



Mayor's Message  
November 19, 2025  
Mayor Josh Cohn

Attached is the text of my message of November 19, with the Leventhal opinion that I introduced. Also attached are the items reviewed by Leventhal other than code or statute. I have included the "Missing Context," though Leventhal, page 4, found the Board of Ethics February 2023 decision factually deficient without considering the Missing Context.

For my own discussion and comparison of the New York Conference of Mayors opinion and the Board of Ethics decision, as well as a series of statements and presentations to the City Council that I have made on this topic, please see my May 7 Mayor's Message and the material compiled with it.

Josh Cohn

Mayor

City of Rye

Postscript: I have added the text of my December 3, 2025 statement regarding the need to hire Leventhal and review the entire ethics code and our board of ethics' practice.

Mayor Josh Cohn – text for 11/19/2025 Council Meeting – Mayor’s Message

[some ad lib remarks/changes are not reflected]

I am speaking to the Council and the public pursuant to our City Charter section C7-1G with respect to a need of the city government.

I have good news: I have cleared away the obstacle to ethics code review.

When I first publicly raised the idea of ethics code review, at the May 7 Council meeting, the Council seemed receptive, with one condition -- the review could not examine past board of ethics behavior. Of course, the most notable recent behavior of the board was its February 2023 decision.

That condition was ok with me. I reached out to Steven Leventhal, the sole expert personally recommended by the general counsel of the New York Conference of Mayors (NYCOM). To name only some of Leventhal’s credentials, he has been a consultant to the United Nations Ethics Office, chair of the New York State Bar Association Local and State Government Law Section, and a member of the Grievance Committee for the Tenth Judicial District. He currently serves as:

- ethics counsel to two counties and 7 other municipalities.
- hearing officer for the New York State Commission on Lobbying and Ethics in Government (and he will be presiding officer next month in NYS Commission v. Andrew Cuomo, dealing with Cuomo’s book deal);
- long-time co-chair of the New York State Bar Association Local and State Government Law Section Ethics Committee;
- co-author and editor of *Municipal Ethics in New York: A Primer for Attorneys and Public Officials*, published by the NYS Bar Association.

In addition, he is frequently hired to provide ethics advice, training and continuing professional education programs throughout the state.

Leventhal was willing to do a forward-looking review, confidentially and for a nominal amount. In other words, just what was requested. Yet when the

Council heard this good news, the majority refused, implicitly saying our ethics code and the 2023 decision are fine as they are.

Our ethics code, substantially unchanged in 60 years, is not fine. For example, the section central to the 2023 decision provides no meaningful guidance to our Board of Ethics, whose members are volunteers, not municipal ethics experts. It suffers from subjectivity, ambiguity and the potential for misuse against an opponent - which misuse may render the City Council forever split, as we have seen all too vividly. Fixing our ethics code is not just a technical matter. It's for the benefit of Rye residents, who expect and deserve an effective local government.

So, I hired Leventhal on my own dime. I focused him only on the 2023 decision.

Yes, I paid him. Don't roll your eyes. Anyone familiar with lawyers of Leventhal's standing knows that few of them are willing to compromise their integrity or jeopardize their reputations. I have found one instance where Leventhal as a litigator was spanked by a judge for his pretrial behavior (and later cleared of misconduct by the Appellate Division Grievance Committee), not bad for a long career at the bar. Leventhal has remained preeminent in municipal ethics and couldn't possibly be interested in compromising that.

I asked Leventhal to examine just a few of the many questions raised by the 2023 decision. His analysis was devastating. I'll make it available publicly on the city website, under the Mayor tab in the Government section. In the meantime, I'll read you a few quotes:

"The Board of Ethics did not exercise appropriate restraint. [Its] haste in issuing the Confidential Advisory Opinion without providing you" - that is, me - "and the other interested parties with notice and an opportunity to be heard...demonstrate[s] a level of hypocrisy damaging to the credibility of the Board of Ethics and the reliability of its opinions."

Leventhal added that "the failure to provide notice and an opportunity to be heard completely undermined the reliability of the Confidential Advisory

Opinion and deprived it of any weight of authority that it might otherwise have had.”

He wrote that the opinion “was flawed both in substance, and in the procedure by which it was rendered. The Board of Ethics acted in excess of its lawful authority, failed to afford affected parties with notice and an opportunity to be heard and misapplied the vague and overly broad Code of Ethics provision.”

Despite this, some of you might say, okay, the Board may have misconstrued the law and made procedural mistakes, but perhaps the board carefully reported the facts.

Wrong. Leventhal refutes this, saying the Ethics Board did not seriously consider the facts. In his words, “It is impossible to conclude that the Board of Ethics objectively applied [the code of ethics] to a reliably developed set of facts.”

As Leventhal said upfront, “The opinion expressed by the Board of Ethics should be regarded as a nullity.”

This vindicates Carolina Johnson, Julie Souza, Ben Stacks and me. We were abused. We were right to object. (But we knew that.)

Leventhal leaves us with a final thought, and, again, I quote, “The City Code of Ethics is long overdue for an updating, and is deficient in many respects.”

This council now has nothing to lose by hiring Leventhal to review our ethics code on a forward-looking basis, ASAP. All of you have read the NYCOM January opinion that preceded the Leventhal analysis. The NYCOM opinion shows a huge gulf between best practices and our ethics board’s practices in its 2023 decision. Anyone who’s seen it understands, or should understand, that a review is necessary.

One of you said at the July 16th meeting that the Council will review the ethics code, but you’re waiting until Julie and I have left the Council. The only purpose of waiting would be to perpetuate the falsehood that Carolina, Ben, Julie and I did something wrong - which all of you, again because you

know NYCOM's view, know in your heart of hearts is baloney. Your waiting would really just be more of the infighting that has plagued this council. And this waiting began in the spring when I first brought the Leventhal recommendation and offer to the council in response to the May 7<sup>th</sup> meeting's discussion.

People elected us to work together to meet the city's needs. The city needs this review to avoid disruptions like the one it suffered in 2023 and beyond. Rye residents need this review. Now.

Put aside the human cost of the 2023 debacle. Rye residents expect and deserve a local government that's focused, and is in no danger of being derailed again by the misapplication of a flawed ethics code.

Leventhal has other business in Westchester on December 1st and 5th. He is willing to come to Rye on either of those days.

I propose that we hire Leventhal immediately to begin the review of our code of ethics.

LEVENTHAL, MULLANEY & BLINKOFF, LLP  
ATTORNEYS AT LAW  
15 REMSEN AVENUE  
ROSLYN, NEW YORK 11576  
TELEPHONE: (516) 484-5440

November 17, 2025

Hon. Josh Cohn  
Mayor, City of Rye  
1051 Boston Post Road  
Rye, New York 10580

Re: Powers and Procedures of the City Board of Ethics

Dear Mayor Cohn:

This is written in response to your inquiries regarding the Confidential Advisory Opinion of the City of Rye Board of Ethics, dated February 13, 2023.

*I. My Credentials.*

I serve as ethics counsel to two counties, five towns, one city, two villages, and a special improvement district, and serve as a hearing officer for the New York State Commission on Lobbying and Ethics in Government. I am immediate past-chair of the New York State Bar Association Local and State Government Law Section, and long-time co-chair of the Section's Ethics Committee. I served as chair of the Nassau County Board of Ethics, a member of the Grievance Committee for the Tenth Judicial District, and as a consultant to the United Nations Ethics Office. I have lectured and written extensively on the subjects of government ethics and professional responsibility, and I am co-author and editor of Municipal Ethics in New York: A Primer for Attorneys and Public Officials, published by the NYS Bar Association. I am frequently engaged to provide ethics advice, training and continuing professional education programs to municipal officers and employees throughout the state, municipal associations, bar associations, law firms and universities.

*II. The City of Rye Code of Ethics.*

The City of Rye Code of Ethics section relied upon by the Board of Ethics, Section 15-10B, was adopted in 1966, and has not been amended in the nearly sixty years since its adoption. It provides that:

B. An officer or employee of the City should not by his/her conduct give reasonable basis for the impression that any person can unduly influence him/her or improperly enjoy his/her favor in the performance of his/her official duties or that he/she is affected by the kinship, rank, position or influence of any party or person.

Code of Ethics § 15-13B (Board of Ethics), also adopted in 1966 and not amended in the nearly sixty years since its adoption, provides that:

B. The Board shall render advisory opinions on specific situations to officers and employees of the City with respect to Article 18 of the General Municipal Law and any Code of Ethics adopted pursuant thereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the Board may deem advisable and shall have the approval of the Corporation Counsel with respect to their validity. The Board shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the officer or employee involved.

### *III. Your Inquiries.*

Each of your inquiries appears below, followed by my response. In considering your inquiries, I reviewed the following:

- Your description of events entitled, “Missing Context”,
- Board of Ethics Confidential Advisory Opinion, dated February 13, 2023,
- The Code of the City of Rye, Chapter 15 (Code of Ethics),
- Article 18 of the New York General Municipal Law,
- Your email message to the members of the Board of Ethics, dated February 21, 2023,
- The email message of Mark Blanchard to various recipients, dated February 22, 2023,
- New York State Conference of Mayors and Municipal Officials (NYCOM) opinion, dated January 29, 2025.

1. The board raised a question of its own regarding the conduct of officials who were not parties to the board proceeding and who had not asked the board to review their conduct. (Opinion p. 3, paragraph 2.) Did the board have the legal authority to do this? If it did not have authority, what weight should its opinion be given?

The authority of the Board of Ethics to render advisory opinions is limited to those that are “... on specific situations to officers or employees of the City... pursuant to the written request of any such officer or employee...” *See*, Code of Ethics § 15-13. This language parrots the limited authority conferred by Article 18 of the New York General Municipal Law, Section 808 (Boards of Ethics). The Board of Ethics exceeded this limited authority when it rendered an advisory opinion on a question that it acknowledged was beyond the scope of the inquiry that it had received.

Because the Board of Ethics exceeded its lawful authority, the *ultra vires* opinion expressed by the Board of Ethics should be regarded as a nullity.

2. The board did not give notice of its review of their conduct to the non-party officials and reached its decision without any contact with them. Was this proper conduct by the board? If the answer is no, what weight should the opinion be given?

Consistent with the limited scope of its authority to render advisory opinions, the Board of Ethics lacks the authority to investigate complaints alleging violations of the Code of Ethics. Yet, it is apparent that the Board of Ethics conducted an investigation by interviewing at least one non-party witness in developing the statement of facts that formed the basis of its Confidential Advisory Opinion. Further, by rendering an opinion regarding the conduct of a person other than the one making the inquiry, it effectively treated the inquiry as a complaint, and rendered an opinion without affording its subjects with notice and an opportunity to be heard.

The Board of Ethics should have recognized that its opinions have the potential for causing reputational damage to city officers and employees and, in particular, to those whose tenures depend on the confidence of the electorate. The fundamental principles of fairness enshrined in the due process clauses of the United States and New York State Constitutions should be its procedural touchstone. Notice to all affected parties, and the opportunity for them to be heard before a decision is rendered, not only promotes fairness, but also increases the likelihood that the Board of Ethics will render a fully informed decision that will merit the respect that is essential to the Board's credibility and to the success of the City's ethics program. Here, the failure to provide notice and an opportunity to be heard completely undermined the reliability of the Confidential Advisory Opinion and deprived it of any weight of authority that it might otherwise have had.

3. When the non-party officials learned of the board's opinion and sought to communicate with the board, the board refused any communication. (Emails of J. Cohn and Mark Blanchard.) Was this proper conduct by the board? If the answer is no, what weight should the opinion be given?

The Board of Ethics squandered its opportunity to hear from the interested parties and, if warranted by new information, to modify its decision. By refusing to do so, it compounded the procedural deficiencies that completely undermined the reliability of the Confidential Advisory Opinion.

4. Has the evidentiary standard for a finding of "reasonable basis for the impression" of providing an elected official with a personal benefit been met? Does the potential to eliminate a quorum of the decisional body matter to the analysis?

An "appearance of impropriety" standard such as the one embodied in Code of Ethics § 15-10B will be unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice that his or her contemplated conduct is forbidden, and lacks minimal legislative guidelines preventing arbitrary enforcement. As noted in the opinion of the New York State Conference of Mayors and Municipal Officials, standards that are overly vague or broad may be imposed in a way that is "so restrictive that local officials are constantly having to recuse themselves... paralyzing local governments and public bodies while at the same time disenfranchising the individuals who put the officials into office..." The Code of Ethics of the City of New York has a "catch-all" provision, but it is supplemented by cross-references to specific examples of the conduct that is forbidden. Here, Code of Ethics § 15-10B is devoid of any guidance to those who must comply with its prohibition, or those charged with its interpretations, as to the conduct that

is forbidden. The Board of Ethics has not posted any of its determinations on the city website since 2012, has posted no educational materials on the website, and has not developed a program of regular ethics training for City officers and employees.

Further, because the Board of Ethics lacks the authority to investigate complaints alleging violations of the Code of Ethics, it is not authorized to conduct evidentiary hearings and, therefore, no evidentiary standards apply to the implementation of its advisory function. Accordingly, it should exercise greater care and diligence in thoroughly developing the relevant facts. Here, the Board of Ethics gave no indication of the source of the information that it accepted without testing its veracity by hearing from persons whose conduct it presumed to judge. Even without considering the discrepancies between your description of events and the events as described by the Board of Ethics, in the absence of a clearly stated standard of conduct, investigative authority, evidentiary standards and transparent procedures, it is impossible to conclude that the Board of Ethics objectively applied Code of Ethics § 15-10B to a reliably developed set of facts.

The Board of Ethics has not provided you with a copy of the inquiry that prompted the issuance of the Confidential Advisory Opinion and related communications between the inquiring parties and the Board of Ethics, reportedly expressing concern that its disclosure would constitute an unreasonable invasion of the personal privacy of the persons who made the inquiry, that the inquiry was an inter-agency communication, that “whistle blower” protections might apply, and that the communications were protected by the attorney-client privilege. The Charter of the City of Rye provides at Section 7-1 that the mayor, among other things, “shall have the authority at all times to examine the books, papers and accounts of any board, commission, department, office or agency of the city....” Here, the Board of Ethics cited no authority that would override the City Charter and permit it to refuse your request for a copy of the inquiry. Moreover, it cannot reasonably be argued that its disclosure would result in an unwarranted invasion of personal privacy, or deny a whistleblower of protection, because the inquiring parties released the Confidential Advisory Opinion and its contents are widely known, and because the only privacy interests that are implicated here are yours and those of the others who are the opinion’s primary subjects and whose interests are aligned with yours. Further, the status of the inquiry as an inter-agency communication does not justify denial of your request for its disclosure. That basis for nondisclosure to the public arises under Freedom of Information Law, and does not apply to the right of access granted to the mayor under the City Charter. Even under FOIL, a municipal agency must, at a minimum, permit access to inter-agency materials that set forth facts.

The claim that communications between the inquiring parties and the Board of Ethics are protected by the attorney-client privilege is misplaced, even if the Board’s counsel participated in those communications. The attorney-client privilege applies only to communications that are exclusively between an attorney and a client seeking legal advice. If the communicating participants include anyone other than the attorney and the client or clients, the privilege will not apply. Determining whether a communication has been received from the “client” of a municipal attorney requires an examination of the transactional setting in which the communication takes place. The client of a municipal attorney may, in one transaction, be a particular board, department, or agency, and in another transaction may be a particular officer or employee, or

even the municipality as a whole. *See*, New York Rules of Professional Conduct, Rule 1.13 (Organization as Client). Here, the client of the Board's counsel was the Board of Ethics, and not the inquiring parties. Communications that involved the Board's counsel, the Board of Ethics and the inquiring parties were not privileged communications.

The failure of the Board of Ethics to provide you with a copy of the inquiry and related written communications upon your request compounded the inadequacy and the unfairness of its procedures and reinforced the unreliability of its conclusions.

5. Can a meeting properly noticed and called for a purpose questioned on ethical grounds be held at the time originally noticed but for a different purpose which, though similar, is free of any ethical question, or does the original ethical question destroy the propriety of the meeting and any meetings that follow it?

The Board of Ethics had no authority to usurp the City Council's legislative discretion to convene a meeting to consider the adoption of a moratorium. By concluding that the speed with which the subject hearing was noticed gave rise to "a potential cloud of impropriety", the Board of Ethics improperly usurped the authority and discretion of the legislative body.

Conflicts of interest are prohibited because they tend to interfere with the independent exercise of judgment and discretion. Here, the issuance of the hearing notice was a ministerial act mandated by law, and involved no judgment or discretion on the merits of the question to be considered. Thus, the scheduling of the legislative session did not have the potential to give rise to a prohibited conflict of interest, and did not cast a "potential cloud of impropriety" on further proceedings, as the Board of Ethics erroneously concluded.

6. Can a recused official "unrecuse" immediately upon the disappearance of the facts underlying the recusal?

In the absence of a prohibited conflict of interest, a city official need not recuse himself or herself. Conflicts of interest may be properly found only when they are based on particular facts giving rise to the conflict. When the facts change, so must that analysis. Here, whether or not you or other members of the City Council had a conflict of interest in connection with the proposed moratorium when it would have prevented your neighbor from removing trees on his property, that conflict ceased to exist when the trees were removed. The Board of Ethics erred in finding a "potential cloud of impropriety", untethered to the particular facts giving rise to the purported conflict, i.e., the proximity of your property to the site of the proposed tree removals.

Officials should be mindful of their obligation to discharge the duties of their offices, and should recuse themselves only when the circumstances actually merit recusal. Such restraint should be exercised by the members of voting bodies and, in particular, by legislators, because their recusals have the effect of disenfranchising voters, and because recusal or abstention by a member of a voting body has the same effect as a "nay" vote. *See*, General Construction Law § 41 (Quorum and majority):

Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, ... not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting.

Here, the Board of Ethics did not exercise appropriate restraint. Rather, it acted with the very same "extraordinary rush" that it said gave a "reasonable basis for the impression" of undue influence. The Board's own haste in issuing the Confidential Advisory Opinion without providing you and the other interested parties with notice and an opportunity to be heard, only five days after the request of Councilmember Henderson, and only three days after the requests of Councilmembers Nathan and Fontane, demonstrate a level of hypocrisy damaging to the credibility of the Board of Ethics and the reliability of its opinions.

7. Can the board tell city council members how to vote?

The Board of Ethics cannot tell city council members how to vote. The city council is the legislative branch of city government. The constitutional doctrine of separation of powers prevents an administrative board from interfering in the legislative function. Pursuant to Code of Ethics § 15-13B, the Board of Ethics can only respond to written requests for advice "on specific situations to officers and employees of the City with respect to Article 18 of the General Municipal Law and... [the City] Code of Ethics...."

8. The city's lawyer recused herself as conflicted and her law firm partner advised the board in her place. Was this proper?

The city's lawyer was an independent contractor, and not a city officer or employee. Article 18 of the General Municipal Law and the City Code of Ethics regulate the conduct of City officers and employees only. They do not regulate the conduct of independent contractors. Rather, the conduct of the city's lawyer was governed by the New York Rules of Professional Conduct promulgated jointly by the First, Second, Third and Fourth Departments of the Appellate Division of the New York State Supreme Court.

Some of the conflicts of interest that may arise under the Rules of Professional Conduct are personal to an individual attorney, and some are attributed to the entire firm with which an attorney is associated. Recusal should always be coupled with disclosure of the reason for recusal. (Another deficiency of the City Code of Ethics is the lack of any disclosure requirements).

In order to answer the question posed, it would be necessary to know the reason for recusal by the city's lawyer. The lack of disclosure of the attorney's reason for recusal, coupled with the engagement of another lawyer associated with her law firm to serve as counsel to the Board, further undermines the reliability of the Confidential Advisory Opinion.

*IV Conclusion.*

In conclusion, the Confidential Advisory Opinion was flawed both in substance, and in the procedure by which it was rendered. The Board of Ethics acted in excess of its lawful authority, failed to afford affected parties with notice and an opportunity to be heard, and misapplied the vague and overly broad Code of Ethics provision.

The City Code of Ethics is long overdue for an updating, and is deficient in many respects. Among other things, the Code of Ethics should explicitly state that the Board of Ethics may render advisory opinions only to City officers and employees inquiring about their own conduct, or about the conduct of someone that they have the duty to supervise. The advisory function should act as a shield, not as a sword. In addition, the Code of Ethics should not provide that the opinions of the Board of Ethics “shall have the approval of the Corporation Counsel with respect to their validity”. The independence of the Board of Ethics is an essential element of its credibility. The Board of Ethics should have the advice of counsel, but its advisory opinions should not be subject to the approval of its counsel.

Very truly yours,

*Steven G. Leventhal*

## **Missing Context**

The board summarized “the pertinent facts as we know them,” before reaching its “Findings.” It is not entirely clear where or how it got its facts, but none of them came from the officials it was choosing to criticize (who were not even aware of the proceeding). There are missing facts that should have been relevant, some of which I offer below. They go to the board’s implicit assertion that no steps were being taken to limit tree removal before the incident in question and the board’s outright assertion that the speed of attempted action was suspect.

### **I. Tree Law / Tree Subcommittee**

At the beginning of 2020, in an “annual message,” I announced that the city council would take up amendment of our city’s tree law, our regulation of tree removal. For years there had been resident comment that our existing law was too weak. Property rights advocates had voiced resistance to change. The COVID shutdown hit in early 2020, but even so, in November 2020, I publicly announced the members of a tree subcommittee of the council to move on the topic. I appointed those with diverse views to see if a compromise could be proposed that might have sufficient public support. The subcommittee found that it could agree that a primary remaining cause of large-scale tree removal in our developed city was “flag lot” development ((i.e., inserting houses behind existing houses in formerly green spaces). The tree subcommittee members, referencing tree protection, supported city legislation highly limiting both flag lot and steep slope development, legislation passed by the council for multiple reasons in early 2022.

Rye was flooded by Hurricane Ida in September of 2021, causing a tremendous allocation of city time and resource to flood and stormwater recovery and resilience efforts. Many other city initiatives slowed as a result. In addition, one of the three members of the tree subcommittee passed away. In summer of 2022, the tree subcommittee (with a new member) began corresponding with city staff towards further tree law amendment. This was announced to the entire council in writing in September 2022. Unfortunately, staff was too busy to be responsive to this effort and it did not progress through fall budget season and year end.

In short, there was an ongoing effort to achieve an improved tree law. That effort had had some recent success in passage of flag lot and steep slope development restrictions. We succeeded in passing a moderate, amended tree law following the ethics incident.

### **II. The entire incident was unusually speeded.**

There was a quarter acre of property behind my house that the owner had allowed to remain tree-covered for more than fifty years. The neighbor passed away. The property was

put up for sale privately. In the last day or two of January '23, I saw a man among the trees taking notes on a clipboard. He told me he was pricing removal of the trees and that it would take place within a week. Soon after, I went to city hall to find out if the property had been sold, which it had. At city hall, I encountered the city planner, Miller, who surprised me with the information that the clearcut would not be subject to any city law because the lot faced on a private road. I later phoned the corporation counsel (at the time outside counsel) to see if that information was correct. She confirmed it, but suggested the imposition of a tree cutting moratorium as soon as possible, with a renewed effort to pass an amended tree law to follow.

I recused, passing the lawyer's advice to the deputy mayor, who was on the council tree subcommittee. She and two other councilmembers (both on the tree subcommittee) properly noticed a special council meeting for early the following week. On the intervening Saturday, however, a large crew of tree cutters clearcut the lot of an estimated forty mature trees. In sum, it was apparent at the outset and integral to the Corporation Counsel's suggestion that the council move as quickly as it could. Events proved that even that speed was too slow.

### **III. The Meetings in Question**

It may be unclear that two council meetings are involved. On February 6, the special meeting took place and the three councilmembers who contacted the board boycotted. I had unrecused and attended, making a quorum of four. That meeting teed up a proposed draft moratorium for public hearing on February 15 (when I would be away). The boycotting councilmembers sought advice with respect to their participation on February 15.

### **IV. Minor Curiosities**

I am described as identifying myself in two places as a resident and not as mayor. I am not sure what is intended by this description. I did not in any case identify myself one way or another.

The Corporation Counsel is said to have observed that she had not had as many calls from residents as in other moratorium cases. It is unclear to me why many residents would have called her, however, our other cases were relatively slow moving. In this case, the alarm over this incident was just beginning even as the trees were falling. Immediate neighbors were reaching out to me (recused) or nearby former councilmember Hurd.

Protection of my property is thought to be a theme. My property value has likely gone up with construction behind my house of a home priced at roughly twice the value of mine.



## CITY OF RYE

CITY HALL • RYE, NEW YORK 10580

TELEPHONE (914) 967-5400

### CONFIDENTIAL ADVISORY OPINION

To: Councilmembers William Henderson, Josh Nathan and Lori Fontanes

From: Board of Ethics Chairperson Beth Griffin Matthews and Members Edward B. Dunn and Edward J. Stein.

Date: February 13, 2023

Re: Joint Request for Confidential Advisory Opinion related to participation in council actions regarding the proposed tree moratorium

---

Dear Councilmembers Henderson, Nathan and Fontanes,

We refer to your requests on February 8, 2023 (from Councilmember Henderson) and February 10, 2023 (from Councilmember Nathan) for advisory opinions and Councilmember Fontanes' verbal inquiry on February 10 shortly before the Board meeting. Due to the similarities between the questions raised and in the efficiency of time, we have asked for your consent to provide a single opinion to all of you. All three of you have consented. The threshold question asked is "Whether it is appropriate for a councilmember to attend and vote on actions pertaining to the proposed tree moratorium at the upcoming February 15, 2023, council meeting?"

On February 10, 2023, the fully constituted Board of Ethics convened. Both Greg Usry and Kristen Wilson, Esq. recused themselves as a voting member of the Board. In Attorney Wilson's stead, Mark W. Blanchard, Esq. sat in as limited special counsel to the Board.

While a detailed history is not necessary here, several events we believe are pertinent to our ultimate findings. The pertinent facts as we know them are summarized as follows:

- On Thursday February 2, 2023, Mayor Josh Cohn, presenting himself as a "resident" and therefore not in his Mayoral capacity, inquired with Christian Miller about the property located directly behind his home on Turf Avenue and what the City's regulations permitted regarding tree removal. The Mayor, again presenting himself as a resident, also spoke with Corporation Counsel Kristen Wilson about what, if anything, could be done to stop the

clear cutting of the Turf Avenue property. Corporation Counsel mentioned there is always the option of a moratorium or, for more immediate relief, one could seek a temporary restraining order in court. In response to questions from the Mayor regarding pursuing the option for enacting a moratorium, Corporation Counsel explained the timeframes that would be necessary to notice a special meeting and then schedule a public hearing prior to adoption. The Mayor, so informed, then indicated that he would have to hand this issue off to the Deputy Mayor as he would be directly impacted by any decisions and therefore stated his recusal.

- On the evening of Thursday February 2, 2023, Councilmembers Bill Henderson, Josh Nathan and Lori Fontanes received a text from another Councilmember asking for their availability to attend a Special City Council meeting to occur on Monday February 6, 2023 for the purposes of starting the process to pass an emergency moratorium on "clear cutting" of trees on property in former councilmember Emily Hurd's neighborhood. The Councilmember stated that Emily Hurd and their neighbors were "beside themselves as a developer is looking to chop down a whole lot" in their neighborhood.
- Shortly thereafter, Councilmembers Henderson, Nathan and Fontanes learned that the property where trees were to be chopped down on Turf Avenue abutted the Mayor's property.
- On Friday, all three inquiring councilmembers (Henderson, Nathan and Fontanes) contacted the Councilmember who had requested a Special City Council meeting and advised her that they were concerned about the appearance of impropriety, due to the fact that this type of tree clearing activity had been going on for years and now they were being asked to take the emergency step of calling a special meeting to hurriedly pass a moratorium to stop an action that could and would be seen by many as the Council taking special or extraordinary action that benefitted the Mayor personally.
- As of Friday, February 3, Councilmembers Henderson, Nathan and Fontanes all indicated that they would not be attending and understood that the Mayor was going to recuse himself due to the proximity to his property.
- On Friday, February 3, Corporation Counsel corresponded with the six councilmembers (not the Mayor) addressing the concerns regarding the appearance of a conflict raised by some councilmembers and the Code of Ethics. She also mentioned in an email that Mayor Cohn's complaint was the only complaint she had heard relating to the clear cutting of the Turf Avenue property, in contrast to the broader public outcry that led to the initiation of the legislative process in connection with other recently adopted moratoria.
- Shortly after Corporation Counsel's email, concerned residents began emailing City staff highlighting the purported concern for the Turf Avenue property.
- On Friday February 3, 2023, the Special Meeting was publicly noticed because three Councilmembers called for it.
- On Saturday February 4, 2023, many trees on the Turf Avenue lot were lawfully cut down.
- The emergency meeting took place on Monday February 6, 2023, with three Councilpersons and the Mayor attending; due to the events on February 4, the Mayor no longer believed he had an actual conflict or that there was an appearance of a conflict.

## **Findings and Advisory Opinion**

It is our conclusion that any action taken by any of the Councilmembers in furtherance of the tree moratorium at the February 15, 2023, meeting would be cloaked with an appearance of a conflict or an impression of impropriety that would violate Section 15-10(B) of the City's Code of Ethics, which states:

An officer or employee of the City shall not by his/her conduct give reasonable basis for the impression that any person can unduly influence him/her or improperly enjoy his/her favor in the performance of his/her official duties or that he/she is affected by the kinship, rank, position or influence of any party or person.

Although not raised as a question by Councilmembers Henderson, Nathan and Fontanes, we find that the actions taken by the City Council leading up to the emergency meeting on February 6, 2023, did violate Rye City Code Section 15-10(B), because it appears that the primary reason the emergency meeting was called was to protect the trees on Turf Avenue immediately adjacent to the Mayor's property. We find that the extraordinary rush to call the meeting gives a "reasonable basis for the impression" that the Councilmembers who attended and voted at the February 6 meeting were influenced to take such action because of the proximity to the Mayor's property and to protect the Mayor's property and therefore to provide an elected official with a personal benefit. Moreover, we do not find that the clear cutting of the Turf property erases or negates any conflict or appearance of a conflict going forward with respect to the timing of City Council action relating to a tree cutting moratorium.

As such, we do believe that under these circumstances, an elected official could vote "no" or "abstain" on any actions relating to the February 15 public hearing without violating the City's Code of Ethics. Accompanying the "no" vote or abstention, the elected official could explain that it is not the substantive issue regarding trees that given rise to concern, but rather, the extraordinarily expedited process that led to calling for this emergency meeting and the setting of the public hearing that are the basis for the declination to vote in favor of an otherwise worthy legislative action. To remove the potential cloud of impropriety yet advance the substantive issue, the Council could simply re-commence the process with a newly called hearing on either a moratorium or on the proposed amendments to City Code Chapter 187 ("Trees").

We believe that the above opinion encompasses the primary questions as it relates to the Code of Ethics that all three of you have raised. Councilmember Nathan raised additional questions that have been referred to the Corporation Counsel for a response as the Code of Ethics is not implicated.

Respectfully submitted,

/s/

Beth Griffin Matthews, Edward B. Dunn, Edward J. Stein

---

## February 13th Advisory Opinion

---

**From** Cohn, Josh <jcohn@ryeny.gov>

**Date** Tue 2/21/2023 5:02 PM

**To** Beth Griffin <bgm22@optonline.net>; edward30dunn@gmail.com <edward30dunn@gmail.com>; Ted Stein <tedstein01@gmail.com>

Beth, Ted and Ted:

I was out of the country last week and was distressed to hear of the BoE position on the recent Council special meeting. I now have had the chance to read the BoE opinion in full and talk to my colleagues, and my distress has only increased.

I have learned, and it is clear from the opinion, that you did not speak to the Council members who called the meeting. Nor did you speak with me. As a result, the BoE process lacked fundamental fairness.

The factual summary in the opinion is plagued by misstatement and omission. The opinion lacks important context.

The conclusion robs my independent and hard-working Council colleagues of the respect their autonomy deserves. Even worse, the conclusion robs my neighbors of their right to timely Council action on issues that they may share with me.

All this despite the fact that I voluntarily recused before any Council action, including the call to meeting, was taken.

I understand that the effort by my colleagues to call a special meeting has been deemed extraordinary (and damning) by the BoE. The only thing extraordinary in this situation was the rare opportunity for Council action prior to a quarter-acre clear cut.

Would you please withdraw the opinion (the confidentiality of which has been violated) and hear Council Members Johnson, Souza and Stacks, and me?

Thank you,

Josh

---

## Rye Board of Ethics

---

**From** Mark Blanchard <mblanchard@blanchardwilson.com>

**Date** Wed 2/22/2023 12:46 PM

**To** Cohn, Josh <jcohn@ryeny.gov>; Souza, Julie A. <jsouza@ryeny.gov>; Johnson, Carolina J. <cjohnson@ryeny.gov>; Stacks, Benjamin M. <bstacks@ryeny.gov>; Henderson, William T. <whenderson@ryeny.gov>; Nathan, Josh C. <jnathan@ryeny.gov>; Fontanes, Lori M. <lfontanes@ryeny.gov>

Good afternoon Mayor Cohn and members of the Rye City Council,

The Rye Board of Ethics ("Board") has now received emails from the Mayor and the three other Councilmembers who did not request an opinion from the Board. As you are aware, on Monday, February 13, the Board issued a confidential advisory opinion ("Opinion"), which was given only to the Councilmembers who requested it. Upon my advice as special counsel to the Board on this issue, the Board has been advised not to engage in any further discussions relating to the Opinion.

Best,  
Mark

Mark W. Blanchard  
Blanchard & Wilson, LLP  
235 Mamaroneck Avenue, Suite 401  
White Plains, NY 10605  
Office: (914) 461-0280  
Mobile: (914) 582-7809

This electronic transmission by the law firm of Blanchard & Wilson, LLP contains information that may be confidential or proprietary, or protected by the attorney client privilege or work product doctrine. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents hereof is strictly prohibited. If you have received this transmission in error, please notify Blanchard & Wilson, LLP at (914) 461-0280. Thank you.

We are required by IRS Circular 230 to inform you that any statements contained herein are not intended or written to be used, and cannot be used, by you or any other taxpayer, for the purpose of avoiding any penalties that may be imposed by Federal Tax Law.



# New York State Conference of Mayors and Municipal Officials

119 Washington Avenue, Albany, New York 12210  
Ph (518) 463-1185 • info@nycom.org • www.nycom.org

January 29, 2025

Mayor Josh Cohn  
1051 Boston Post Road  
Rye, New York 10580

Re: Powers and Procedure for a Local Board of Ethics

Dear Mayor Cohn:

I am writing in response to your inquiry regarding the powers and procedure of local boards of ethics and ethical standards. Due to the volume of requests, NYCOM will only respond in writing to those facts and questions presented in writing. It is the policy of the NYCOM Executive Committee that a copy of all written staff responses to member inquiries be provided to the mayor and the attorney of the inquiring municipality. Please note that NYCOM attorneys do not maintain an attorney-client relationship with NYCOM members or their employees or officers. This letter is an opinion of the NYCOM legal staff and is not legally binding.

As previously noted, NYCOM will only respond in writing to the facts and questions presented in writing. Your inquiry involves myriad issues related to the City of Rye's board of ethics, including its powers and procedures. Due to the extensive nature of your request, this opinion is a response to the heart of your inquiries and does not address each specific issue and question raised. You inquire as to the authority of boards of ethics to conduct investigations, the process for noticing meetings of public bodies, applicable ethical standards, the process of an official recusing themselves from participating on a matter, and access to a board of ethics' records and opinions, including the confidentiality of a board of ethics' opinions and communications. While this opinion of the NYCOM staff will discuss general recommendations regarding board of ethics' powers and procedures, it will not provide interpretations of the City's specific code provisions nor will it weigh-in on specific findings or determinations of the City of Rye's board of ethics as the NYCOM staff is not privy to all of the proceedings of such board which led to any decision.

## **Boards of Ethics – Powers and Procedures**

By default, local boards of ethics are governed by General Municipal Law § 808, which authorizes their creation and establishes their default powers and procedure. Unlike the adoption of a local code of ethics, state law does not require municipalities to establish a local board of ethics. Pursuant to General Municipal Law § 808, the local government's governing body appoints members of its local ethics board, which must consist of at least three members. While a majority of a local ethics board's members may not be officers or employees of the subject municipality, any ethics boards created pursuant to Section 808 must include at least one member who is an elected or appointed municipal officer or employee of the municipality. While state law requires at least one elected or appointed municipal officer or employee of the municipality to serve on the board, municipalities should be mindful that certain municipal officers and employees should not be appointed to the board of ethics as it would be impracticable since they would potentially have to recuse themselves from participating on the board in

many if not most sessions. Two such positions are the municipality's top official responsible for overseeing and directing all subordinate officers and employees and the municipal attorney. While NYCOM does not recommend making the city attorney a member of the city's board of ethics, the board of ethics may seek advice from the city attorney or retain its own counsel to the extent that the city council has made appropriations available for such expense.

If a municipality has adopted a local board of ethics pursuant to General Municipal Law § 808, such board may only render advisory opinions to the officers and employees of the municipality that established the board. Moreover, local boards of ethics operating solely pursuant to General Municipal Law § 808 have no authority to conduct investigations (e.g., accept charges or complaints of unethical conduct, subpoena witnesses and records, conduct hearings and take testimony and evidence regarding alleged unethical conduct, and make findings) (see 1991 N.Y. Op. Atty. Gen. (Inf.) 1135), to prohibit a local legislator from voting on a matter properly before the legislative body or to remove a local legislator from office (see Opns St Comp, 1981 No. 81-216), or to subpoena municipal employees and contractors (see 1964 N.Y. Op. Atty. Gen. No. 141).

Notwithstanding General Municipal Law § 808, a local government may adopt a local law that creates a local board of ethics that has powers that go beyond those set forth in General Municipal Law § 808. The Office of the New York State Attorney General has opined that local governments may, by enacting a local law, grant to their local board of ethics the authority to receive complaints alleging violations of ethics regulations, to investigate these complaints, and to conduct investigations on its own initiative as to whether violations of ethics standards have occurred. (1991 N.Y. Op. Atty. Gen. (Inf.) 1135). Additionally, the Attorney General has opined that a municipality may enact a local law establishing a local board of ethics whose composition differs from what is authorized by General Municipal Law § 803(3).<sup>1</sup> In no instance may a board of ethics be empowered to direct a member of a local legislative body on how to vote on a matter before the legislative body.

A city board of ethics that has been adopted solely pursuant to General Municipal Law § 808 is only authorized to issue advisory opinions to a city officer and employee in response to a written request from such officer or employee. While the language in Section 808 does not expressly address the extent or nature of the advisory opinion that can be sought or given, generally, Section 808 has generally been interpreted as authorizing local officials or employees to request advisory opinions relating to their own conduct or situation. In other words, Section 808 has been interpreted as a means of local officials and employees obtaining ethical guidance for their own behavior but not for the behavior or conduct of other officials. If a local government authorizes its board of ethics to conduct investigations of individuals at the request of other officials, employees or individuals, the local law authorizing the board of ethics should clearly set forth the extent of such powers held by the board of ethics.

If a local law has not been enacted granting a board of ethics broader powers than what are set forth in General Municipal Law § 808, then the ethics board should not take up issues that were not specifically asked in the request for an opinion put to such board.

A board of ethics that exceeds its statutory authority is acting in an ultra vires manner and such actions have no force or effect. Moreover, such ultra vires actions risk politicizing the board, which should strive to remain neutral and keep an appearance of impartiality. Finally, if a board of ethics intentionally exceeds the scope of its authority, such action could be considered a violation of the individual board member's oath of office.

Finally, you inquire about the propriety of a board noticing a meeting for one stated purpose but then conducting the meeting for a different purpose. Regarding this issue, State law imposes only minimum requirements for conducting meetings. Specifically, the NYS Open Meetings Law only requires public

bodies to provide notice of the name of the public body meeting, and the date, time, and location of the meeting. In other words, a public body may conduct a meeting for any reason so long as it complies with the timing requirements and gives the date, time, and location the public body is meeting. If a public body decides to conduct a meeting for one purpose but then decides to add something to the agenda or change the agenda entirely, it may do so.

### **Due Process in Ethics Investigations**

As a general rule, government actions which would deprive an individual of a property interest or a right would be subject to procedural due process requirements, meaning that (1) the individual should be notified of the proceeding and (2) given an opportunity to hear the charges and claims against them and respond to them.<sup>2</sup> Assuming arguendo that the City of Rye's board of ethics has been authorized by a City of Rye local law to conduct ethics investigations of individuals (as opposed to simply providing advisory opinions to individuals regarding their own conduct and circumstance), any investigatory activities should provide each subject of an investigation procedural due process.<sup>3</sup> This practice of (1) notifying individuals of ethics investigations and (2) giving them an opportunity to hear the charges and claims against them and to respond to such charges should be complied with even if the ethics board does not have any power or authority to discipline the official or employee because of the potential stigma that could result from such ethics board decisions.<sup>4</sup> Finally, a local official who is the subject of an investigation must be allowed to represent themselves or be represented by someone else during the hearing.

### **Appearance of Impropriety Standard**

You also inquire about an ethical standard in the City's code of ethics. Specifically, Section 15-10(b), which provides as follows:

An officer or employee of the City should not by his/her conduct give reasonable basis for the impression that any person can unduly influence him/her or improperly enjoy his/her favor in the performance of his/her official duties or that he/she is affected by the kinship, rank, position or influence of any party or person.

Specifically, you inquire whether such provision functions as an "appearance of impropriety" standard. First, it must be noted that the appearance of impropriety standard is a court made standard that is the common law definition of what most lay people would consider a conflict of interest. Second, the State's "appearance of impropriety" standard is not entirely a clear, bright line test. Consequently, it can be difficult to ascertain when a local official has violated the standard or should recuse themselves from deliberating or acting on a matter before them. Additionally, local governments should be careful about crafting their own ethical codes that impose standards that are too vague or broad. It is not uncommon for local officials, in the interest of enacting local ethics codes to bolster the public's faith and confidence in their government officials and institutions, to create standards so restrictive that local officials are constantly having to recuse themselves. Such results can have negative unintended consequences, primarily paralyzing local governments and public bodies while at the same time disenfranchising the individuals who put the officials into office, as those members of the public who voted for the recusing official lose their voice. Local officials are strongly encouraged not to craft overly broad or vague ethical standards, but in the alternative, to allow disclosure of interests and the ballot box to serve as the check on conduct.

Finally, it must be noted that if a public official recuses themselves from participating in a specific matter and the reason for the recusal ceases to exist, the official may withdraw their recusal and resume participating in the matter before the board.

## **Records of Boards of Ethics**

Another issue that you inquire about are records generated by or provided to the board of ethics. Records of local boards of ethics are subject to the same laws and must be handled in the same manner as local government records generally.

### ***The NYS Freedom of Information Law***

The Freedom of Information Law (FOIL)<sup>5</sup> sets forth the guidelines for public access to municipal records. FOIL requires that all agency records be made available for public inspection or reproduction unless a record falls under a specifically designated exception to disclosure.

The NYS Committee on Open Government was established within the New York State Department of State as mandated by FOIL. The Committee provides individuals with advice in response to written or telephone inquiries and provides written opinions to written requests. The Committee can be contacted at: Committee on Open Government, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231; Ph (518) 474-2518; <https://opengovernment.ny.gov/>.

### **Who is Subject to FOIL?**

Agencies are subject to FOIL's disclosure requirements. The Public Officers Law defines an agency as any state or municipal department, board, bureau, division, or committee or any governmental entity performing a governmental or proprietary function for the state or a municipality.<sup>6</sup> This includes villages, towns, counties, cities, school districts and special districts. In a city, this includes all separately created boards, including a board of ethics.<sup>7</sup>

### **Records Available Under FOIL**

A record is considered any information available in physical form.<sup>8</sup> This definition includes photographs, designs, maps, microfilms, and records maintained electronically. It includes all records pertaining to city business regardless of where the record is kept. This would include city records that may not be physically located in the city clerk's office, such as a letter addressed to the city, which the mayor may have at his or her home, or records pertaining to city business even though they may be kept in the city attorney's office.

Audio and video recordings are available under FOIL. Therefore, if the city clerk or an elected official records a meeting, the audio or video recording is subject to disclosure under FOIL.

The city's records access officer, as designated by the city council, is legally empowered to process requests for records under FOIL. The records access officer is responsible for coordinating the city's response to FOIL requests. All requests for city records, including records of the board of ethics, should be forwarded to the records access officer. To avoid confusion as to the application and requirements of FOIL, other employees of the city should not disclose city records unless specifically authorized to do so.

City officials cannot prevent disclosure of a record by defining a record as "confidential" or promising someone else that the record will remain confidential. The record would still be available unless it fell within one of the statutory exceptions to disclosure that are enumerated in Public Offices Law § 87(2).<sup>9</sup> Regarding records of boards of ethics, there are three possible grounds for withholding a record: (1) if the record is made confidential by state or federal law, (2) if disclosure of the record would result in an unwarranted invasion of personal privacy, or (3) if the record is "inter-agency or intra-agency materials" which are not (a) statistical or factual tabulations or data; (b) instructions to staff that affect the public; (c) final agency policy or determinations; or (d) external audits.

Regarding this issue, the Committee on Open Government has issued a lengthy opinion on the subject of board of ethics records. In lieu of citing large sections of the opinion herein, I will refer you to that opinion (FOIL-AO-f8922), which is available online at <https://docs.dos.ny.gov/coog/ftext/f8922.htm>.

***Confidentiality of Board of Ethics Communications and Records***

Finally, you inquire about the confidentiality of board of ethics records, including communications to and from the board and any opinions or findings issued by the board. First, a board of ethics has no authority or power to make or designate records it generates or that are within its custody and control as confidential. Moreover, a board of ethics labeling a record as "confidential" has no force and effect. Rather, the ability to make records confidential resides solely with the State of New York and the federal government. Stated differently, unless a specific provision of state or federal law makes a record confidential, local governments and their agencies must handle such records pursuant to FOIL and the State's records management laws as non-confidential records, and a board of ethics may not simply clothe communications or its records in confidentiality by proclamation. As the Committee on Open Government has opined:

[A]n assertion or claim of confidentiality, unless it is based upon a [federal or State] statute, is likely meaningless. When confidentiality is conferred by a statute, records fall outside the scope of rights of access pursuant to §87(2)(a) of the Freedom of Information Law, which states that an agency may withhold records that "are specifically exempted from disclosure by state or federal statute". If there is no statute upon which an agency can rely to characterize records as "confidential" or "exempted from disclosure", the records are subject to whatever rights of access exist under the Freedom of Information Law [see Doolan v. BOCES, 48 NY 2d 341 (1979); Washington Post v. Insurance Department, 61 NY 2d 557 (1984); Gannett News Service, Inc. v. State Office of Alcoholism and Substance Abuse, 415 NYS 2d 780 (1979)]. As such, an assertion of confidentiality without more, would not in my opinion guarantee or require confidentiality.<sup>10</sup>

I hope that this opinion is helpful. If you have any questions or would like to discuss this issue further (or any issue for that matter), do not hesitate to contact me at (518) 463-1185 or by email at [wade@nycom.org](mailto:wade@nycom.org).

Respectfully,

*Wade Beltramo*

Wade Beltramo  
NYCOM General Counsel

---

<sup>1</sup> Op. Atty. Gen. 86-44.

<sup>2</sup> See Thomas v. Held, 941 F. Supp. 444 (S.D.N.Y. 1996).

<sup>3</sup> See Lee TT. v. Dowling, 87 N.Y.2d 699 (1996).

<sup>4</sup> Id.

<sup>5</sup> Public Officers Law, Article 6.

<sup>6</sup> Public Officers Law § 86(3).

<sup>7</sup> See FOIL-AO-14371, available online at <https://docs.dos.ny.gov/coog/ftext/f14371.htm>.

<sup>8</sup> Public Officers Law § 86(4).

<sup>9</sup> Public Officers Law § 87(2).

<sup>10</sup> FOIL-AO-f8922, available online at <https://docs.dos.ny.gov/coog/ftext/f8922.htm>.

## Spoken December 3 – Mayor Josh Cohn

With the Cuomo ethics hearing delayed, Leventhal can offer us certain times on December 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>. Let's please hire him and begin. Frankly, the Board of Ethics badly needs the help he can give.

See these two snapshots, side by side, and then tell me we don't need help:

### Board of Ethics Prior Process

#### So Far As I Have Seen It

- Complaint received by Board
- Notice given to accused
- Copy of complaint given to accused
- Hearing for accused
- Board renders decision**  
(without legal authority, but at least with semblance of due process)

### Board of Ethics 2023 Case

- Complaint (actually Board made its own) received by Board
- No notice to or communication with accused*
- Board renders decision**
- Board denied request for post-decision hearing or communication*
- Board refuses to give copy of complaint to accused*

Even looking past the fact that our Board of Ethics has no authority to answer a question not raised in writing by an inquiring official with respect to self (that is, no authority to investigate complaints), most would concede that the board should at least have consistently provided some semblance of due process. It didn't. The unfairness is blatant.

I think Rye wants a board of ethics that is fair and consistent. **We don't have it.**

I don't know if Rye wants a board of ethics that can take or initiate and answer complaints. **If we do, we don't have it.** If we want it, we need to amend our law to authorize it. If we amend our law to authorize it, then like other towns that have such boards of ethics, we need to supply the rules to guide the board in its work.

The need for due process; the lack of board legal authority; the need to avoid forcing recusals on vague grounds that disenfranchise citizens all were noted in the Leventhal opinion, the NYCOM opinion and even back in 2023. This is not new. Councilmembers claimed the January NYCOM opinion was just general rules that for some reason did not apply. Leventhal applied those rules and more. He showed our board of ethics making many mistakes.

The board's flawed 2023 opinion hurt several councilmembers and their families. Julie has spoken on this repeatedly. We did of course have a councilmember retire early, likely for this reason. I don't think the people that I appointed to the board years ago could be happy with that. Nor can they be happy in their present state of uncertainty. Right now, we have a board unable to file meeting minutes in accordance with city policy or publish the redacted reports required by city code. Let's help them and help those wounded by the board in 2023. Let's begin ethics code review now. All I am requesting is that we get Leventhal in for that first review of the whole ethics code, not just the two sections he has already touched on. And let's do that when Julie and I can attend along with Josh and Bill – all the survivors of 2023. Fair and aboveboard.