

PRIVILEGED AND CONFIDENTIAL
January 9, 2017

MEMORANDUM TO MAYOR ALCOCK AND GENEVA CITY COUNCIL:

Re: Report of Ethics Committee: December 3, 2016 Complaint Against the Geneva City Council and the City Manager Concerning Public Notice of Sale of the Waterloo Tract

Introduction

Pursuant to Code § 26-6, the Ethics Committee (the "Committee") submits the following report to the Geneva City Council. As set forth below, the Ethics Committee has determined that the report of violation of the Code of Ethics by the Geneva City Council and the City Manager has been substantiated. Following factual investigation, the Committee has determined that, taken as a whole, the Geneva City Council and the City Manager have violated Tenet 7 of the Code of Ethics.

Complaint

On December 3, 2016, a Geneva resident filed a complaint with the Ethics Committee alleging first, that the Council's use of Executive Session to discuss the sale of the Waterloo Tract was in violation of the Open Meetings Law; and second, that the notice provided for and the actions taken during the June 1, 2016 City Council meeting, the July 13, 2016 City Council meeting, as well as the notice provided in the Agenda for the November 6, 2016 City Council meeting were not sufficient to provide adequate public notice of the parcel at issue.

The Ethics Committee informed the resident that the Ethics Committee lacked jurisdiction to consider the claim of violation of the Open Meetings Law, but that the Committee could and would review the claim whether the City's (jointly the City Council and City Manager) notice to the public of the sale of the Waterloo Tract violated any of the Tenets of the Code of Ethics.

Factual Narrative

The Ethics Committee reviewed many of the details of the sale of the Waterloo Tract in its January 2, 2017 Report to City Council and, to the extent relevant, incorporates those factual findings here. The Committee's additional factual investigation is discussed here.

The Agenda to the June 1, 2016 City Council meeting referred to the property at issue as "Seneca County Tax Parcel 23-3-17.2." At the June 1, 2016 City Council meeting, this property was referred to as "City owned property."

<https://vimeo.com/170244521> (at @ 54:28). Discussion at the June City Council meeting about the property took approximately one (1) minute. A motion for a public hearing to determine whether there exists a municipal interest in the property passed. The minutes of the June 1, 2016 Council meeting can be found here: <http://cityofgenevany.com/wp-content/uploads/Current/government/CouncilMeeting2016/8%20June%201.pdf>

On July 13, 2016, a public hearing was held to determine if there was a municipal interest for the City of Geneva to continue to own the property. The Agenda referred to the property as "City property." A video of the July 13, 2016 City Council meeting is not available. The minutes of the meeting (<http://cityofgenevany.com/wp-content/uploads/Current/government/CouncilMeeting2016/July%2013%20Action%20Minutes.pdf>) report that no one came forward to speak during the public hearing of the sale of City property.

The Agenda for the November 6, 2016 City Council meeting lists as the first order of unfinished business: "Resolution Authorizing Sale of Public Property – Town of Waterloo Tract: Presented by City Manager Horn #66 – 2016." No member of the public spoke during the public comment portion concerning the Resolution. The Resolution passed and, as the City Council, the Mayor and the City Manager are aware, a number of Geneva residents quickly responded with various levels of surprise and upset.

At the December 7, 2016 City Council meeting (at which the Resolution was back on the Agenda due to a technical error), a number of Geneva residents spoke critically of the process that the City had followed leading up to the sale. (<https://vimeo.com/195726595>.) Some residents made the point that the land on the lake side of 5 & 20 is known by the City to be important to the residents of Geneva and that when no one spoke at the public hearing on July 13, 2016, the City Council should have found that very odd and should have understood that the City's notice to the public of the proposed sale was not sufficient. The Committee also notes the comments of Eileen Buckley, in which she criticized the City's description of the property by its tax parcel number, rather than something more useful to the public. She observed "that's not the way we talk." *Id.* at 53.48.

During investigation of this complaint and the related November 14th complaint, the Ethics Committee spoke with Geneva residents who consider themselves both very interested in the Geneva lake front and close followers of Geneva City Council, and yet were taken by surprise with the sale of the land as depicted in the map at the November 6, 2016 City Council meeting or, if not at the City Council meeting, were startled when they read the Finger Lakes Times article on November 8, 2016.

DISCUSSION

TENET 7: COMMUNICATION

Tenet 7 provides:

Public Officials shall share substantive information with the public that is relevant to a matter under consideration by public bodies when they have received information from sources outside of the public decision-making process.

Based upon our factual investigation, the Committee has concluded that City Council and the City Manager violated Tenet 7. We stress that the Code of Ethics does not address an actor's intentions. It looks to conduct. We also note that a finding that Tenet 7 was violated in no way suggests or implies that the process was legally inadequate.

Tenet 7 expresses the aim that Public Officials (here the City Council and the City Manager) communicate "substantive information" that is "relevant" to a matter under consideration. Substantive is defined as "having a firm basis in reality and so important, meaningful, or considerable." Information is "relevant" when it has a significant and demonstrable bearing on the matter at hand. Communicate means "to convey knowledge of or information about : make known." The City Council and City Manager had information about this proposed sale from Executive Session discussions. Such information is "outside of the public decision-making process." As a result, City Council and the City Manager had the duty under Tenet 7 to convey to the people of Geneva meaningful information that is significant to the matter at hand (the Waterloo Tract).

While the residents of Geneva surely have the obligation to be informed, this was not the case of Geneva residents looking the other way and/or not paying attention and then coming in at the 13th hour to cry foul. This was, in the Committee's estimation, sincere surprise and bewilderment by Geneva residents who thought they were paying attention and quite literally had no idea that the property to be voted on at the November 6, 2016 City Council meeting was a parcel on the lake side of 5 & 20, immediately adjoining the Seneca Lake State Park. Jim Meany ("Meany") closely follows the Geneva City government, is actively engaged in attending City Council meetings, and participates in discussions on many topics. Yet, Meany's first action after reading the November 8, 2016 Finger Lakes Times article was to email Councilor Robert K. Camera and ask how this possibly could have happened.

Meany is perhaps the best example, in that he spends considerable time and energy following the actions of the Geneva City Council, but he is not alone. Other residents with an interest in the lake front and who consider themselves

informed about Geneva City Council also communicated that they did not know until at or after the November 6, 2016 City Council meeting that the land at issue was part of the “green space” on the lake side of the 5 & 20 corridor. We also find persuasive the residents who pointed out that the City Council is aware that the lake front is a “hot” issue and that it should have raised scrutiny when no one spoke at the July 13, 2016 public hearing.

During the June 1, 2016 City Council meeting, the City Manager did describe the property as immediately adjoining the Seneca Lake State Park and, from his description, it is plain that the land being considered being sold is on the lake side of 5 & 20. However, it is not realistic to expect residents to attend every City Council meeting. The Minutes of the June 1, 2016 City Council meeting describe the property as “Seneca County Tax Parcel 23-3-17.2.” As Ms. Buckley pointed out, “that’s not how we talk.” Geneva residents could indeed pour over the Agendas and the Minutes of the June and July meetings as well as the Agenda of the November meeting and have no understanding that the property at issue was a parcel that could reasonably come within property they consider vital, or at least important, to their previously stated interest in green space and the lake front. If the information provided is not sufficient to inform Geneva residents of such basic information, then it does not reach the standard of “substantive” and “relevant” as set forth in Tenet 7.

In short, the references to the property tax parcel as well as references to “City owned” or “Waterloo Tract,” individually and combined, did not convey significant and meaningful information to the people of Geneva. Because of the lack of information publicly available to the residents of Geneva with an interest in green space and lake front property, and because even the most interested and engaged citizens were unable to appreciate the details of the transaction, the Committee has concluded that the City failed to “share substantive information with the public that is relevant to a matter under consideration” and, as a result, violated Tenet 7.

We recognize that we are grouping all Council and the City Manager together, when we might come to a different conclusion if we considered each individual separately. The City Manager did, as stated, describe the property as adjoining the Seneca Lake State Park in his June 1, 2016 presentation. Councilor Angelina Marino did bring the Resolution to the attention of three (3) neighborhood associations. Nonetheless, we group everyone together to stress that the City Council and City Manager work together and have a joint mission.

CONCLUSION

As set forth above, the Committee has concluded that the City Council and the City Manager failed to adequately communicate to the public the details of the land that was considered being sold. The materials available to the public: to wit, the Agendas and Minutes to the June 1, 2016 and July 13, 2016 City Council meetings and the

Agenda to the November 6, 2016 City Council meeting did not make clear that the property was green space on the lake side of 5 & 20. As a result, the City Council and City Manager violated the mandate of Tenet 7 that Public Officials shall communicate substantive and relevant information. Pursuant to § 26-6, any disciplinary action is up to the Council to determine. Should a Councilor, the Mayor, or the City Manager wish to speak with us after review of this report, we would be happy to do so.

RECOMMENDATIONS

The Committee suggests that it may be a useful activity at the Retreat to discuss what else could or should have been done in order to more effectively communicate with the people of Geneva the details of the Waterloo Tract. This situation is obviously unique as it is a “hot” issue, but such “hot” issues will arise again. Assuming that providing more extensive details on the Agenda¹ is a necessary first step in informing the public, what can or should be done beyond a fully descriptive agenda?

Submitted by THE ETHICS COMMITTEE on January 9, 2017

¹ The Committee notes that it can be very difficult to locate the Agenda on the City’s web site and recommends that the Agendas be catalogued in an easy to access directory as are the Minutes.