

BOARD OF ETHICS

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January 16, 2024

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Meeting – 6:30 pm

John O' Neill
Town Clerk

I. Call to Order

The Board of Ethics Committee Meeting was called to order at 6:30 pm.

II. Roll Call

Commissioners Present

Mary Camilli

Nancy Cappello

Lynn Connery

Robert Gerrol

Frank Marci

Kristen Wagner

Edwin Zacharias

Commissioners Absent

Spencer Lombard

III. Election of Officers

Ellen (Lynn) Connery was nominated and seconded for Chair. Frank Marci was nominated and seconded for Vice-Chair. Ellen (Lynn) Connery was voted in as new Chair. Frank Marci was voted in as new Vice-Chair.

IV. Appointment of Commission Clerk

Heather Shonty was voted in to continue as Commission Clerk, as she has done an excellent job.

V. Approve Minutes

Minutes of the last meeting were accepted.

VI. Public Participation

Rose Lyons – 46 Elton Drive:

Chair should be Ellen Connery, not Lynn Connery

VII. Remarks by Board Members

None

VIII. Adoption of Rules of Order/Regulations

Introduction of Attorney Marc Needelman, called in by the Mayor to act as Counsel to the Board of Ethics. Attorney Needelman has reviewed the matter and all proceedings to date and would like to make some suggestions/recommendations. Attorney Scott Lingenfelter who works with Attorney Needelman was also in attendance. Code of Ordinances calls for the adoption of certain regulations and rules of procedure. Attorney Needelman prepared two pages which have been distributed to the Board: Regulations of the Newington Board of Ethics and Motion Regarding Adoption of Rule of Order/Regulations. According to Attorney Needelman, it would be appropriate to adopt both of those. The Motion Regarding Adoption of Rule of Order/Regulations was read, seconded, and Adopted.

IX. New Business

a. Discussion of process and procedures for conducting probable cause hearings and post-probable cause hearings pursuant to §32-11et seq. of the Newington Code of Ethics.

Attorney Needelman spoke about the investigation handling. Attorney reminded the Board that this was a public session and needed to remain confidential so it is inappropriate to mention names this evening. At this stage, all matters are deemed confidential in fairness to the Complainant, the Respondents, and the Commission. Attorney Needelman continued to say that to review the background to date as I understand it, complaints were filed on October 5th and October 10th. The Complainant in those cases was the same individual, was notified of the receipt within the proper period of time. The Board of Ethics met in Executive Session on October 24, 2023. There was a finding at that meeting that the complaint has sufficient evidence to warrant an investigation. The Board of Ethics then notified the Complainant and the Respondents of this initial determination on October 30th via Fed Ex and/or hand delivery. Having met those jurisdictional requirements, I draw your attention to Section 32-11 section G2-b. This lays out the role and actions of the Board at this point in time. It states the Board has the power to hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses pursuant to the procedural rules adopted by the Board to compel attendance and require production or examination by the Board of any books and papers deemed relevant. This means that this Body is charged with the responsibility of conducting a hearing, swearing in witnesses, receiving testimony, reviewing documents—that if they aren't provided voluntarily, this Body has the authority to issue a subpoena, compelling the attendance of a witness and also compelling the production of documents. All that would be required (I would suggest shortly) that the body adopt a regulation as called for procedural rule that subpoena and production of documents shall be in accordance with Connecticut General Statutes and the provisions of your Section 32-11 G2-6. It would be my recommendation that if we are to go forward, that we would schedule a hearing date at the earliest reasonable opportunity, that Notice would be given to the Complainant, Respondents, and/or their legal counsel, that

we would meet at that point--that would be in Executive Session as authorized by State Statute, witnesses would be placed under oath and examined. You retain the right to make the call whether or not I would, on your behalf, do the examination, as provided for in your regulations, there can be cross-examinations by the Respondents or their representatives. We would invite parties to attend that meeting. We would hope and expect they would voluntarily attend and bring any documents that we request; and if they didn't at that time, the Body could consider authorizing issuance of the subpoena which I would make arrangements for. State Statutes provide a process for issuing a subpoena, and your Regulation also indicates that in addition to an indifferent person or a State Marshal, the local Police Department is also authorized to issue a subpoena.

A question was asked by a Board member regarding confidentiality. In regards to disclosure of confidentiality of information, is there a regulation in place in the event that we feel that confidentiality was not kept in regards to a complaint?

Attorney Needelman responded by stating that Section 32-12A says that no part of the confidential complaint, the aforesaid information (meaning the complaint itself) or the aforesaid investigation shall be disclosed to any third party by the Respondent, the Complainant, any person contacted for the purpose of obtaining information, legal counsel, witness, designated party, Board or staff member, unless said confidentiality has been waived by the Respondents. It goes on to say in subsection B, if a disclosure is made, the Board may, after consultation with the Respondent if the Respondent is not the source of the disclosure, publish its finding and a summary, which really doesn't apply at this point in time. Those are the only provisions I see concerning the matter, but we can look at that in the interim.

My question was: does it have to be proposed if say, in a public forum, things were discussed that shouldn't have been discussed? So, we would have probable reasoning to believe that confidentiality was not upheld. Is there a process to question people on that? Attorney Needelman stated he would be ready to address that at the next meeting.

Attorney Needelman recommended a Motion that a date be scheduled for the hearings. He would take care of issuing the Notices to the Complainant and the Respondents on our behalf, indicating what documents the Board would like to have produced and that we would meet on that date and time and hopefully we would receive complete cooperation of those invited to attend and that they would respond by both attending and producing the requested documents; and if not at that time, the Body would have a few options, one of which I just laid out to you. The next order of business would be to discuss and set a date and time for this hearing and for you to adopt a Motion, authorizing the issuance of subpoenas and requests for production as provided for by Connecticut law and your own Ordinance, Section 32-11G-2-6.

Attorney Needelman asked that the Body move and adopt Motion authorizing the Committee's counsel to issue subpoenas and production of documents, if necessary, as provided for by Connecticut Statutes and your Section 32-11G. Motion was made to provide our attorney the ability to get subpoenas and documents according to our Charter Statute and Connecticut Statutes for the next meeting where we will have a hearing. Motion seconded and carried. Attorney Needelman stated that the next order of business would be to set a hearing date. A letter needs to be issued to individuals that we would like to have in attendance asking them to respond whether their attendance will be forthcoming on a voluntary basis and if there were any documents we were looking for be produced at that time, barring an affirmative response, I would then issue subpoenas to keep this process moving along rather than waiting until that night to tell you and putting the matter off. So, perhaps a reasonable timeframe would be three to four weeks to accomplish all that. After a brief discussion, a Motion was made for the meeting to be held on Tuesday, February 13th at 6:30 pm. Motion was seconded and carried.

X. Public Participation

Rose Lyons – 46 Elton Drive: Rose asked who the Board Member was that asked the question of Attorney Needelman regarding the breach of confidentiality. The Board Member was Kristen Wagner. Rose wasn't sure of the question that was asked, so it was clarified: The question was if there is any regulation or procedure around if there is a breach of confidentiality in an openly public forum.

XI. Remarks by Board Members

Frank Marci expressed his gratitude to the Democratic party for their confidence in him and for placing him back on the Board. Bob Gerrol stated that he is looking forward to seeing how this is going to be resolved. Another Board Member stated "I think we are in a good place—we are getting things in motion and I think all the work we do now will lead to smoother processes if any other complaints come in." Frank Marci thanked Lynn who really spearheaded getting the attorneys on board.

XII. Adjournment

Motion to adjourn meeting and seconded. Meeting adjourned at 7:04 pm.