

TO: Town Supervisor

CC: Greenburgh Town Council
Greenburgh Town Clerk

OPINION 2011-8

Background

This Advisory Opinion addresses an inquiry of the Town Supervisor regarding Section 4L(4) of the Code of Ethics as to whether he could “write personal letters to each of the members of the Zoning Board [of Appeals] asking that they expedite [a particular] matter.”

Section 4L(4) of the Code of Ethics provides: "No member of the Town Board shall participate 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". The Town Supervisor is a member of the Town Board.

Section 4L(4) was adopted as part of the July 2007 amendments to the Code of Ethics. The Section pertains only to matters involving the Planning Board or Zoning Board of Appeals. The Section has been the subject of three Board of Ethics advisory opinions, Opinions 2008-3, 2011-1 and 2011-7. As discussed in those opinions, the Section prohibits appearing before the Planning Board or ZBA as an advocate or advocacy communications with members of those boards, but does not prohibit all activities by Town Board members regarding applications before the Planning Board and ZBA such as writing letters to newspapers and meeting with and advising citizens.

Opinion

In his inquiry, the Supervisor stated that it would be horrible if the matter was not quickly reviewed by the Zoning Board of Appeals and that in his opinion delays could result in exposure under the Federal Americans with Disabilities Act.

As we understand it, at the time of the Supervisor’s email, no application had yet been made in the first instance to the Zoning Board of Appeals, which the email indicates is the appropriate Town body to consider the matter. While not expressing any view as to zoning laws, there is nothing in the Code of Ethics which prevents the property owners from making an application to the ZBA which we understand normally meets monthly. We do not know if, as this time, an application has been made.

In Opinion 2008-3, we concluded that (unless a personal interest were involved) Section 4L(4) prohibited a member of the Town Board from (1) appearing at ZBA or Planning Board meetings regarding applications, (2) writing letters to ZBA or Planning Board members regarding applications and (3) calling and/or having other direct person-to-person contacts with ZBA or Planning Board members regarding applications.

In Opinion 2008-3 we stated that “[a]lthough the scope of the prohibition is narrow, we believe that it is pervasive within the narrow scope in which it operates.”, and accordingly we think the actions prescribed by Section 4L(4) apply both to pending applications and also with respect to prospective applications. Thus, Town Board members, including the Town Supervisor, may not write personal letters to one or more ZBA members regarding a matter which is pending before the ZBA or which is anticipated to be taken to the ZBA.

With regard to the potential issue of legal liability raised in the Supervisor's email, while not expressing any view under the Federal ADA, we note that there is nothing in the Code of Ethics which prevents the ZBA's counsel, a Deputy Town Attorney, from advising the ZBA of any legal issues under any relevant Federal or state statute.

BY THE BOARD OF ETHICS

Adopted at October 19, 2011 Meeting

Voting for: Mr. Eisen

Mr. McLaughlin

Mr. Sigal

Not Present:

Mr.

Constantine

Mr. Scott