

**TO: GREENBURGH TOWN BOARD**

**BOARD OF ETHICS ANNUAL REPORT TO TOWN BOARD,  
PURSUANT TO SECTION 11G OF CODE OF ETHICS, FOR YEAR 2009**

**I. OVERVIEW**

The Board of Ethics was reconstituted during the Year 2007. During 2009 the reconstituted Board of Ethics continued the process of (i) developing institutionalized processes; (ii) administering verified complaints filed by residents of the Town; (iii) publishing opinions and other ethical materials; and (iv) recommending statutory refinements to the new Code of Ethics adopted in July 2007.

**II. SUMMARY OF ACTIVITIES IN 2009**

*A. 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 mid-2009, the Town Board made modifications to the Code of Ethics dealing with the term lengths and staggered term ending dates of members of the Board of Ethics.

In September 2009, the Board of Ethics issued a report to the Town Board on the additional statutory changes it recommended. A joint meeting with the Town Board was held in November 2009 at which some of the Board of Ethics' statutory recommendations were discussed.

*B. Opinions and Administering Verified Complaints*

In May 2009, the Board of Ethics issued *Opinion 2009-1*, responding to a request of the Chief of Police with respect to potential conflicts of interest in the duties of a Town employee regarding inspection of taxi cabs licensed by the Town.

In September 2009, the Board of Ethics issued *Opinion 2009-2*, responding to a request of the Library Director with respect to acceptance of a proposed gift which would allow a Library employee to attend a Book Fair in Madrid, Spain.

As of the date of this Report, the Board of Ethics is administering six resident verified complaints.

*C. Publishing Ethical Materials*

In August 2009, following an inquiry from the Town Supervisor, the Board of Ethics published a report concerning gifts to or the benefit of the Town, which is published on the "Board of Ethics page" on the Town's website.

*D. Annual Financial Disclosure Statements*

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 decisionmaking authority are required to file Annual Financial Disclosure Statements. Section 8E further provides that "the Town Board shall determine the list of persons who are subject to the disclosure requirements." In 2008 and 2009, the Town Board deferred acting on making this determination, and the Forms were sent to those individuals to whom they had been sent in the past.

*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. At the November 2009 joint meeting, it was agreed that the Board of Ethics would propose to the Town

Board a stated policy for it to consider adopting that would explicitly prohibit threats and retaliatory actions by a Town official or employee against the Board of Ethics or its members. [Endnote 1]

### III. MEMBERSHIP; COUNSEL

#### A. Membership

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. The combination of recusals and absences makes it impossible at times to muster a legal quorum, much less a vote on an action. The September 2009 legislative recommendation by the Board of Ethics to the Town Board contained a provision to allow for up to two alternative members of the Board of Ethics.

At the November joint meeting of the Board of Ethics and the Town Board, the Town Board invited the Board of Ethics to suggest candidates for consideration by the Town Board. Pursuant to Section 11B of the Code of Ethics, a majority of the members of the Board of Ethics may not be affiliated with any one political party. In January 2010, the Board of Ethics suggested a candidate to the Town Board for interview and consideration, which candidate who beside his other qualifications would meet the political party affiliation limitations of Section 11B. [Endnote 2]

#### B. Counsel

The Board of Ethics does not have compensated 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."

At the November joint meeting, it was agreed that efforts would be made to obtain volunteer counsel, with appropriate experience and skill sets, for the Board of Ethics and that the Board of Ethics could, if it wished, have more than one volunteer counsel to undertake this public service. Various outreaches were made, which resulted in eight responses. Five were invited to interviews at the January Board of Ethics meeting, and four appeared. Out of this process, the Board of Ethics selected two as investigatory counsel. Both are experience litigation lawyers. In addition, out of this process, the Board of Ethics selected an experienced business lawyer as administrative counsel, since the Town Attorney informed the Board of Ethics in September that the Town's First Deputy Attorney wished to eliminate or reduce the amount of time he was required to spend on Board of Ethics matters. All three would serve on an uncompensated *pro bono* basis.

### 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. As requested by the Town Board at the November 2009 joint meeting, the Board of Ethics will restudy the proposed form and resubmit it to the Town Board.

B. *Membership.* The Board of Ethics recommends that a full complement of members be appointed.

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.

D. *Statutory Amendments.* The Board of Ethics believes that the statutory refinements it recommended in September 2009 make salutary amendments to the Code of Ethics, and urge their adoption. [Endnote 3]

*ENDNOTES:*

1. At the February 2010 meeting, 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.
2. As of the date of the submission of this Annual Report, this candidate is awaiting interview by the Town Board.
3. The Board of Ethics also notes that, at the November 2009 joint meeting, members of the Town Board raised the possibility of making policy changes to the Code of Ethics. Pursuant to his request, a subcommittee of the Board of Ethics met with the Town Supervisor to discuss analytical issues and issues of administrative feasibility. If the Town Board should forward to the Board of Ethics proposed statutory amendments to the Code of Ethics reflecting changes to ethical policy in the Code of Ethics, the Board of Ethics will consider as provided in Section 11G of the Code of Ethics.

Dated: February 23, 2010

Respectfully submitted,

GREENBURGH BOARD OF ETHICS  
Jack McLaughlin, Chair Statutory and Rules Committee  
Mike Sigal, Chair  
Walter Rivera, Secretary  
Eric Scott

cc: Town Clerk