

ETHICS COMMISSION
c/o CITY OF ANNAPOLIS OFFICE OF LAW
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Subject: Determination re Lawrence Littig Complaint

A complaint filed with the Ethics Commission on January 28, 2016, by Harriett Bernstein ("Ms. Bernstein") alleged a member of the Board of Port Wardens ("Board"), Lawrence Littig ("Mr. Littig"), violated a provision of the City Ethics Code addressing conflicts of interests. Annapolis City Code ("Code"), § 2.08.040 (A)(1)(a) provides, in relevant part, that "[a]n official or employee may not participate in...any matter in which , to the knowledge of the ...official..., the official... or a qualified relative of the official... has an interest."

The action cited as violating this provision was Mr. Littig's participation in hearings in which the Board considered Ms. Bernstein's application for an environmental groin to be situated next to property owned by Gerald and Amy Broda (collectively, "the Broda's"), who are, respectively, the son-in-law and daughter of Mr. Littig. The Broda's are qualified relatives of Mr. Littig as provided by Code § 2.08.020 (13).

After considering the complaint, the Commission, pursuant to Ethics Commission, Procedures for Conducting Ethics Commission Business ("Procedures") § (C) (4), chose to conduct its own investigation. Relying on that investigation, the Commission issued a March 8, 2016, Notice of Charge pursuant to Procedures § (C) (5), which reflects the responsibility of the Commission detailed at Code § 2.08.110.

A hearing was convened on April 11, 2016, which was undertaken pursuant to Procedures § (C) (6). An Assistant City Attorney presented the charge against Mr. Littig. In presenting the charge the Assistant City Attorney solicited testimony from Ms. Bernstein and introduced into evidence the transcripts of three hearings before the Board during which Ms. Bernstein's application was considered. Mr. Littig testified in opposition to the charges.

The Board considered Ms. Bernstein's application during three hearings convened on August 25, 2015; September 22, 2015; and January 26, 2016. Mr. Littig was present at each of these hearings.

During the August 25 hearing Mr. Littig's wife and the Broda's testified in opposition to Ms. Bernstein's application. The testimony indicated that Ms. Bernstein's, the Broda's, and Mr. and Mrs. Littig's properties abut Wells Cove, with the Broda's property abutting and directly South of Ms. Bernstein's property and with the Mr. and Mrs. Littig's property across the Cove from the Bernstein property. Mrs. Littig premised her opposition on concern with sand being applied as part of the proposed project migrating into the Cove, thereby impeding use of the boat her and Mr. Littig have owned for "a long time." The Broda's premised their opposition on the proposed project causing sand to accumulate about their slip, which would render the slip "shallow and useless" and "...negatively affect the use of [their] waterfront."

Mr. Littig testified that his wife drove with him to the August 25 hearing. While Mr. Littig testified he did not recall discussing his wife's planned testimony, the Commission finds Mr. Littig's statement to be self-serving and believes that such a discussion was highly likely. In addition, Mr. Littig testified he was aware the Broda's planned to testify. Hence, before the hearing commenced Mr. Littig was aware that he, his wife, his son-in-law, and his daughter had an interest in the matter of Ms. Bernstein's application.

According to Code § 2.08.040 (A)(1)(a) Mr. Littig should not have participated in any hearings regarding Ms. Bernstein's application. Mr. Littig is highly educated with a doctorate degree, has served on the Board for 12 years, and is the second most senior member of the Board. Regardless of the specific provision of law, it had to have been obvious to him that his participation in any hearings on Ms. Bernstein's application would simply not be fair or ethical. But, Mr. Littig chose to participate.

During the August 25 hearing, Mr. Littig engaged Ms. Bernstein in a cross-examination that was obviously adverse to her application. He questioned the viability of her proposed plantings to stabilize the shoreline and raised issue with the stone groin proposed for under her pier. During the cross-examination Ms. Bernstein suggested Mr. Littig recuse himself. Mr. Littig did not respond and continued his cross-examination. Before the Ethics Commission, he testified he did not hear this suggestion. The Commission finds it inconceivable that he did not hear Ms. Bernstein's suggestion that he recuse himself. The suggestion was made during a colloquy during which it is clear Mr. Littig was hearing Ms. Bernstein as he was specifically responding to her comments. And, she indicated she raised her voice when making the suggestion, as she was upset.

At the conclusion of the August 25 hearing Ms. Bernstein's counsel asked Mr. Littig to recuse himself. In response, Mr. Littig acknowledged both his relationship with the three opponents who testified and stated that he was "...affected by this [the application]." In refusing to recuse himself, he stated that "...my opinions are my opinions..." and "[i]f that's a problem with you, you can register it as a problem." Mr. Littig then seconded a motion to table the application, noting that he was not going to vote on the motion, which carried. The Commission noted that the Board Chairman appeared dismissive of the conflict of interest concern.

During a subsequent September 22, 2015, hearing Mr. Littig apologized for not recusing himself, acknowledging "...at least a perception of a conflict of interest since I live in Wells Cove." The Commission finds the conflict of interest was not merely of perception, but was apparent and clearly existed. Mr. Littig continued indicating he would recuse himself from further deliberations regarding the application. The Board Chairman clarified for the record that Mr. Littig did not vote on the motion to table made at the conclusion of the August 25 hearing, but there was no comment made about Mr. Littig having seconded the motion to table the application.

In the January 26, 2016, Board meeting a motion to deny Ms. Bernstein's application was adopted with the Chairman noting for the record that Mr. Littig had recused himself from the vote. The Commission notes that the transcript of the January 26 hearing indicated Mr. Littig voted to deny the application. Mr. Littig's testimony before the Commission was that he did not vote on the application and this was corroborated by Ms. Bernstein's testimony. The Commission accepts Mr. Littig's testimony and concludes the transcript erroneously reports Mr. Littig voting on the motion.

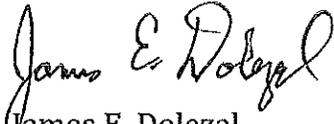
The Ethics Commission, after considering the testimony provided at the its April 11 hearing, finds that Mr. Littig's actions and participation in the August 25th Port Warden Board meeting violated the conflict of interest provisions of the City Ethics Code, City Code § 2.08.040 (A)(1)(a). Mr. Littig requested the hearing authorized by Procedures § (C)(7), which allows evidence of mitigation in relation to the sanctions available to the Commission pursuant to Code § 2.08.100. That hearing was convened on June 7, 2016.

At the June 7 hearing Mr. Littig testified that prior efforts to secure the shoreline of Ms. Bernstein's property caused him to be "upset" when he arrived at the August 25th Port Warden's hearing. He reiterated his apology and withdrawal from further consideration of Ms. Bernstein's application at the subsequent Board meeting, noting he was "ashamed" of his actions.

Relying on the evidence presented at the hearings before the Commission, the Commission concludes Mr. Littig's conduct merits severe sanctions. He came to the August 25 hearing fully aware of the adverse interest he and his family had in the application. Yet, he chose to aggressively engage in the hearing, in a manner that made his opposition to the application clear. His engagement included ignoring Ms. Bernstein's request that he recuse himself and an insulting response to Ms. Bernstein's counsel's later request that he recuse himself. His conflict of interest was not subtle, but clear and obvious to any reasonable person. His recusal at the later hearing is of no consequence as it was simply too late to ameliorate his egregious conduct.

The Ethics Commission reprimands Mr. Littig for his inappropriate behavior at the August 25 Port Warden Board hearing. Additionally, the Commission recommends Mr. Littig be removed from the Board of Port Wardens because of the obvious and blatant conflict of interest displayed during that hearing. The conduct he exhibited should not be tolerated or in any manner sanctioned.

In accordance with City Code 2.08.100 (A)(2) the Mayor is to advise the Ethics Commission of the action taken regarding the recommendation that Mr. Littig be removed from the Board of Port Wardens. This determination will be posted on the City's web site pursuant to City Code 2.08.110 which provides, in relevant part, that "...[i]f a finding of violation is made, the final determination will be made public and posted on the City's web site."


James E. Dolezal
Chairman