

**MINUTES  
OF  
THE TOWN OF RENSSELAERVILLE TOWN BOARD  
SPECIAL MEETING  
MAY 22, 2014**

The Town Board of the Town of Rensselaerville held a Special Meeting on the 22<sup>nd</sup> day of May 2014 at 7 o'clock in the evening at the Rensselaerville Town Hall, 87 Barger Road, Medusa, NY. The meeting was convened by Supervisor Lounsbury and the roll was called with the following results:

PRESENT WERE:            Attorney Tom Fallati  
                                 Supervisor Valerie Lounsbury  
                                 Councilwoman Marion Cooke  
                                 Councilman Gerald Wood  
                                 Councilwoman Margaret Sedlmeir  
                                 Councilman Robert Bolte  
                                 Town Clerk Victoria Kraker

Also present were two interested citizens as well as Board of Ethics committee members Diana Hinchcliff, Georgette Koenig and John Mormile.

The purpose of this meeting was to continue the review of proposed changes to the procedures of the Board of Ethics. No audience comments were accepted.

Supervisor Lounsbury turned the meeting over to Attorney Fallati.

Attorney Fallati has continued his review of the proposed changes recommended in the study performed by Councilwoman Sedlmeir and former Councilman Jack Kudlack; as well as suggestions of the Board of Ethics committee members. Attorney Fallati has drafted the proposed revisions and has incorporated the Board's suggestions as well as a number of more technical edits. In addition, Attorney Fallati has proposed an entirely new timeline which conforms to the proposed revisions:

1-3 days from filing, the Board of Ethics must send an acknowledgement of receipt of complaint to complainant and also forward complaint to the subject of the complaint and to the attorney for the Town.

1-10 days from filing, the Board must hold an initial meeting; make a written determination either finding probable cause or dismissing *sua sponte*; and

determine if services of counsel are needed (approval from the Town Board will be required).

3 days from initial meeting, in the case of probable cause, the Board must forward the decision, complaint and supporting materials to the Town Board; and in the case of dismissal, must notify the complainant, the subject of the complaint and the Town Board of the disposition.

11-30 days from filing, the Board of Ethics must complete the investigation and hearing and issue a written decision.

30-60 days from filing provides additional time to complete investigation and final written recommendation only if it is approved by the Town Board. There may be an extension beyond 60 days from filing only upon finding of extenuating circumstances.

Co-Chairperson for the Board of Ethics, Diana Hinchcliff, spoke extensively on issues and problems she foresees with the timeline and other issues she has experienced or projected as possible causes for concern. She strongly feels that the original timeline should not be changed because, even under the original timeline, it was extremely difficult to meet the deadlines. She notes that members of the Board are volunteers and have other commitments. In addition, attorneys, witnesses etc. also have to coordinate scheduling. The time it takes for letters to be sent and received via U.S.Mail needs to be considered. And also of concern was the meetings, although private, still require a Legal Notice which must be printed in the newspaper at least five days prior to the event. Another troublesome topic was the possibility that someone might not want to come forward with a complaint for fear of being fired, for other personal reasons, or for an ‘excusable’ delay.

Attorney Fallati feels that perhaps adding a stipulation that ‘upon a reasonable request of the defendant’, the timeline may be extended.

Some issues and concerns from the previous meeting have been addressed as follows:

1. There was apprehension regarding what the standard of proof should be. It seems that most agreed that the standard should be ‘clear and convincing’ evidence as opposed to ‘preponderance’ of the evidence.

2. Addressing the Board’s obligation, if any to cover a defendant’s legal expenses, Attorney Fallati stated that the Town would have to adopt a Local Law

creating a provision allowing reimbursement or indemnification to employees if they are found to have acted in good faith.

Ms. Hinchcliff, feels that there would be a conflict of interest in that the attorney for the Town should represent the Town Board and the Board of Ethics should hire its own attorney if necessary. Additionally, she suggests there should be funds set aside in the budget for such.

3. Former employees and other officers may appear voluntarily, but cannot be forced to appear unless through a Court Order.

4. Records shall be stored in a separate locked file in Town Hall.

5. Attorney Fallati recommends that a transcript should be in written form. Ms. Hinchcliff agrees that a written transcript is incredibly helpful for review purposes.

Georgette Koenig inquired into the legality of testimony via conference call or other electronic means. Attorney Fallati stated that it is possible, although he does not recommend it. Even if the subject of complaint consents to that type of testimony, the quality of the record is diminished and cross-examination, or lack of, becomes an issue.

6. There are numerous exceptions to the hearsay rule. It would be burdensome to require the Board of Ethics to make legal determinations. The Board of Ethics should weigh evidence as it sees fit.

A motion was made by Councilman Bolte to adjourn the meeting at 8:24 PM; 2<sup>nd</sup> by Councilwoman Sedlmeir.

*Motion carried: Ayes (5) Lounsbury, Cooke, Wood, Sedlmeir and Bolte; Nays (0)*

**RESPECTFULLY SUBMITTED;**

Victoria H. Kraker  
Town Clerk