

**Town of Corning Ethics Board
Meeting Minutes
March 9, 2017**

Dave Shafer called the meeting to order at 7:16pm.

Roll Call: Dave Shafer, Hope Johnson, Dave Boyd & Mark Witmer present. None absent.

The Pledge of Allegiance was given.

Dave Shafer reported that former Chairman Beth Prentice resigned from the Ethics Board in December 2016. At its meeting on January 17, 2017, the Town Council appointed Mark Witmer to fill the vacancy created by Ms. Prentice's resignation.

Minutes Approval

Hope Johnson made the motion to approve the April 11, 2016 meeting minutes and Dave Boyd seconded. Motion carried unanimously.

Resignation

Dave Shafer reported that when he contacted Ethics Board member Don Karns about setting a time for this meeting, Mr. Karns told him he did not have the time or interest to continue as a member of the Ethics Board. Motion to accept Mr. Karns verbal resignation made by Dave Boyd, seconded by Hope Johnson and carried unanimously.

2016 Annual Disclosures

Hope Johnson made the motion to discuss 2016 Annual Disclosures submitted by the Town of Corning's elected and appointed officials and employees. Mark Witmer seconded it, and the motion carried unanimously. Dave Shafer noted that several elected and appointed officials did not submit required disclosure forms. He will follow-up with these individuals to (retroactively) obtain required disclosure forms for 2016.

Dave Shafer noted that GML Article 18 (Conflicts of Interest), Section 810 specifically excludes judges or justices of the unified court system from the definition of a "local elected officials". Additionally, it states "that the term "local officer or employee" shall not mean a judge, justice, officer or employee of the unified court system." It appears that these individuals are therefore exempt from Financial Disclosure requirements detailed in GML Section 812 and applicable to all other local elected officials, local officers or employees. It was noted that Corning town law does not recognize this differentiation. Hope Johnson made a motion to recommend that this matter be reviewed with the town attorney and, if he concurs, town law be amended to exclude judges and any local officers or employees of the unified court system from financial disclosure requirements applicable to other local elected officials, officers and employees. Motion seconded by Dave Boyd and carried.

Discussion also ensued about who is included in the definition of a “local officer or employee” in GML Section 810. Notably, “heads...of departments...and their deputies and assistants” are specifically included but the definition of “employees” is limited to those “who hold policy-making positions.” The apparent intent, therefore, is to exclude employees who do not have policy-making authority from annual financial disclosure requirements. Corning town law does not recognize this differentiation. Hope Johnson made a motion to recommend that this matter be reviewed with the town attorney and, if he concurs, town law be amended to exclude town employees who do not have policy-making authority from annual financial disclosure requirements. Motion seconded by Mark Witmer and carried.

Dave Shafer will provide a summary of 2017 Annual Disclosures at the next meeting.

Advisory Reviews

Dave Boyd made the motion to review two matters of Town business where ethics concerns could potentially arise. The motion was seconded by Mark Witmer and carried unanimously.

Dave Shafer reported that the first matter involved the Town Council’s review and approval of the East Corning Water District Extension 2 project. At the onset of the public review period for this project in Fall 2015, Councilmen Shafer and Sammis both self-reported that they live in the area to be served by the Ext 2 project and that they both had, as private homeowners, signed petitions supporting its approval. Throughout the subsequent course of the public review period, Councilmen Shafer and Sammis recused themselves from Council discussions about the project and then abstained from the vote that resulted in its approval. Neither received any financial benefit from the project’s approval and both received only service benefits attributable to all homeowners served by the Ext2 project (e.g. the opportunity to procure public water for their homes at standard rates). In accordance with a legal opinion provided by Hodgson Russ, however, Councilmen Shafer and Sammis did vote on a bond issue for funding the project after the project itself had been approved by the other Council members. They have also rejoined discussions and voting on other practical matters related to implementation of the project. Because these precautionary measures were implemented, the participants believe that no ethical violations therefore occurred. Since these events have already occurred and this disclosure to the Ethics Board is retroactive, it was taken under advisement and no advisory recommendations were offered.

Dave Shafer reported that the second matter is ongoing and involves the Town’s contractual relationship with the East Corning Volunteer Fire Department, Inc. (ECFD). Dave reported that in addition to being Town Councilman, he is a long-time member and President of the ECFD. Councilman Mike Brenning is also a long-time member of the department and its Chief. He noted that he and Councilman Brenning are both volunteer members of ECFD, they do not receive any financial compensation for their efforts on behalf of the organization, and that their role as volunteer officers of the organization has been openly disclosed. Therefore, this situation is not believed to be

in conflict with GML, Section 18 or existing Town Law. And, for this reason, they have not recused themselves from discussions or voting on contractual matters between ECFD and the Town. They will also be actively involved a Town initiative to contract with a 3rd party consultant who will be reviewing the efficiency of fire protection services delivered by the 4 volunteer fire departments that serve the Town of Corning (including ECFD). In discussion, Hope Johnson and Dave Boyd both expressed their concern that while this situation may not violate NYS or Town ethics laws, community perception of an ethical conflict could arise. They recommended that the Ethics Board continue to review this situation throughout the study period. Dave Shafer indicated that he would recuse himself from further Ethics Board discussions, development of advisory recommendations, and voting on such matters.

Composition of Ethics Board

Dave Shafer reported that a community resident attending the Town Council meeting in January expressed the opinion that a Town Council member should not be allowed to concurrently serve on the Ethics Board. He noted NYS GML Article 18 Section 808 stipulates that (the) "board of ethics shall consist of at least 3 members, a majority of whom shall not be officers or employees of such county or municipality...and at least 1 of whom shall be an elected or appointed officer or employee of the county or municipality." In March 2016, the Town of Corning's attorney reviewed the matter of board participation and noted that the Town's own Ethics Law of 2011 also stipulates that the Ethics Board "shall include at least one member who is an elected or appointed municipal officer or employee". He noted, however, that this definition does require the position to be filled by a Council member. Rather, it could be the Town Assessor, Code Enforcement officer or any other municipal officer or employee. Following discussion on about the pros and cons of having a Councilman on the Ethics Board, Hope Johnson made a motion supporting the Town Council's decision to appoint a Councilman to the Ethics Board but reserving the option to request a temporary replacement for Councilman Shafer during the planned Fire Service Efficiency Study and implementation of resulting actions. Motion was seconded by Dave Boyd. 3 board members voted in favor (Johnson, Boyd, Witmer) and 1 abstained (Shafer). Motion carried.

Personal Liability - Ethics Board Members

Dave Shafer noted that the Town's attorney, Chris Ferratella, was recently asked to comment on whether individuals serving on the Town Ethics Board are at-risk for any personal liability exposure. Attorney Ferratella subsequently confirmed that members of the Ethics Board are covered under Public Officers Law Sec. 18 and do not have any individual liability as long as they are acting within the scope of the job they are appointed to do.

Ethics Board Review: Town of Corning Ethics Law of 2016

Motion by Hope Johnson to discuss Ethics Board review of the Town's Ethics Law of 2016. Seconded by Dave Boyd and carried. Dave Shafer noted that the format of the Town's current Ethics Law is closely based on a Model Plan developed by the Office of the State Comptroller and that it could benefit from a thorough review and update.

Dave will circulate a copy of the current law in Word format so that board members can add recommended changes directly into one master document.

Filling Vacancy on Ethics Board

Motion by Dave Boyd to discuss filling the Ethics Board vacancy created by Don Karns resignation. Seconded by Mark Witmer and carried. It was noted that a recent article in The Leader about a vacancy on the Ethics Board only generated one applicant (e.g. Mark Witmer). Board members agreed to query any personal acquaintances and/or professional colleagues who live in the Town of Corning and might be interested in serving. Potential candidates should then be referred to Dave Shafer to set up an interview. Hope Johnson indicated that she would also like to participate in interviews with potential candidates.

Appointing a Chairman

Hope Johnson made a motion to discuss appointment of a Chairman for the Ethics Board. Seconded by Mark Witmer and carried. Dave Shafer indicated that he does not want to be appointed Chairman on a permanent basis since Council's intention in appointing him to the Board was in a liaison rather than leadership capacity. No other members of the Board volunteered to serve as Chairman. Motion by Dave Boyd for Dave Shafer to serve as Acting Chairman and postpone appointment of a permanent Chairman until after the current board vacancy is filled. 3 board members voted in favor (Johnson, Boyd, Witmer) and 1 abstained (Shafer). Motion carried.

2017 Meeting Dates

Motion by Hope Johnson to discuss 2017 meeting dates for the Ethics Board. It was seconded by Dave Boyd and carried. It was decided that the Board will meet again on April 4th at 6:30pm to consider recommended changes to the Town's current Ethics Law. Thereafter, it is expected that meetings will be held on a quarterly basis unless urgent topics for discussion arise.

Visitor Comments

There were no visitors to the meeting and, therefore, no comments.

Motion to Adjourn

Dave Boyd made the motion to adjourn at 8:45pm, it was seconded by Mark Witmer, and carried unanimously.

Respectfully submitted by,



David Shafer
Acting Chairman-Ethics Board