer, Avalon Bay and the E. Irvington Civic Association.

In an e-mail dated August 27th, 2014, the Supervisor wrote:

"I hope that the Ethics Board will support the request to accept the one million dollar donation . . . If we don't accept the donation, the developer gets to keep the money according to the terms of the agreement.

"No member of the Town Board or Officials were aware of the agreement between the Avalon and the E. Irvington Civic Association until recently. We were not influenced in any way by their donation since we were not aware of it.

"The Town Board has a resolution accepting the one million dollar donation from Avalon Bay for the purchase of almost 28 acres of open space near Taxter Ridge Park."

The resolution was held over pending the action before the Board of Ethics

UNDISPUTED FACTS

1. There was no involvement of town officials before the offer of the commitment of funds.
2. No Town Elected or Public Officer or Agency Member directly or indirectly solicited this gift.
3. The town became aware of the commitment of funds after the votes on the Avalon Bay project were completed; therefore, the commitment of funds had no influence on any town votes.
4. When the Town Board learned of this commitment, they made it known to the public.
5. The Town is only acting as a conduit for the funds, receiving them from a developer, purchasing land within the town and in turn immediately turning title to the land to the village of Tarrytown, which is in the Town of Greenburgh. The Town of Greenburgh will not hold the title to the land and will have no responsibility for its development or maintenance.
6. The Town must proceed in the manner because of the Finneran Law.
7. The property in question is in Tarrytown and abuts Taxter Ridge Park.
8. The property will be open to use by all Greenburgh residents.

There was an open meeting and all members of the public in attendance who wished to make a statement were allowed to address the Board. The Board, also, reviewed site plans and other written documentation submitted to it by Town Officials and members of the public.

Jack McLaughlin, Chairman of the Board of Ethics, recused himself from the hearings and deliberations due to a conflict of interest. Dr.Sarcinella, secretary of the Board of Ethics, chaired the hearing of this matter. A quorum consisting of four members of the Board of Ethics heard this matter and made the decision which resulted in this opinion.

Three votes were taken.

VOTE 1 -- agree to the above facts--unanimous vote-aye

VOTE 2 -- agree that the following section of the Greenburgh Code of Ethics applies-section 570-4 standard of conduct (A) Gifts and solicitations--unanimous vote-aye

VOTE 3 -- agree that no violation of the Ethics Code will occur if funds are accepted under these facts presented--unanimous vote-aye

OPINION

It is the opinion of the Board of Ethics that the acceptance of these funds does not violate the Greenburgh Code of Ethics.

CAVEAT

1. TOWN MUST FOLLOW ALL CODE REQUIREMENTS WITH REGARD TO THE ACCEPTANCE OF THESE FUNDS.

2. DUE TO THE UNUSUAL AND UNPRECEDENTED CIRCUMSTANCES SURROUNDING THIS MATTER, THIS ADVISORY OPINION IS LIMITED TO THESE FACTS AS PRESENTED.

Although the BOE understands the reasons for keeping the commitment of funds agreement between the Civic Association and the developer a secret, the BOE is neither condoning or advocating such secrecy and takes no position at this time of the propriety of a civic association or any other individual or group negotiating on behalf of the town.

Two members of the Board of Ethics expressed discomfort with the agreement's secrecy from the Town of Greenburgh and with the exclusion of public awareness and input over the duration of the agreement and the short amount of time between the actual disclosure and need to commit to accepting or rejecting the one million dollars. They agree, however, that the Greenburgh Code of Ethics was not violated by the Town's acceptance of the one million dollars to purchase and transfer title to the land to Tarrytown

BY THE BOARD OF ETHICS

Adopted at September 10, 2014 meeting

Voting for:

Dr. Hopkins, PhD

Mr. Eisen

Hon. Friedman, Esq

Dr. Scarcinella, EdD

Recused:

Mr. McLaughlin