

Opinion of the City of Rochester Board of Ethics – 2018-1

May 8, 2018

Overview

On October 11, 2017, The Friends of Washington Grove, Inc. submitted a letter expressing, among other points, concerns about a September 20, 2017 decision by the Rochester Zoning Board of Appeals concerning an application submitted by Conger and Mary Jo Gabels.

The Board of Ethics reviewed and discussed the letter and its contents at its December 12, 2017 meeting. At the meeting it was noted that the Board of Ethics under the Code of Ethics is limited to reviewing ethical matters and has no power or responsibility to render opinions on the issues raised in the letter concerning the zoning process or zoning code.

The Board unanimously agreed on its own initiative to render an advisory opinion regarding that portion of the letter which stated: *From our perspective, the process was tainted. The chair of the Zoning Board of Appeals, Mimi Freund Tilton, is a long-term friend of the Gabels, a relationship to which she admitted. Yet she did not recuse herself from this discussion and decision and voted for the Gabels. We don't know the extent to which her friendship influenced her decision. That is not the point. At issue here is the ethical reputation of the your government, and Department of Planning and Zoning in particular. We request that you or your staff look into this issue, inform us of city policy, and assure us that you have addressed this matter with Ms. Tilton and the department in question.*

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Relevant sections of the Code of Ethics are as follows:

“No City officer or employee shall discuss, vote on, decide or take part in, formally or informally, any matter proposed or pending before any agency or other City officer or employee in which he has an interest.” (Section C.3)

“No City officer or employee, acting in the performance of his/her official duties, shall treat, whether by action or omission to act, any person more favorably than it is the custom and practice to treat the general public.” (Section C.4)

Ms. Tilton, by virtue of her position, is a City officer. However, based on the definition of “Interest” as set forth in the Code of Ethics, Ms. Tilton did not have an interest in the decision complained about.

No evidence or information was presented in the letter that Ms. Tilton treated the Gabels more favorably than other members of the general public or zoning board applicants. Therefore there can be no finding of a violation on those grounds.

That being said, the issue of inappropriate behavior by Ms. Tilton could have been easily avoided by her recusing herself from discussions or vote on the matter. The Board strongly recommends that City officers consider refraining from participation or voting on any decision or matter in which they might have, or be perceived as having, an indirect or personal interest. Disclosure of potential conflicts or personal relationships, at a minimum, should be clearly stated as a matter of record.

It is therefore the opinion of the Board of Ethics that nothing in the current Code of Ethics or General Municipal Law directly precluded Ms. Tilton from participating in the referenced decision or that the decision itself constituted an ethical violation. We again note that the Board's mandate is not to serve as a sounding board or review panel on the merits of Rochester Zoning Board of Appeals decisions, and therefore are not rendering an opinion on the wisdom of the decision or the merits of the other issues raised in the letter.

(Steinbrenner, Ginett, Patterson, Scott, Sierra, Weir)