

**Enforcement of Application Deadlines and the Appearance of Impropriety:
Towards More Ethical Government in Barrington**

The Vote: A Turning Point?

As reported in the *Observer* on March 4, at the meeting of the Barrington Town Board on Feb. 25, two members of the board, Mr. Olney and Mr. Wright, voted to hold to the original, published deadline for applications to the committee to nominate members of the town's new Ethics Board.

If the position of Mr. Olney and Mr. Wright prevails, what appears to be a single vote on a rather mundane issue could turn out to be a turning point towards more ethical government in the Town of Barrington. As of this writing, the Board is in a stalemate on this issue, since two of the five board members, Supervisor Farnan and Councilman Freeman, voted to extend the original deadline and Councilman Christensen abstained.

On the surface, a main reason cited for extending the deadline (and probably the reason for Mr. Freeman's vote) appears rational and even "ethical" enough, namely the need to have a larger pool from which to select the committee. But a closer look reveals why the preferred choice, from an ethical point of view, is to abide by the published deadline.

In the current case, three apparently qualified individuals applied for the 3 or 5 member nominating committee before the published deadline. A fourth individual applied after the deadline.

The Ethics Board was created by Town Law No. 2 of 2008, filed with the State in June, 2008. (This law can be viewed at www.friendsofbarrington.com or a copy can be picked up at the Town Hall.) According to the law, the new Ethics Board, once appointed by the Town Board, will provide guidance to Town Officials as occasions arise, on the possible need for members to recuse themselves from votes involving conflicts of interest and on the avoidance of the appearance of impropriety.

This law was first proposed by Councilman Freeman in the midst of conflicts surrounding the town's review of the Sturdevant Road Planned Unit Development (PUD) proposal (2005-2007), with its implied charges of ethical impropriety by town officials, especially during the initial stages of its review, which had taken place for several months outside of near neighbors' and the public's view, while the developer was still purchasing some of the land.

In order to create, as Mr. Freeman has stated, a "layer" between the Town Board and the Ethics Board, the law states that a 3 or 5 member committee shall be appointed to make nominations to the Ethics Board. The Town Board, in turn, will select the Ethics Board from those nominated by this committee.

Especially with upcoming elections in view, it is important for citizens of the town to be aware of the historical background and some important issues underlying the recent debate on the Town Board regarding application deadlines.

The upcoming election offers the opportunity to turn a page on what turned out to be a tumultuous period in the history of the Town Board, and to move the town government towards a more fully open, legal, and ethical way of doing business, one free of the incessant conflict which has characterized this most recent period in its history.

The creation of the new Ethics Board provides an excellent opportunity for progress in the town in these regards, if it is done in the proper way, and its underlying concerns are not aborted at conception.

The Issue: The Appearance of Impropriety and the Erosion of Trust in Government

Up until now, the failure of the Barrington Town Board either to (1) publish openings on committees and boards consistently or, (2) when openings are published, to enforce the announced deadlines consistently, has led on several occasions to (3) the appearance that the “elasticity” of the deadline has been used by a minority on the Town Board to exert improper influence and control over the appointment process.

Selective postponement of application deadlines too easily creates the opportunity for the make-up of the applicant pool to be manipulated, or to appear to be manipulated, with little or no public or even Town Board scrutiny, so that the final appointments are more likely to satisfy a single official's agenda, or, in the worst case scenario, to carry on by proxy an official's vendetta against perceived opponents in the town, inside and outside of town government.

The result is that fully and even more qualified, “on time” applicants may lose out in the final vote to equally or even less qualified candidates who did not make the initial deadline. These rejected candidates become permanently turned off from the prospect of applying for positions in the future.

The result is a sad loss to the town of highly qualified applicants to the auxiliary boards and committees.

Not adhering to the deadlines, or arbitrarily extending them, amounts to reopening or keeping the door for candidates open until fully or even more qualified (and “on time”) ones can more easily be passed over in favor of ones favored and recruited, after the deadline, by town officials.

The public, also involved (and properly so) in recruiting candidates is placed at a disadvantage, because they assume that “a deadline is a deadline.”...all the more so when the later candidates are brought in outside of public view, and/or at the last minute.... just a few days before the meeting in which they are to be both interviewed and selected.

Whether or not behind-the-scenes recruitment has in fact taken place is difficult to prove. Townspeople, including other board members, are not privy to the private phone conversations and emails between board members and candidates brought in after the deadline.

But that there is an appearance that this has taken place several times during the past two years is indisputable

The ethical standard in this and all cases is the higher standard of the appearance of impropriety.

No facts of actual impropriety are necessary to prove the appearance of it.

The mere appearance of impropriety, especially if it occurs over and over again, erodes confidence on the part of the public that the Supervisor and the Town Board are operating in a fair and equitable manner, in the interests of the town and not out of one or more of their member's personal interests.

Historic Antecedents:

1. The Displacement of a Veteran Planning Board Member, December '06-Jan.'07

In the recent history of the Town Board, the first instance of the appearance of such manipulation occurred in late 2006, a few weeks before the Planning Board was to vote on its recommendations concerning the Sturdevant Road development proposal.

When it became known in late 2006 that a member of the Planning Board whose term was to expire on Dec.31, and whose opposition to the project was well known, the unconventional if not unprecedented step was taken by the Town Board to place an ad in the newspapers to secure competing applicants.

This was done despite the fact that the Planning Board member in question had served faithfully for many years and wished to be reappointed and that up until then such candidates were automatically reappointed without notice being placed in the papers. Under the pretense of needing more agricultural representation, a notice was published, and a farmer was, by all appearances, recruited by a town official or officials to apply for the position and, in effect, to run against the incumbent. In an extremely difficult and emotionally wrenching vote by the Town Board on Jan. 3, 2007, forced to choose between these two candidates, the new member was selected and the incumbent displaced.

In fact, the board members' dilemma could have easily been avoided altogether. Rather than being forced to choose between these two excellent and well qualified applicants, the Board could have easily, within a matter of weeks, expanded the Planning Board to include alternates so that both applicants could serve and more agricultural representation attained.

Worst of all, since the displaced member was a known opponent of the development project, appearances were created that her displacement was an attempt to influence the final vote of the Planning Board. Potentially, this act could even have placed the Town Board in serious legal jeopardy.

To make matters even worse, shortly after the vote, research into the Town Board minutes discovered that it was a different Planning Board member, and one also known to be skeptical of the project, whose term had actually expired and was the one who should have been interviewed and voted on, and that it was her position that had been displaced.

In what turned out, perhaps, to be the low point in the recent history of our Town Board, the displaced Planning Board member received the shocking news of her displacement in a late afternoon, itinerant and illegal executive session of the Board on Jan. 24, 2007, in which three board members traveled to the lakeside homes of each of the involved Planning Board members, to tell them which one had been displaced, an hour or so before a scheduled Town Board meeting. (The legal requirements of this unfortunate episode could have been easily satisfied had just one of the board members refused the invitation to take this car ride.).

The displaced board member believes to this day, correctly so I believe, that her displacement was and remains illegal, insofar as she was never given the opportunity for an interview. The Town Board, to this day, has remained insensitive to her situation, has never expressed regret or sought any redress of her grievance.

Luckily, this displacement of an opponent of the Sturdevant Road project had no effect on the voting on the project, since the project proposal collapsed in a matter of weeks, when one of the developers withdrew from the project.

Historic Antecedents:

2. The Appointment of the Zoning Committee, Spring, '08

Prior to Dec. 2006, the Town Board had routinely appointed or reappointed members to boards and committees without any public notice of openings whatsoever, whether or not the vacancy was created by the expiration of the term of a person who wished to continue to serve.

This left the door wide open to cronyism and nepotism.

However questionable the underlying motives for this sudden and rather arbitrary decision, in December of '06, to publically announce the need for candidates, it was perhaps a step forward towards more ethical government in the town. But through what turned out to be a new "policy" of disregard for published deadlines, it was immediately followed, in terms of the advance of ethical government, with a step backwards.

Since late 2006, the Town Board has quite faithfully stuck to the procedure of publishing openings and deadlines. But until its last meeting, the Board has routinely waffled on the matter of enforcing the published deadlines for applications.

As a result, the appearance of manipulating or attempting to manipulate the appointment process by exercising undue influence over the makeup of the applicant pool after the published deadline by a single town official, has taken place in several instances:

- 1) An appointment in 2007 to the Agriculture and Community Relations Committee following the resignation of one of its members;
- 2) The appointment of a Town Historian in early 2008,
- 3) The appointment of members to the committee responsible for the reform of our zoning code. (The "Zoning Committee") in the spring of 2008,

The first two of these are stories for another day. In the case of the Town Historian appointment, the unfortunate competition between an applicant who had opposed the Sturdevant Road project and applied on time and an applicant who applied late was finally resolved by the appointment of the Dundee Historical Society as the town's Historian and the subsequent establishment of the "Barrington History Group" of the Dundee Historical Society.

In the matter of the selection of the Zoning Committee, and in *another low point for ethical government in the town*, the appearance of inappropriate influence over the selection process by allowing an eventually chosen candidate into the process after the initial round of interviews, was further reinforced by the manner in which the final voting took place.

At the Town Board meeting on May 28, 2008, with a single exception, and as an apparent clue or reminder as to how the Board was expected or encouraged to vote, apparent favorites, (and eventually elected) candidates were placed by the Town Supervisor at the top of the list on a large flip chart, and those eventually not elected, and apparently less preferred, at the bottom.

Unbelievably, those near the bottom of the list included a member of the Zoning Board of Appeals, a long time Barrington resident from "the hill" with invaluable personal contacts in the Mennonite Community, highly skilled and experienced in group process, clearly the best qualified among all of the candidates as a potential committee chairman, and...believe it or not... one of the very first to apply for the position!

Incredibly, in what had all of the appearances of a semi-staged vote, this individual received only two votes on the first round, interestingly, by both Mr. Wright and Mr. Olney, none from the Councilman who had initially sponsored him, and was eliminated in a tie breaker second round of voting. It appears that endorsements of this individual by individuals who had opposed the Supervisor's handling of the Sturdevant Road project may have contributed to this sorry outcome.

Two individuals who applied after the deadline were selected. One of the late comers who received a unanimous vote by the Board on the first round of voting, had resigned from the Planning Board in Dec. of '06, after receiving indications of insufficient confidence by fellow members of the Planning Board, on the manner in which he managed the Board's review of the Sturdevant Road proposal,

During his review of the Sturdevant Road Proposal in the summer and fall of 2006, he had (1) falsely argued that the density of the development, between the Lake roads and east of Rt. 54, was not out of character with that in the area; (2) argued against the relevance of our Comprehensive Plan's prescription against dense housing on steep slopes ; (3) failed to even consider the relevance of the steepness of the slope; (4) failed to allow consideration of the State law that states that Planned Development Districts must be "in furtherance of the town comprehensive plan and zoning local law and ordinance"; (5) would not allow full and systematic consideration by the Board of the State law's provision that such developments must be "in accordance with the overall planning objectives of the area", (6) against the advice of the Town Attorney, cut short the Board's consideration of No. 6 and requested additional and costly revised plans from the developer without full Planning Board's authorization, (7) stated in a meeting of the Board that he didn't even want to read a published "Open Letter to the Barrington Town Board and Planning Board" signed by over 200 residents of the town because he wanted to "keep an open mind", and finally (8) resisted implementation of the Board's decision to convene citizen committees to work on the new Comprehensive Plan.

Prior to the Town Board's vote on the Zoning Committee, and following his resignation, this individual had communicated to the Town Board (1) opposition to the Town Board's temporary moratorium on subdivisions of five acres or less ("Whatever happened to Property Rights?"), (2) skepticism about the need for steep slope regulations, and had (3) publically advocated a stance towards land use regulation summarized by "Don't tell me what to do with my land until you pay my taxes."

Since his appointment to the Zoning Committee in the vote just summarized, he has advocated allowing flag lot and cul-de-sac subdivisions with a minimum of 35ft minimum road frontage in the base zoning code, relaxing the present code's norm of 150 ft. of frontage on a road. (The 150' minimum road frontage was and remains a cornerstone of the town's attempt to maintain its rural character as called for in the Comprehensive Plan and is a virtually universal standard across the entire Finger Lakes Region. Smaller frontage requirements, especially in rural sections of the town, should be the exception, provided for in cluster subdivision regulations or variances, not the rule set forth in the base Zoning Code.).

The Town Board's decision, apparently made in informal discussions of questionable legality prior to the meeting in which the vote took place, to limit the size of the Zoning Committee to 5 (plus two alternates), further sealed the fate of highly qualified applicants, and in the one case, a very highly qualified applicant. When asked by the Supervisor, prior to the vote, how large the Board wanted the committee to be, Mr. Freeman replied, "I think we should go with our earlier plan" (and choose 5 plus 2 alternates), inadvertently revealing the fact that the Board, or a sub section of it, had made this critical decision through collaboration outside of a public meeting or legal executive session.

Unfortunately, the effect of this decision limiting the committee size, coupled with the laxity in enforcement of a deadline and the questionable voting procedure, created a Zoning Committee of

insufficient size to form effective subcommittees which would have enabled more prompt and effective completion of its tasks. It removed access by the committee to valuable and even critical skill sets of rejected applicants. It created a committee with too much representation by individuals with a radically minimalist approach to land use regulation and zoning which may undermine the Committee's ability to faithfully implement the Comprehensive Plan's directive to preserve through the Zoning Code the town's rural character.

Back to the Present

In the current case involving the selection of the Ethics Board nominating committee, suspicions, and therefore the appearance of impropriety, are again afoot ...suspicions that the proposal to allow consideration of the 4th applicant and/or to extend the deadline to allow additional candidates is designed to create an applicant pool from which a committee can be selected that is more inclined to select nominees favorable to a particular board member.

At this point such suspicions may appear far-fetched, with little basis in fact. But from an ethical point of view, whether these suspicions are justified by facts is irrelevant. That the suspicions exist is a fact, and where there is a suspicion, it is more safe to assume that there is such an appearance.

Suspicions and appearances easily surface when preceded by such a long string of such appearances and when trust has been so deeply eroded.

The more the appearances of impropriety, the more easily future appearances are generated, regardless of the facts of the case...

The Town Board's response to these charges of the appearance of impropriety should not be, "Well, you know, appearances are in the eyes of the beholder," as though this gets the Town Board off the hook. Obviously, appearances are in the eyes of the beholder. But for sane beholders, they do not arise out of whole cloth or from an imagination independent of observed behaviors and policies of Town Board members.

The proper stance of the Board should be to establish and consistently follow policies and procedures which will minimize the generation of such appearances in any sane beholder's eyes. To do otherwise, is to make the Ethics Code's prescription against the appearances of impropriety meaningless.

But even in this case, there are some facts that support the appearance of impropriety. Even though the nominating committee has not even been selected and the call for nominees to the Ethics Board or a description of qualifications published, individuals have already applied or indicated interest in appointment to the Board. Among these individuals is one with a history of grievance with a town official.

Recommendations:

It is time for the Town Board to put into place a more satisfactory process regarding application deadlines and their enforcement. If formally adopted and rigorously followed, the following procedures will go a long way towards eliminating the appearance of impropriety in the matter of securing and selecting candidates for auxiliary boards and committees and towards the restoration of trust in our town government.

1. Board or committee members whose terms expire, but who have faithfully served and wish reappointment, should be **reappointed without public solicitation of other candidates**. *Rejecting these individuals communicates ingratitude*. It will have the long term effect of gradually decreasing the number of qualified people willing to volunteer for boards and committees. New candidates should be reserved for openings on new committees or for openings on established committees or boards, in which the person whose term is expiring does not wish to be reappointed.

2. In all other cases, **announcements of openings** should be made in the newspapers.

3. Prior to the announcement of openings in the newspapers, the Board should develop and publish **the requirements and qualifications for the position** and the **criteria that are to be used in the selection** process.

Without such criteria applicants, citizens, and other board members cannot be confident that decisions are not being made out of personal prejudice, interests, or grievance. Such criteria can also be helpful for applicants as they summarize their qualifications in their applications and interviews. Published qualifications can be helpful in reducing the number of unqualified applicants, or the selection of unqualified candidates and can also provide a helpful checklist as Board members consider their choices and a more rational basis for selecting and rejecting candidates.

Criteria and/or qualifications lists could be used by Board members to score, compare and select candidates, helping to make the final choice by individual board members more objective and to ensure that criteria and qualifications, and not inappropriate factors are determinative in their selection.

(Note: Criteria recommended by some concerned citizens last year for the appointment of individuals to the Zoning Committee were, by all indications, disregarded by the Town Board. Apparently no alternative criteria were developed, or if developed, were never shared with the public.)

4. The **number of board or committee members to be selected, and the size of the committee**, for example 3 or 5 in the case of the Ethics Board nominating committee, should be decided and communicated to the public *before the announcement is placed in the paper*, and should be *included in the announcement*, so that the Board has a standard by which to judge whether or not a sufficient number of individuals have applied before the deadline.

5. When there is a **choice within applicable law, for a smaller or larger committee or board** (between a 5 or 7 member committee, for example), **the larger number should, in most cases, be chosen**, so that representation of more interests, cultures, and regions within the town can be represented, and utilization of a larger number of skill sets among candidates utilized.

6. If, after serious attempts to recruit a sufficient number of candidates for the larger number, too few qualified candidates apply, the Board can at its discretion, and if allowed by law, **reduce the size of the board or committee to the smaller number**.

7. **Two alternates** should be selected for all boards and committees

8. All published announcements of openings should **include a deadline** for applications.

9. For all announcements, and wherever possible, **at least 2 weeks should be provided for the acceptance of applications** followed by **2 weeks between the reception of applications and the final voting by the Town Board**, This will give the Board sufficient time to receive input from the citizenry on the qualifications of the applicants.

10. **Application deadlines should be kept and not extended**, unless either (1) an insufficient number of candidates or (2) an insufficient number of candidates with sufficient qualifications initially apply.

11. All Town **Board members who are recruiting candidates** for committees or boards, should do **so in a manner completely transparent** to other board members and the public .The content of emails and phone calls in which such recruitment takes place should be made available to the rest of the Board and to the public.

12. Upon request to the Town Clerk, the **identity of applicants should be made available to the public** any time after they are made available to the Town Board so that townspeople are in a position to express their opinion regarding the qualifications of the applicant prior to the vote by the Board. Sufficient time and opportunity should be given between the application deadline and the final vote by the Town Board for citizens to register with Town Board members any concerns they may have about a particular applicant's qualifications for the position.

13. In cases **where there are questions as to whether or not an individual wishing reappointment has faithfully served**, other members of the committee and especially its chairperson should be consulted for an opinion on the matter and their advice should be kept confidential.

14. **Attendance and participation of new appointees to boards and committee should be monitored by the Committee Chairperson and reported to the Board.** If their attendance is inadequate they should be replaced as soon as possible, as stated in the terms of our Planning Board Alternate's law.

15. **Formal letters of acceptance** in the case of those selected and **letters of appreciation**, for those not selected, should be written to all applicants following the Board's decision. Quality applicants should be encouraged to re-apply for future openings on other committees or boards.

They might also be encouraged to participate as citizen observers in committees or boards in which they have particular interest, to better prepare themselves for possible future appointments.

16. In the case of **this important (Ethics Board) nominating committee**, it is especially important for the Board to establish and communicate, criteria, both for the selection of the nominating committee and the committee's selection of nominees.

For starters...

- a. Members of the nominating committee should have a **thorough understanding of the Ethics Law and the Code of Ethics** and be **fully committed to its implementation**.
- b. No one should be selected to the nominating committee and no person should be nominated by this committee who has any **prior and/or standing (?) grievance** with any town official or employee
- c. No one should be appointed to the Committee or nominated for the Board that is a **close family member** (sibling, parent, spouse, child, or son/daughter-in-law) of a town official or employee.
- d. No one should be selected to the nominating committee and nominated by this committee who is **currently involved in business dealings** with the town or any town official or is a **close relative** of such an individual.

- e. No one should be selected to the nominating committee and no person should be nominated by this committee who has a **history of questionable ethical behavior** in their own business or professional dealings.
- f. Among the nominees selected by this committee should be a lawyer or at least, someone with the **time, skills and commitment to research the relevant law.**
- f. Members of the nominating committee and the nominees to the Board should have an **impeccable record in the area of retention of confidentiality**, as attested to in letters of reference from prior employers, friends, acquaintances and associates.
- g. Nominees to the Board should have a **proven history of objectivity and impartiality.**

Conclusion:

It is time for government in the Town of Barrington to take a dramatic turn towards consistent, open, fair, legal, professional and ethical government.....government that will free the town from the incessant and inefficient conflict that has afflicted it for the past 3 years.

The upcoming election gives us all a chance to help move the town in this direction.

Steve Knapp

Former Barrington Town Historian
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