

Councilman Denis F. Gallagher  
Borough of Edgewater  
Municipal Building  
916 River Road  
Edgewater, NJ 07020

October 10, 2003

Local Ethics Board  
Department of Community Affairs  
101 S. Broad Street  
P.O. Box 803  
Trenton, NJ 08625-0803

Re: Borough of Edgewater

Dear Sir/Madam:

I am currently a councilman for the Borough of Edgewater in Bergen County, New Jersey. I recently wrote asking you for an opinion regarding what I believe to be conflicts of interests involving Edgewater officials. I was told that I should draft my letter in the form of a complaint.

This, then, is the complaint:

Several constituents have approached me and asked specific questions about possible conflicts of interest involving five Planning Board members and Borough employees. The questions were prompted by recent newspaper articles that have appeared in The Record. (I have enclosed copies of these articles for your reference.)

Specifically, it has come to my attention that our Mayor, who is a voting member of our Planning Board, owned 800 shares in the Mariner's Bank, and owned them since at least as early as the spring of 2001. (He recently sold those shares). Mariner's Bank is owned and controlled by Fred Daibes, a major local developer. We have also learned that fellow Planning Board members Jeff Mathieu and Joseph Kirwin are also among the original 80 shareholders of Mariner's Bank.

Mr. Daibes is the owner and developer of a large complex located in the Borough known as the Portside Gorge (formerly St Moritz). In December 2002, the Planning Board voted to give Mr. Daibes an additional 18 units in the Portside Gorge development.

In February of this year, the Mayor and Council (including Councilwoman Lois Fein) voted to allow Mr. Daibes to fulfill the Mt. Laurel set-aside obligation incurred by the Portside Gorge development by substituting units in two adjoining, approximately 80-year-old wooden frame buildings that he owned. Mr. Daibes advised that Mariner's Bank would finance the low and moderate income housing mortgages for the purchasers.

The Borough Council voted and the mayor broke the tie to approve the developer's agreement for the additional 18 units at Portside Gorge.

Lois Fein is a councilwoman and a long time Planning Board member. As early as September 14, 2002, her husband, John Schwartz, a newly licensed real estate agent employed by the Freiberg Real Estate Agency, became the exclusive listing agent for Daibes Park, another Fred Daibes development, planned to include 200+ units, over which Mr. Daibes has direct control. Recently, Councilwoman and Planning Board Member Lois Fein herself became a real estate agent, and is now also employed by the Freiberg Real Estate Agency.

Planning Board member Joseph Kirwin owns 14,000 shares in mariner's Bank. Mr. Kirwin's current landlord is an insurance company that Mr. Daibes has a direct interest in. Planning Board member John Candelmo's wife owns 1,750 shares of mariner's Bank. Planning Board member John Candelmo, who is also Edgewater's Construction Code Official, did not disclose that fact to the Board. Planning Board member Candelmo currently has a mortgage with Mariner's Bank.

As Mr. Daibes is anticipated to continue to appear before the Planning Board and the Mayor and Council with respect to both the Portside Gorge project and other projects, I feel strongly that the above-referenced individuals must recuse themselves from any decisions involving any Daibes-owned or controlled projects. This appears to be a clear conflict of interest, as defined by Title 40A:9-22.1 et seq. "Local Government Ethics Law," paragraph 40A:9-22.5 d.:

"No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment."

In addition, I believe that this is a clear violation of Edgewater's Code of Ethics as set out in paragraph 37-2:

"No official, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge or his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties."

Your earliest possible reply regarding this matter would be appreciated.

Thank you.

Sincerely,

Denis F Gallagher  
Councilman

State of New Jersey  
Department of Community Affairs  
Division of Local Government Services - Local Finance Board  
101 S Broad St – PO Box 803  
Trenton, NJ 08625-0803  
Phone – 609-292-6613  
E-mail [dlgs@dca.state.nj.us](mailto:dlgs@dca.state.nj.us)

July 19, 2006

PERSONAL & CONFIDENTIAL

Honorable Dennis F. Gallagher  
18 Arlington Terrace  
Edgewater, New Jersey 07020-1503

Re: Local Government Ethics Law  
Complaint #LFB-03-022  
Notice of Determination

Dear Councilman Gallagher:

The purpose of this letter is to apprise you of the final outcome of the above-referenced complaint.

As you are aware, the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., provides the Local Finance Board (Board) with the power to initiate, receive, hear and review complaints, and hold hearings with regard to possible violations of the Local Government Ethics Law, where no local ethics board has been established, and determine if a complaint against a local government officer or employee is within its jurisdiction, frivolous, or without a reasonable factual basis, prior to conducting an investigation.

Complaint #LFB-03-022 was filed by you against five officials of the Borough of Edgewater. You alleged that these officials had financial or professional relationships with Mr. Fred Diabes or businesses under his control when they participated in matters related to the Portside George Development. More specifically, the complaint alleges

1. Mayor Christiansen (also voting member of Planning Board)

- a. Voted on Resolution 02-040 (Stipulation of Dismissal- Voted to offset Council tie) 1/21/2003
- b. Voted on Resolution 03-066 (Portside Gorge Development, Developers agreement, Voted to offset Council tie) 2/18/2003
- c. Voted on Planning Board Resolution No. 8-26-02-01 (Preliminary plan approval - Portside Gorge Development)

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d. Voted on Planning Board Resolution No. 12-12-02-1 (Approval of amendments to final site plan - Portside Gorge Development)

e. Mayor allegedly owned 800 shares of Marnier's Bank (as reported by "The Record"—800 shares is less than 1%) Mayor reportedly sold all shares on or before 6/2003. The alleged financial position is not indicated on the Mayor's 2002 or 2003 Financial Disclosure Statements.

2. Councilwoman, Planning Board Member -- Lois Fein

a. Motion brought by Ms. Fein on Planning Board Resolution No. 8-26-02-01 (Preliminary plan approval - Portside Gorge Development)

b. Voted on Planning Board Resolution No. 12-12-02-1 (Approval of amendments to final site plan - Portside Gorge Development)

c. Voted on Resolution 02-040 (Stipulation of Dismissal) 1/21/2003

d. Voted on Resolution 03-066 (Portside Gorge Development, Developers agreement) 2/18/2003

e. Ms. Fein's husband, John Schwartz is allegedly a realtor for Freiberg Realty and is allegedly the exclusive listing agent for Daibes Park. The allegation states that Mr. Schwartz has been such since September of 2002, thus predating the aforementioned matters before the Planning Board. This position is not indicated on Ms. Fein's 2003 Financial Disclosure Statement.

f. Freiberg Realty allegedly also employs Ms. Fein as a realtor. Complainant states that she is a recent addition to the real estate company's staff. A date of hire was not suggested in the complaint. This position is not indicated on Ms. Fein's 2003 Financial Disclosure Statement.

3. Planning Board Member, Jeff Mathieu

a. Allegedly, one of the original 80 shareholders of Marnier's Bank.

b. Mr. Mathieu is listed as "absent" for both Planning Board Resolution No. 8-26-0201 (Preliminary plan approval - Portside Gorge Development), and Planning Board Resolution No. 12-12-02-1 (Approval of amendments to final site plan - Portside Gorge Development)

c. There is no indication that Mr. Mathieu held any financial interest in Marnier's Bank on Mr. Mathieu's 2003 Financial Disclosure Statement.

4. Code Enforcement Official, John Candelmo - Planning Board Member,

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- a. Mr. Candelmo's wife allegedly owns 1,750 shares of Marnier's Bank.
- b. Mr. Candelmo Voted on Planning Board Resolution No. 8-26-02-01 (Preliminary plan approval - Portside Gorge Development)
- c. Mr. Candelmo Voted on Planning Board Resolution No. 12-12-02-1 (Approval of amendments to final site plan - Portside Gorge Development)
- d. There is no indication that Mr. Candelmo or his wife held any financial interest in Marnier's Bank on Mr. Candelmo's 2003 Financial Disclosure Statement.

The complaint cited N.J.S.A. 40A:9-22.5(d) of the Ethics law; however, N.J.S.A. 40A:9-22.5(c) is also implied, they are as follows:

N.J.S.A. 40A:9-22.5(c) No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others; and

N.J.S.A. 40A:9-22.5(d) "No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment."

Following an investigation of the facts and circumstances relevant to this complaint, the Board made determinations concerning four of the five officials implicated by your complaint. The fifth individual remains under investigation by the Board and those allegations will be considered at a later meeting of the Board after which you will be notified.

The Board considered the allegations against Ms. Fein and based on the submitted response, the Board determined that there was an insufficient nexus between Ms. Fein's actions and Mr. Schwartz's and Ms. Fein's relationship with Freiberg Realty, notwithstanding the real estate company's relationship with Diabes Park.

Regarding the remaining three individuals considered by the Board, Former Mayor Christiansen, Mr. Candelmo and Mr. Mathieu, the Board focused their determination on the financial involvement of their officials. The local Government Ethics Law defines "interest" as "the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union". N.J.S.A. 40A:9-22.3 (d). The Board determined that any interest in Mariner's Bancorp held by the officials was far the 10% threshold that might prohibit their participation in matters relating to Portside George Development and likewise, would not warrant inclusion on their financial disclosure forms at Section III D would be unwarranted.

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More specifically, the Board's investigation revealed that there are 1,320,445 total shares outstanding for Mariner's Bancorp. Former Mayor Bryan Christiansen confirmed that he holds or held 600 shares of Mariner's Bank, representing a percentage of 0.045% of the outstanding common shares of the company. Code Enforcement Official and Planning Board Member John Candelmo confirmed that his spouse, Ms. Candelmo holds 1000 shares of common stock of Mariner's Bancorp and is the Custodian of an additional 750 shares held for the Candelmo children. The Candelmo family holds 0.13% of the outstanding interest in the company. Finally, Planning Board Member Jeff Mathieu submitted that he and his wife hold a total of 1980 shares, representing an interest of 0.149%.

For the forgoing reasons, the Board elected to dismiss the case against Former Mayor Christiansen, Mr. Candelmo, Ms. Fein and Mr. Mathieu as having no reasonable factual basis.

This case against the four aforementioned officials is now closed.

If you have any questions regarding this matter, please feel free to contact David Zipin at (609) 292-0479.

Sincerely,

Susan Jacobucci, Chair  
Local Finance Board

SJ:DZ

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State of New Jersey  
Department of Community Affairs  
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September 28, 2006

PERSONAL & CONFIDENTIAL

Honorable Dennis F. Gallagher  
18 Arlington Terrace  
Edgewater, New Jersey 07020-1503

Re: Local Government Ethics Law  
Complaint #LFB-03-022  
Notice of Determination

Dear Councilman Gallagher:

The purpose of this letter is to apprise you of the final outcome of the above-referenced complaint.

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Complaint #LFB-03-022 was filed by you against five officials of the Borough of Edgewater. You alleged that these officials had financial or professional relationships with Mr. Fred Diabes or businesses under his control when they participated in matters related to the Portside George Development. One individual of the group of five was reviewed separately at the most recent Local Finance Board meeting held on Wednesday, September 13, 2006. That individual was Planning Board member Joseph Kerwin. Specifically, the complaint regarding Mr. Kerwin alleged that he was one of the original 80 shareholders of Marnier's Bank, holding in excess of 14,000 shares of the bank's outstanding common stock. The allegation added that the interest Mr. Kerwin held in Mariner's Bank would have amounted to a prohibiting involvement with Mr. Diabes leading to a conflict of interest when considering matters pending before the planning board.

The complaint cited N.J.S.A. 40A:9-22.5(d) of the Ethics law; however, N.J.S.A. 40A:9-22.5(c) is also implied, they are as follows:

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N.J.S.A. 40A:9-22.5(c) No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others; and

N.J.S.A. 40A:9-22.5(d) "No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment."

Following an investigation of the facts and circumstances relevant to this complaint, the Board previously made determinations concerning four of the five officials. At its most recent meeting, the Board heard the matter as it pertains to Mr. Kerwin, the fifth individual.

The Board again focused their determination on the financial involvement of Mr. Kerwin. The local Government Ethics Law defines "interest" as "the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union." N.J.S.A. 40A:9-22.3 (d). The Board determined that any interest in Mariner's Bancorp held by Mr. Kerwin was far below the 10% threshold that might prohibit his participation in matters relating to Portside George Development and likewise, would not warrant inclusion on his financial disclosure forms at Section III D.

More specifically, the Board's investigation revealed that as of September 30, 2003, Mr. Kerwin held 27,500 shares representing 3.59% of the outstanding 765,630 shares. This represents the highest percentage of outstanding shares Mr. Kerwin has held. The most recent calculation from August 15, 2006 shows that Mr. Kerwin now holds 31,500 shares representing 2.30% of the outstanding 1,370,245 shares.

For the forgoing reasons, the Board elected to dismiss the case against Mr. Kerwin as having no reasonable factual basis.

This case against Mr. Kerwin is now closed.

If you have any questions regarding this matter, please feel free to contact David Zipin at (609) 292-0479.

Sincerely,

Susan Jacobucci, Chair  
Local Finance Board

SJ:DZ

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