

TO: Paul Feiner, Town Supervisor

cc: Greenburgh Town Board  
Greenburgh Town Clerk  
Planning Commissioner  
Town Attorney  
Chair, Planning Board  
Chair, Zoning Board of Appeals

## **OPINION 2011-1**

### **Background**

On January 21, 2011, the Town Supervisor, pursuant to Section 11D(2) of the Code of Ethics, requested that the Board of Ethics give an advisory opinion as to whether it would be permissible under the Town's ethics laws for the Town Board/Planning Board/Zoning Board of Appeals "to hold hearings on the same night" so as to "cut the time period significantly of the [Town's] review process [of land use applications]".

### **Opinion**

Section 4L(4) of the Code of Ethics prohibits a member of the Town Board from "participat[ing] as an advocate before the Planning Board or Zoning Board of Appeals for or against any application, except with respect to any property in which she/he has an Interest."

In Opinion 2008-3, in response to several inquiries from the Town Supervisor, we issued an opinion regarding "advocacy communications with respect to applications before the Town's Planning Board." We noted that Section 4L(4) is unique to members of the Town Board (which is the body which appoints members of the Planning Board) and that as part of the 2007 amendments to the Code of Ethics "the Town Board unanimously passed the restriction in Section 4L(4) in order to keep the Planning Board and ZBA free from political interference". We concluded that:

- Section 4L(4) prohibited Town Board members from "(1) appearing at Planning Board meetings regarding applications, (2) writing letters to Planning Board members regarding applications, [and] (3) calling and/or having other direct person-to-person contacts with Planning Board members regarding applications . . . ."

- Section 4L(4) did not prohibit Town Board members from writing letters to newspapers regarding applications, meeting with and advising residents regarding applications, and contacting an applicant.

We pointed out in the Opinion that all activities of Town officials, including the activities permitted by Section 4L(4), were subject to the solicitation, acceptance of contributions, lobbying and receiving compensation restrictions of the Code of Ethics.

In considering this request for an advisory opinion, the Board of Ethics notes that a public hearing is part of a public body's fact finding and is designed for a public body to hear from the applicant and the public regarding a matter before the public body. A member of the public body may, but is not required to, express a view as to the merits of the matter during the public hearing.

The restriction in Section 4L(4) is a restriction on advocacy communications by Town Board members with respect to applications before the Planning Board or Zoning Board of Appeals. Holding joint public hearings of the Town Board, Planning Board and Zoning Board of Appeals, where those boards deem it appropriate, does not *per se* violate Section 4L(4). An advocacy expression by a Town Board member at a joint public hearing could, however, violate Section 4L(4).

Based on the foregoing, the Board of Ethics concludes:

1. The Town Board may hold a joint public hearing with any other board (including the Planning Board and/or Zoning Board of Appeals) without violating Code of Ethics Section 4L(4). During a joint public hearing with the Planning Board and/or Zoning Board of Appeals, a member of the Town Board may not directly or by implication express a view on the merits of the application or vote for or against an application.

2. Members of the Town Board may ask questions, may discuss issues, may request further information, may request alternatives be proposed, and may otherwise participate in any manner they wish in a joint public hearing, so long as they do not express a view on the merits of or vote on the application during the joint public hearing.

3. Members of the Town Board may outside of the joint public hearing express views on the merits of the application consistent with Opinion 2008-3 discussed above.

4. Members of boards other than the Town Board may express merit views during a joint public hearing, as the restriction of Section 4L(4) does not apply to them.

The Board of Ethics recommends that, at the beginning of a joint public hearing involving the Planning Board or Zoning Board of Appeals, that a statement be read by the Town Supervisor to the following effect: *"Under the Greenburgh Code of Ethics, members of the Town Board may not express advocacy views for or against an application before the Planning Board or Zoning Board of Appeals. The Town's Board of Ethics has advised the Town Board in an advisory opinion that, during a joint public hearing with the [Planning Board] [Zoning Board of Appeals], members of the Town Board may not express a view on the merits of the application, although they may ask questions, discuss issues, request further information and proposals, and otherwise participate in the joint public hearing. Under the Town's ethics laws, expression of views on the merits by members of the Town Board must take place outside of the joint public hearing with the [Planning Board] [Zoning Board of Appeals]."*

The Board of Ethics also recommends that the Chair of the [Planning Board] [Zoning Board of Appeals] read a statement to the following effect: *"As noted, members of the Town Board may not, during the course of this joint public hearing, express a view on the merits of the application. To facilitate the smooth conduct of this joint hearing, the members of the [Planning Board] [Zoning Board of Appeals] have determined that they too will not, during the joint hearing, express views on the merits."*

BY THE BOARD OF ETHICS

*Adopted at February 15, 2011 Meeting*

Voting For: Mr. Constantine

Mr. Eisen

Mr. McLaughlin

Mr. Scott

Mr. Sigal

*Endnote:*

1. We point out that this advisory opinion only addresses the Greenburgh Code of Ethics. It does not address any other state or municipal statutes which may have a bearing on the holding and conduct of joint public hearings.