

**Town of Ancram
Town Board
Special Meeting
May 5, 2011**

Present:	Supervisor Arthur Bassin	Councilman James Miller
	Councilman John MacArthur	Councilman Chris Thomas
	Councilwoman Madeline Israel	Town Clerk Monica Cleveland

Supervisor Bassin called the special meeting to order with a salute to the flag at 7:03pm. Mr. Bassin stated that all town board members had been notified of the special meeting, the meeting had been published in the official paper and posted at Town Hall according to NYS Municipal Town Law.

Mr. Bassin stated that ethics issues were normally handled in executive session, but because this issue had previously been discussed publicly in Planning Board meetings and because the individual involved had agreed to a public session, the meeting would be held in public not executive session.

Mr. Bassin made the following statement about the matter before the Town Board:

“The Ethics Board recommendation that a planning board member recuse is based on the principal of the possible “appearance” of a conflict of interest as defined in our law, not an actual conflict of interest. The reasoning is pretty simple: the planning board member did a perk test on Tahmin’s property. The parcel the planning board member worked on is now before the planning board for a subdivision. Our law requires a town official to recuse under these circumstances when parties to the matter challenge a member of the board on the grounds of an appearance of a conflict of interest. On the other hand, the Ethics Board recommendation confirms that if the planning board member does recuse, or if he is suspended, he is eligible to continue to perform work for Tahmin on this parcel once the subdivision is approved.”

Mr. Bassin introduced the Ethics Board members in attendance. They were Richard Wheeler, Linda Pulver and Ronald Brant. Mr. Bassin announced that Ethics Board Chair Jack Lindsey had recused himself from considering this situation because of a legal matter he was involved in which also involved one of the parties in this recusal issue. Ethics Board Member Bonnie Hundt was not able to attend the meeting.

Mr. Bassin stated that the Ethics Board has recommended by a 4-0 vote, with Chair Lindsey recusing, that the subject of the complaint voluntarily recuse himself in this matter, and if he does not, the Town Board suspend him from the case or remove him from the Planning Board either temporarily or permanently.

Mr. Bassin asked for questions or comments on the Ethics Board Recommendation from the Town Board Members.

Councilwoman Israel stated that her vote will not be on the integrity of the person involved, for whom she has the highest regard, but of the appearance of a conflict of interest. She felt that by not acting on this, the Town Board leaves the town open for an article 78 suit which would cost the town money to defend. She was perplexed as to why the member in question did not recuse himself willingly.

Councilman MacArthur asked how many complaints has come across for this Planning Board member and issue. Ron Brant answered there was one.

Councilman Thomas asked when the perk test in question was performed. The subject of the complaint stated that it was prior to the person coming to the Planning Board, in November or December of 2010. Mr. Thomas stated that he has a problem with this dispute. He stated that he has great respect for the Ethics Board but that this issue is based on work done prior to the new Ethics Law coming into effect. He wondered how far in the past the town will go for Ethics issues. Mr. Thomas reminded the board that the subject had not voted on the decision yet and if he does vote, he cannot work for the applicant for the next two years.

Councilman MacArthur felt that the subject of the complaint had not had a chance to recuse as of yet. Mr. Bassin stated that the recommendation is based on if the subject does not recuse himself from the vote.

Referring to Mr. Thomas's comment about the date of the perk test and the date the new Ethics Law was adopted, Mr. Bassin stated that the previous Ethics Law would have also covered this situation. (Note: the new Ethics Law was adopted by the Ancram Town Board at the November 18, 2010 meeting).

Councilman Miller stated that when the subject does recuse himself he cannot be in the discussion of the subdivision. Mr. Miller stated that he felt that by not acting on the complaint and supporting the Ethics Board recommendation, it would be a mockery of the law.

Donna Hoyt stated that she has read through the law and that it states "can, may and will benefit", and the law applies to something that will happen, not to something that did happen.

Jim Stickle felt that because the subject of the complaint had brought the perk test to the attention of the Planning Board this should have not been an issue. Mr. Stickle felt that this would have never made the headlines. He felt that the contractors are going to do work for people, but do not know at that time if the person will ever be before the Planning Board. He stated that this would not have been an issue if it was a project that had been bid out. Mr. Bassin stated that it was not clear if bidding out a project eliminated any ethics issues and suggested we needed to clarify this point with the Ethics Board. Mr. Brant stated that in his opinion, the recusal is more of a moral issue. If the subject recuses himself, he can then do the work on the property in the future.

Cynthia Shae stated that the subject had only done the perk test and she felt he was a secondary party to a decision that was made by the Board of Health. She stated that he didn't do the final approval of the perk test -- h only dug the holes - and that because he disclosed his involvement this should not be an ethics issues.

Bob Mayhew asked if this was going to be a retroactive law. Mr. Mayhew stressed that the subject only dug a hole and that it was done last year. He stated that there was nothing in the old law that spoke about unpaid committee members. Councilman Miller noted that because of ethics Mr. David Boice stepped down from the Youth Commission.

Mr. Ron Brant stressed again that this was not a new law but a revised law. The law, the old one and the revised one, can only be the same or more strict then the State law. The work was done on the property and there is the possibility of more work. If a contractor feels that he is losing jobs because of service on town boards, then common sense says he should get off of the boards. But, Mr. Brant stressed, their expertise is greatly needed and the town would not like to lose their opinions.

Councilwoman Israel reminded the town that she sat on the Planning Board and that a lot of times, those on the board had done work for the applicant and there was no controversy because the existing ethics law was not enforced. She stated that we are not talking about a lack of integrity, but the Town Board does not want any member of any board to appear unethical.

Donna Hoyt stated that because of this issue, it seems that contractors cannot be on a board. She felt the town was at risk of losing great expertise and information.

Councilwoman Israel asked what the reason was for the subject to not recluse.

Mr. Jim Stickle stated that the contractors on the boards will have to recluse themselves all the time. He stated that complaints will be filed all the time because of this and that the Ethics Board be tied up.

Richard Wheeler stated that by not acting on this complaint the town is left open. He stressed that this is an appearance of a conflict. Cindy Shae stated that he does not have to recluse himself until the vote. Mr. Bassin disagreed and stated that if a member is recusing he needs to do it at the beginning of the meeting and not participate in the discussion leading to the vote.

The subject of the somplaint informed the board that his problem with recusing himself is that the person who filed the complaint did not do so with the Ethics Board but with the Planning Board. Mr. Bassin stated that the way the law reads is that a person can file a complaint with the head of a board who can then pass it on to the Ethics board. The subject stressed that he came to the Planning Board from the beginning with the information that he did the perk test. He was not asked to recluse himself at that point.

Donna Hoyt was afraid that people would be filing complaints with the Ethics Board to

keep someone from voting a certain way. Mr. Bob Murphy stated that the Ethics Law states that an untrue complaint cannot be filed. If there are no substantial facts, the complaint goes nowhere.

Mrs. Israel stressed again that there is an appearance of a gain. Mr. Brant stated again that if the subject recluses, then he can do future work on the project.

Mr. Bassin explained again that a complaint goes to the Ethics Board and has to be vetted. In this case, the Ethics Board feels it is appropriate based on their investigation of the facts and circumstances for him to reclude himself. Mr. Bassin stated that the perk test was a financial transaction and could be seen by some as influencing his vote.

Mr. Rick Dubray stated that Mr. Boyles has a God given right to vote. He questioned why he was even here before the Town Board. Mr. Bassin stated that he is here before the Town Board because someone who is involved with the subdivision filed a complaint. It was suggested that the person filing the complaint was not a part of the sub-division process, but Mr. Bassin stated that because he is a bordering neighbor, he is involved with the process and has the right to file a complaint.

Cindy Shae asked again what date the law is going to go back to. She felt the issue sat with this. Mr. Bassin stated that each case would be based on its own merits and determined by the Ethics Board, but that the old law that has been in effect since 1970 also covered this kind of situation. Mr. Brant stated that the old law was written and passed in 1970 and that it included conflicts of interest.

Cindy Shae stated that the work was already done and paid for and that if the subject votes, he cannot do work on the property for two years. Mr. Bassin felt there could be the presumption & appearance that having done work for the applicant, the planning board member might tend to favor the applicant's application.

Donna Hoyt stated that when an applicant comes before the Planning Board and meets their requirements, they get their permit. She felt that opinion has nothing to do with the process. Mr. Bassin agreed but felt that if there was a conflict of interest issue raised by someone not on the Planning Board who was involved in the process, as in this case, then there is an appearance of a conflict issue that has to be dealt with. Mr. Bassin felt that the ethical and business decision in this case was an easy one -- if the subject voluntarily recluded, he would be eligible to do work for the applicant when the subdivision was approved, an outcome that would be good for the Town and good for the subjects business. .

Mr. Dennis Sigler stated that a wrong decision would open the town up to law suits and he felt the board's vote tonight would do this.

Mr. Bob Mayhew asked again how far back the town was going to go back with the Ethics Law. Mr. Bassin stated that it is going to depend on each issue.

Councilman MacArthur stated that in 35 minutes the board has been listening to the same issues over and over. He suggested the board vote.

Nancy Bryant stated that the 1970 ethics law, if not strong enough, was superseded by the State Law. Mr. Bassin stated that he would have Jack Lindsey, Ethics Board Chair, to write a short memo in terms of the old law and the revised law.

Mr. Bassin read the following resolution:

Resolution #18 of 2011: Ethics Board Recommendation:

WHEREAS, the Ancram Ethics Board has recommended that Planning Board Member Terry Boyles recuse himself in the Tahmin subdivision matter now in front of the Ancram Planning Board, and

WHEREAS, the Ancram Town Board has carefully reviewed and discussed the Ethics Board recommendations and agrees with its,

THEREFORE IT IS RESOLVED, that if Mr. Boyles does not voluntarily recuse himself from the Tahmin subdivision matter, then the Town Board hereby suspends Mr. Boyles from participating in any discussions relating to the Tahmin matter, and from voting on the Tahmin subdivision matter.

Resolution passed with a roll call vote as follows: Councilman Thomas, No; Councilman Miller, Yes; Supervisor Bassin, Yes; Councilwoman Israel, Yes; Councilman MacArthur, No.

Councilman Thomas stated that he respects the Ethics Board, and if it were him, he would recuse. He feels that if we do not let the subject make the decision without the suspension decision, nobody knows how the subject would have voted, and that is an issue. He is sorry it came to this but he hopes that everyone understands his feelings.

Councilman Miller stated that he looked at the facts to make his vote and the law is the law and it states that the subject should recuse himself.

Councilman MacArthur felt that this could turn into one person making a complaint to swing a vote. He felt that if there had been additional people complaining, it may have been different.

Mr. Bassin stated that he understands both the arguments in favor of recusing and against recusing, but that the Town Board has to do what it believes is best for the Town. He stressed that all town officials and volunteers should be making decisions that are in the public interest, not in their personal interest, and that based on our law, he felt recusal or suspension was the right thing for the Town and the subject, who if he recused or was suspended could continue to do work for the applicant after the subdivision was approved. Mr. Bassin quoted contractor and ZBA member Fred Schneeberger, who when asked about when to recuse, said "when in doubt, opt out".

Councilman Israel stated that she felt that by passing this resolution, the Board has

protected the town from future litigation in this case.

A motion was made by Councilman MacArthur and seconded by Councilman Thomas to adjourn the meeting. Motion carried.

Respectfully submitted by,

Monica Cleveland
Ancram Town Clerk