

12-092



BOROUGH OF BELMAR, NJ

601 MAIN STREET
P.O. BOX A
BELMAR, NJ 07719
732-681-3700
mayor@belmar.com

September 25, 2012

Richard E. Constable, III, Commissioner
NJ Department of Community Affairs
PO Box 800
101 South Broad Street
Trenton, NJ 08625

Dear Commissioner Constable:


As the Mayor of the Borough of Belmar, it is my obligation to write to you today and ask for the Department of Community Affairs to conduct an Ethics Investigation of a member of our governing body. I do not make this request lightly, but this issue is critically important for people throughout Belmar and its impact and repercussions will be felt immediately by our residents.

At the August 15, 2012 Council meeting, Councilman James Bean recused himself and abstained from voting on the First Reading and Introduction on ordinance 2012-12 based on the legal opinion of the Belmar Borough Attorney Michael DuPont. Section 40-6.14.5 of ordinance 2012-12 directly affect's Councilman Bean because he owns and occupies a property with an accessory dwelling unit that would change from being non-conforming to conforming. Since Councilman Bean could directly benefit from ordinance 2012-12, Mr. DuPont advised Councilman Bean to recuse himself.

At Belmar's Council meeting on September 19, 2012, there was a Second Reading & Public Hearing on ordinance 2012-12 (I have enclosed the ordinance and minutes from the meeting for your review) Mr. DuPont again publicly advised Councilman Bean to recuse himself from discussion on the ordinance and abstain from voting due to his inherit conflict and to avoid any appearance of impropriety. Councilman Bean deliberately and willfully disregarded Mr. DuPont's legal opinion and both spoke on and voted in favor of the ordinance. Mr. DuPont then instructed the Belmar Borough Clerk to strike Councilman Bean's vote from the record because of his conflict.

Middle class taxpayers throughout Belmar would stand to benefit from this important ordinance and, unfortunately, the vote has been compromised because of Councilman James Bean's actions. I would like to formally request a full investigation and determination on Councilman Bean's actions on September 19, 2012 and advice on how we should proceed.

Sincerely,


Matthew J. Donerz
Mayor



Dismissed Bean 12-095
BUT Dismissed Mayor 12-092

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

September 3, 2013

James Bean
612 16th Avenue
Belmar, New Jersey 07719

Re: Local Government Ethics Law
Complaint #LFB-12-095
Notice of Determination

Dear Mr. Bean:

The purpose of this letter is to apprise you of the Local Finance Board's final disposition of the above-referenced complaint.

The Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., (LGEL) 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 LGEL, 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. You are hereby notified that a complaint was filed against you and it was dismissed.

Complaint #LFB-12-095, as summarized, alleged that you violated the Local Government Ethics Law when you participated in the consideration of a Borough Ordinance against the objections of Borough Counsel. Borough Counsel had previously independently determined that you had a prohibitive involvement regarding the Ordinance, which reclassified certain conditional uses of accessory dwelling structures.

The complainant specifically cited the following provisions of the Local Government Ethics Law as having been violated:

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 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.

A preliminary investigation of the facts and circumstances of this complaint determined that, at meetings held on May 2, 2012 and June 6, 2012, the Borough Council considered 2012-8, an ordinance which would change the permitted uses for properties containing an accessory dwelling structure. The Council voted 4-1 (Council woman Deicke opposed) to introduce the ordinance, and 5-0 to approve a change at the May and June meetings, respectively.

At the August 15, 2012 meeting of the Borough Council, Borough Attorney Michael DuPont recommended the Council re-vote on the ordinance out of an abundance of caution in that you may have a conflict of interest with the ordinance.

Mayor Doherty offered Ordinance 2012-12 (which repealed and replaced the previously approved ordinance). Ordinance 2012-12 was identical to 2012-08. The motion passed 4-0. You abstained.

At the close of the September 19, 2012 workshop session, you again discussed your participation in the vote on the ordinance with the Borough Attorney.

In the public session of the same date, the Ordinance was summoned for its second reading and potential adoption. During the discussion of the Ordinance, you attempted to participate. Apparently, the Mayor and Borough Attorney attempted to stop you from speaking.

You voted in favor of the ordinance against the advisement of Mr. DuPont. Mr. DuPont asked that the record reflect that your vote be stricken from the record. The record reflects this request.

The Board also reviewed additional items in making its determination. You submitted to the Board documentation that the property was grandfathered in for year round use under prior Borough ordinances.

You provided a copy of the Certificate of Occupancy on file with the Borough of Belmar issued August 10, 2010 for 612 ½ 16th Avenue, the residential address of the accessory dwelling on your property. This C.O. does not list any restrictions on the use of the dwelling unit, such as seasonal limits of occupancy. You provided that there are no records of prior Certificates in the Borough for this address.

Following a preliminary investigation of this complaint and upon consideration of these facts and circumstances and the materials submitted related to this complaint, the Board voted to dismiss this matter as having no reasonable factual basis.

The Board determined that provision (c) of the Local Government Ethics Law was not violated because you were warranted, by virtue of your position as an elected Councilmember in the Borough form of government to participate in discussion and votes related to matters in front of Council.

The Board further determined that provision (d) of the Local Government Ethics Law was not violated because it does not appear that you derive a benefit from the subject Ordinance

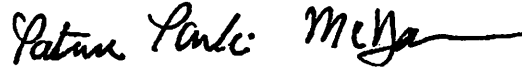
not also shared by a larger community of property owners in the Borough. Prior Appellate Court decisions on violations of provision (d) of the Local Government Ethics Law have gone against a violation of the Law where the ordinance impacts all property owners who are similarly situated.

LFB Complaint 12-095 is now closed.

Pursuant to N.J.S.A. 40A:9-22.9, the local government officer or employee against whom a complaint has been filed must be notified of the Board's conclusion regarding a complaint. This letter is a notification that a complaint was filed against you and dismissed. No action is required on your part.

If you have any questions regarding this matter, please contact Nick Bennett at (609) 292-0479.

Sincerely,



Patricia Parkin McNamara
Executive Secretary
Local Finance Board

C: Complainant
PPM:nb
C12-095.Dismissal.Bean