

## **“Incident” at the February 22, 2019 Ethics Board Meeting**

by Ron Peltier, Bainbridge Island City Council Member at Large

### **Recent article about my comments at the 2/22/19 Ethics Board meeting**

You may have read a recent article in the local newspaper about comments I made during the February 22<sup>nd</sup> Ethics Board meeting. Those comments have been described as “bullying” and “haranguing”. My purpose here is not to argue with how others choose to describe my comments but just to say that they were an honest and passionate expression of legitimate concerns about the details of the Ethics Board’s work in regards to one specific ethics complaint. That complaint was in regards to comments I made during a private meeting about the issue of speed limits on neighboring streets in Winslow. Missing from the newspaper article, and from the comments by Ethics Board members in the article, was the reason I felt compelled to tell the Ethics Board I was appalled by their lack of due diligence.

## **BACKGROUND**

### **Conflict of interest complaint**

Last September an ethics complaint was filed against me for stating the position that I would not support lowering the speed limit on Grow Avenue unless it was also lowered on neighboring Lovell Avenue. The two streets run parallel between High School Rd and Wyatt Way. Speeding cars are an issue on both streets, something I’m keenly aware of because I grew up on Lovell Avenue and my family still owns a house there.

### **Ethics Board’s determination that a material violation likely occurred**

In December of last year the City’s Ethics Board reviewed the conflict of interest complaint related to my position on speed limit equity and decided that a material violation of the Code of Ethics had likely occurred. The determination, which was forwarded to the City Council, included no explanation of how the Ethics Board had arrived at it. The determination did include the Ethics Program section they believed I had violated:

## **Article II Code of Ethics**

### **D. Conflict of Interest – General**

#### **1. Applications of Conflict of Interest**

Except as permitted in subsection (b) below, an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or

fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family:

- c. Is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by the action.

### **Two Key Tests for a Conflict of Interest Violation**

Looking at the Article II Code of Ethics language above, there are two tests that need to be true for a material conflict of interest to have occurred:

- 1) A direct official action needs to have taken place.
- 2) Property owned by the Official taking the direct official action has, as a result, been significantly affected.

By arriving at their determination that a material violation of the Code of Ethics had likely occurred I assumed the Ethics Board was saying both of these things were true. It was clear to me that the facts didn't support the Ethics Board's determination and I let it be known that I wanted the Ethics Board's determination discussed in public by the City Council. I also let it be known that I would appeal any vote by the City Council to uphold the Ethics Board's determination to the City's Hearing Examiner.

### **Assurances by Council Members they could explain**

At our January 15<sup>th</sup> meeting, leading up to the January 22<sup>nd</sup> City Council meeting where the conflict of interest determination would be discussed, two members of the City Council assured the rest of us that they could explain the rationale behind the Ethics Board's determination that a material violation of the Code of Ethics had likely occurred. They both had attended the Ethics Board meetings where the speed limit complaint was discussed. One is the Council liaison to the Ethics Board and former Ethics Chair.

### **Conflict of interest determination reviewed and remanded back to Ethics Board**

When the Ethics Board's determination of a likely conflict of interest came up for discussion at the City Council's January 22<sup>nd</sup> meeting neither of the two Council members who had assured us they could explain the Ethics Board's determination were able to do so. They gave two different versions of the Ethics Board's rationale.

One council member explained that a direct official action had occurred when I voted with the rest of the City Council to lower the speed limits on all neighborhood streets in Winslow. It was pointed out to him that the complaint in question did not pertain to that vote but rather to my comments regarding speed limit equity made months earlier. The

second council member alluded to a “pattern of behavior” and a “lack of contrition” as justification for the conflict of interest determination. This was in reference to two separate Article I complaints that had nothing to do with the alleged conflict of interest complaint. The discussion concluded with the City Council unanimously voting to remand the determination back to the Ethics Board for more information.

### **Ethics Board’s discussion of the remanded conflict of interest determination**

It was pretty obvious to a majority of the City Council at our 1/22 meeting that no direct official action had taken place within the parameters of the original complaint and that the notion that I had received any special and significant benefit to my property was also not credible. The Ethics Board now had the unenviable task of explaining why they had made their determination that both a direct official action and a significant benefit to my family’s property on Lovell Avenue had occurred. I was keenly interested in hearing how they would explain this and attended the February 22<sup>nd</sup> Ethics Board meeting.

**Didn’t know what constituted a direct official action.** When the Ethics Board arrived at the point in their 2/22/19 meeting for discussion of the remanded determination of a material violation of the Code of Ethics, the member who wrote the determination offered an explanation. He explained that the Ethics Board didn’t know what constituted a direct official action and were unsure if one had taken place. Sending the determination to the City Council, I gathered from the general discussion, was their way of letting the City Council, and perhaps the Hearing Examiner, decide.

I could not believe what I was hearing and was struck by how little regard the Ethics Board seemed to have for how their lack of due diligence had impacted me and my family. After being recognized by the Board’s Chair I made some comments that would later be described as “bullying”, “haranguing”, and questioning of the Ethics Board’s competence and integrity.

A day or two after the 2/22/19 Ethics Board meeting an email was sent to the Mayor protesting my comments. I subsequently apologized for my tone and the choice of words used to express my concerns. Those concerns, in regards to how the Ethics Board arrived at their determination of a material conflict of interest over the speed limit issue, are justified and they still stand. This is a continuing story.

### **Some important points I’ll leave you with:**

- 1) **The phrase “direct official action” is defined** in Article VI, Definitions, in the Ethics Program. A direct official action for a member of the City Council does

- not occur by simply stating an opinion or position on an issue but rather by participating in a City Council decision through the act of voting.
- 2) A charge of a material conflict of interest is one of the most serious ethics violations that can be made against a public official. It implies that an official so charged is dishonest and places personal gain above the best interests of the community as a whole.
  - 3) **The Ethics Board is considered to be the City's authority on ethics.** One of their jobs is to conduct ethics training for members of the City Council and all of the other committees, boards, and commissions at the City. The City Attorney is more than willing to provide what ever advice and training the Ethics Board needs *to do their job well*. If they don't know the meaning of something in the Ethics Program all they have to do is ask the City Attorney.
  - 4) **The Ethics Program applies to all officials at the City.** The expectations and rules set forth in the City's Ethics Program apply to all of the City's officials, whether they are members of the City Council or volunteers serving on an advisory committee. This *includes* members of the Ethics Board. They are in no way immune or above the ethics rules they help administer. Like the rest of the City's public officials, the Ethics Board and its individual members are potentially subject to ethics complaints, including for the manner in which they carry out their duties in administering the Ethics Program.
  - 5) **The Ethics Program's Core Values and Principles include:** 1) Honesty & Integrity; 2) Equality, Fairness, *Impartiality*, & Mutual Respect; 3) Transparency and Honesty in all public statements and written communications.
  - 6) Actions by the City's Ethics Board can have very real consequences to those they sit in judgment of and can be damaging to reputations and standing in the community, especially when combined with a local press that has callous disregard for fair and unbiased reporting.

I hope this all helps you better understand what happened at the February 22<sup>nd</sup> Ethics Board meeting where I told the Board I was appalled by what I considered to be a lack of due diligence on their part. Please let me know if you have any questions or comments. You can email me, Ron Peltier, at [rpeltier@bainbridgewa.gov](mailto:rpeltier@bainbridgewa.gov) or call me at (206) 842-4798.