

TO: GREENBURGH TOWN BOARD

**BOARD OF ETHICS ANNUAL REPORT TO TOWN BOARD,
PURSUANT TO SECTION 11G OF CODE OF ETHICS, FOR YEAR 2011**

I. OVERVIEW

During 2011 the principal activities of the Board of Ethics were: (1) administering and issuing opinions on verified complaints filed by residents of the Town and requests for advisory opinions made by Town officials, (2) analyzing and reporting on potential statutory changes to the Code of Ethics proposed by the Town Board, (3) reporting on the status of promulgation of the Code of Ethics and ethics training, both of which are required by the Code of Ethics and (4) administering the Annual Statement of Financial Disclosure process.

II. SUMMARY OF ACTIVITIES IN 2011

A. Opinions on Verified Citizens Complaints and Requests for Advisory Opinions

During 2011 the Board of Ethics issued eight opinions. Three were generated by verified complaints filed by Town residents, and five were generated by requests for advisory opinions by Town officials. The brief opinion summaries herein are solely for purposes of the Annual Report. The respective complete opinions, and not the summaries herein, should be consulted for the precise conclusions and rationales under the Code of Ethics. All of the opinions of the Board of Ethics are copied to the Town Board and Town Clerk and are posted on the Town's website.

Opinions 2011-1, 2011-7 and 2011-8 were advisory opinions addressing various issues under Section 4L (4), which prohibits a Town Board member from appearing before the Planning Board and Zoning Board of Appeals as an advocate and from advocacy communications with members of those boards.

Opinion 2010-2 was an advisory opinion that an agency member was not prohibited from acting as treasurer of a campaign committee for a non-incumbent candidate for judicial office.

Opinion 2010-3 was an advisory opinion addressing a particular circumstance where a proposed bidder for a Town property would fund an environmental investigation of the property.

Opinions 2010-4 concerned a citizen's complaint that a Town official had solicited and/or accepted refreshments by a Town business with applications before or litigation involving the Town. The merits were not addressed, as the Board of Ethics found that an after-the-fact resolution of the Town Board was in effect a pardon and thus rendered moot the issue and prevented any further action by the Board of Ethics.

Opinion 2010-5 found that an agency member had violated the Code of Ethics by accepting a political contribution from an applicant's professional representative. The Board of Ethics found that the agency member did not fail to comply with other provisions of the Code of Ethics raised in the citizen's complaint.

Opinions 2010-6 found that a Town official did not violate the Code of Ethics in using inappropriate language, interpreted as a threat, when demanding that one member of the Board of Ethics recuse himself from an investigation. Such recusal would have had the immediate effect of stopping the investigation due to the lack of quorum. The investigation could be restarted once a vacancy on the Board of Ethics was filled or if a member of the Board of Ethics who had recused himself were to determine that he could act.

There are four stages to a Board of Ethics investigation of a verified complaint: The first stage entails a review of technical requirements (e.g., the complaint has been signed and verified). The second stage entails a review as to whether the complaint potentially implicates a provision of the Code of Ethics. The third stage is an initial "Phase 1" investigation, typically involving review of documents and answers to written questions. If the Board of Ethics is not able to determine in the Phase 1 investigation that no violation has occurred, then a more formal "Phase 2" investigation, including oral testimony under oath, is commenced.

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 2008 and continued working on this project during 2009. The statutory refinement project undertaken by the Board of Ethics did not involve consideration of policy changes to the Code of Ethics.

The Board of Ethics held two joint meetings with the Town Board in early 2009, and the Board of Ethics also received comments from the public. In September 2009, the Board of Ethics issued a report to the Town Board on the statutory changes it recommended. These were administrative, non-substantive changes.

A joint meeting with the Town Board was held in November 2009, at which time several members of the Town Board indicated that the Town Board may wish to adopt some substantive changes to the Code of Ethics. The Town Board and Board of Ethics each appointed a subcommittee to work on a revision to the Code of Ethics which would combine substantive and non-substantive changes. Based on these discussions and research done by the Board of Ethics subcommittee on several issues, the Board of Ethics subcommittee prepared a draft Code of Ethics revision which it sent to the Town Board subcommittee in October 2010 for comments. Since October 2010, the Town Board worked on changes alone, and in September 2011 referred a set of changes to the Board of Ethics pursuant to Section 11G of the code of Ethics.

The Board of Ethics members developed a draft Report to the Town Board regarding the proposed set of amendments forwarded by the Town Board and published it on the Boards of Ethics' page on the Town website on October 5. The Board of Ethics heard public comments at its October 19, 2011 meeting, and then finalized and adopted a Report to the Town Board.

C. Code of Ethics Promulgation and Ethics Training

1. In April 2010 the NYS Comptroller conducted an ethics audit of 31 municipalities in the State, including the Town of Greenburgh. This resulted in Examination Letter to the Town, dated March 18, 2010. In July 2010, the Town responded, in the Corrective Action Plan it was required to submit to the NYS Comptroller, that it would address several areas of deficiency. Among the issues raised in the Examination Letter was the need for statutory provisions relating to nepotism and recusal; both of these were addressed in the manner recommended by the NYS Comptroller and included in the October 2010 draft Code of Ethics revision.

2. The Examination Letter also found that the Town was deficient in the area of ethics training. Section 10F of the Code of Ethics provides that the Town Attorney's Office shall develop ethics training materials and programs. Such materials developed by the Town Attorney's Office are to be reviewed for substantive accuracy by the Board of Ethics; to date, the Board of Ethics has not received any such materials for review. Section 10F of the Code of Ethics further provides that the Town Attorney's Office is required to conduct Code of Ethics training programs, and (with a few specified exceptions) those persons who are required to file annual financial disclosure statements under Section 8 are required to attend a Code of Ethics training programs at least once every two years.

In June 2011 the Board of Ethics requested the Town Attorney to confirm that the Office of the Town Attorney distributes a copy of the Code of Ethics to each Appointed Officer and Employee upon employment and at least once every three years thereafter and to each person or legal entity having a contract with the Town providing for payments in excess of \$100,000 as required by Section 570-10 of the Code of Ethics. The Town Attorney did not reply to the June 2011 email nor to a follow-up email sent in July 2011. Therefore, the Board of Ethics is unable to confirm that the Code of Ethics has been given to Appointed Officers (except department heads as indicated in the following paragraph) and employees or to persons or legal entities having contracts with the Town in excess of \$100,000.

In June 2011, the Board of Ethics requested the Town Clerk to confirm that the Town Clerk is in compliance with Section 570-10 of the Code of Ethics which requires that the Town Clerk shall distribute a copy of the Code of Ethics to each Elected Officer and Agency Member upon taking office and at least once every three years thereafter while in such office. The Town Clerk replied that copies of the Code of Ethics were sent to all then current (March 2011 or June 2011) Elected Officers, department heads and members of the Town's Boards and Commissions [Agency Members]. A recent review by the Board of Ethics

confirmed that such a distribution had been made. However, the review was not able to confirm that new Agency Members and Elected Officials routinely receive a copy of the Code at the time they execute their oath of office. The Town Clerk's office agreed to address this issue. In 2011, several of the subjects of verified citizen complaints stated that they were unaware of the specific provision or provisions of the Code of Ethics which they were charged with violating. In October 2011 the Board of Ethics sent an email to the Town Board with copy to the Town Clerk suggesting that the oath of office for new elected officials and agency members be amended to include a statement acknowledging receipt of a copy of the Code of Ethics. The Town Clerk has indicated support for this suggestion.

The Board of Ethics appointed a subcommittee to analyze the status of ethics training in the Town, and in August 2011 the Board of Ethics issued a report to the Town Board under Section 570-11 H of the Code of Ethics finding that it does not appear that the Town Attorney's Office has developed and presented ethics training materials and/or programs

D. Annual Statements of Financial Disclosure

Pursuant to Section 8E of the Code of Ethics, public officers, certain local political party officials, certain candidates for local elected office, and employees and agency members with decision making authority are required to file an Annual Statement of Financial Disclosure. A copy of The Annual Statement Financial Disclosure for year-end 2011 has been submitted by all required Town elected officials and employees. Several agency members did not submit the form. As required by the Town Code, the names of those individuals were submitted to the Town Clerk for posting on the Town web site.

E. Threats against Board of Ethics Members

Unlike any other board of the Town, the Board of Ethics issues opinions regarding activities of Town officials and employees. An essential part of an effective municipal ethics program is that a Board of Ethics be able to conduct its work without threat or retaliation. At the November 2009 joint meeting, it was agreed that the Board of Ethics would propose to the Town Board a stated policy that would explicitly prohibit threats and retaliatory actions by a Town official or employee against the Board of Ethics or its members. In February 2010, the Board of Ethics adopted a recommendation to the Town Board for a policy statement regarding threats and retaliatory actions against members of the Board of Ethics. No action has been taken by the Town Board.

III. MEMBERSHIP & COUNSEL

A. Membership

On December 31, 2011 the second term of Mike Sigal, aggregating five years, expired. He had been Chair of the Board of Ethics since 2007. In addition to drafting and contributing to the opinions issued by the Board of Ethics during his tenure on the Board of Ethics, as Chair, Mr. Sigal led the Board of Ethics in working with the Town Board on the drafting of significant revisions to the Code of Ethics, in established a process of handling citizen complaints, in holding regular public meetings of the Board of Ethics and in contributing to public access to the proceedings of the Board of Ethics.

B. Counsel

The Board of Ethics does not have compensated independent 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." At the November 2009 joint meeting of the Town Board and the Board of Ethics, it was agreed that efforts would be made to obtain qualified volunteer counsel for the Board of Ethics. This effort succeeded in obtaining the services of three attorneys. Due to increased professional commitments, Frank Apicella and Gary Sastow, two volunteer attorneys who had served for more than a year, resigned in 2011. The assistance and counsel which they provided is appreciated by the Board of Ethics as is that of Joseph Malara who remains as *pro bono* counsel to the Board of Ethics.

IV. RECOMMENDATIONS

A. *Statutory Amendments.* The Board of Ethics recommends that the Town Board amend the Code of Ethics as reflected in the October 2011 Report of the Board of Ethics.

B. *Code of Ethics Promulgation and Ethics Training.* The Board of Ethics recommends that:

1. The Town Board require the Office of the Town Attorney to distribute a copy of the Code of Ethics to each Appointed Officer and Employee upon employment and at least once every three years thereafter and to each person or legal entity having a contract with the Town providing for payments in excess of \$100,000 in accordance with section 570-10 of the Code of Ethics.

2. The Town Board require the Office of the Town Attorney to develop and implement an appropriate ethics training program.

3. The Town Clerk (or the Town Board as applicable) amend the oath of office for newly Elected Officers and Agency Members to include a statement acknowledging receipt of a copy of the Code of Ethics.

C. *Policy Statement re Threats against Board of Ethics Members.* The Board of Ethics recommends that the Town Board adopt the policy statement recommended by the Board of Ethics re threats and retaliatory actions against members of the Board of Ethics.

Dated: February 21, 2012

Respectfully submitted,

GREENBURGH BOARD OF ETHICS
Mark Constantine, Secretary
Glenn Eisen
Jack McLaughlin, Chair
Eric Scott

Mike Sigal, former Chair, collaborated on this Report as to Parts I and II.

cc: Town Clerk

Thomas Hopkins, new member of the Board of Ethics as of January 2012

Joseph Malara, Esq., Counsel