

**Shelburne Ethics Committee Hearing Minutes 01/09/19**  
**Wednesday, January 9, 2019 at 7:00 PM**  
**Meeting Room One**  
**Town Center**

**Committee Members Present:** Chair Lee Suskin, Vice Chair Tom Little, Mike Ashooh, Bill Deming, Gwen Webster, Alternate Pete Gadue, Clerk of the Committee Diana Vachon

**Public Attendees:** May Mindell, Anne Powell, David Hillman, Ron Gagnon, Town Manager Lee Krohn, Chair of the Design Review Board (DRB) Jeff Pauza, Patty Pauza, Peter Raymond, Mark Sammut William Posey, Normand Stanislas, Jean Stanislas, Town Planner Dean Pierce, Mary Kehoe, Jeff Hodgson, VCAM Eric Herz-O'Brien

At approximately 7:10 PM Chair Suskin called the hearing to order in the matter of Pierce vs. Pauza Complaint #20181211-001

Chair Suskin administered the oath to Mr. Pauza and Mr. Pierce.

Chair Lee Suskin, Vice Chair Tom Little, Peter Gadue, Bill Deming, Mike Ashooh, and Gwen Webster of the Committee introduced themselves. Chair Suskin introduced the clerk of the committee Diana Vachon and stated that Mr. Gadue is alternate member of the Committee.

Chair Suskin invited members of the Committee to disclose any conflicts of interest or appearances of a conflict of interest. Hearing none from the Committee Chair Suskin stated that he communicated with the Complainant, Mr. Pierce, the day he filed the Complaint. On that date, Chair Suskin asked Mr. Pierce if he wanted to wait to file the Complaint because that night the Selectboard had an opportunity to adopt a newly revised Ordinance. Mr. Pierce did not want to wait. At that point Chair Suskin stated he had not read the Complaint and did not discuss the contents with Mr. Pierce. The Chair does not feel it will affect his ability to participate tonight. Hearing no objections, the Chair continued.

**Determination Whether or not to Proceed with the Hearing:** Due to the documentation that has been submitted, it might not be necessary for the Committee to hold a full hearing. Chair Suskin listed the received documentation and brief summaries of the contents of each document. The Complaint filed by Mr. Pierce, as a Shelburne resident, on 12/11/18 alleges that Mr. Pauza had a prejudgment on a Shelburne Green application to the Development Review Board (DRB). Mr. Pauza's Formal Response stated that he will recuse himself from Shelburne Green matters as the integrity of the DRB is of utmost importance. But he does not admit nor deny that he violated the Ethics and Conflict of Interest Ordinance of 2015 because he does not understand that what he did that is allegedly wrong. He and the DRB would like clarification when a DRB member may express opinions and be able to participate.

The Chair explained that we are not here to give advice. The 2015 Ordinance will not that. Under the new 2018 Ordinance, we are able to give guidance. We may do that later.

Mr. Pauza asked what besides recusal could happen. Vice Chair Little: Chapter 5 of the 2015 Ordinance states in addition to the remedy of requiring recusal and placing a copy of the Committee's decision in a public file, the Committee may publicly censure, and may recommend removing the public official for cause. These are possible sanctions, but not indications that will happen.

After the Committee asked questions and there was a brief discussion of the fact that Mr. Pauza had recused himself from the Shelburne Green application, some Committee members did not see the need to continue with the hearing. Mr. Pierce wants Mr. Pauza found in violation of the Ordinance. The Chair and the Vice Chair determined that a motion by a Committee member is needed not to proceed with a hearing. The Chair asked if there were any objections to proceed. Mr. Gadue and Mr. Deming objected and stated reasons for the objection. The Chair asked for a motion. Mr. Gadue being the alternate cannot make a motion. The Chair asked Mr. Deming if he is making a motion. Mr. Deming said no. The Chair asked if anyone else on the Committee would like to make a motion. Mr. Ashooh is in favor of continuing with the hearing. Hearing no motion, the Chair opened the hearing and reminded the parties that they are still under oath.

**Proceeding with the Hearing:** The Chair proceeded to follow the hearing steps laid out on the Rules of Procedure. We have the parties' contact information. Neither party had questions on the hearing procedure.

Disclosures have been made - are there any others? Hearing none, the Chair continued the hearing starting with Mr. Pierce.

Mr. Pierce said he was relying on his written submissions. He stated the necessity of quasi-judicial boards to be fair and equal to all. And it is up to the Committee to determine what a prejudgment is and if Mr. Pauza's expressed opinion and view of Shelburne Green fits that definition of prejudgment. Mr. Pauza cross-examined Mr. Pierce and said that some of the video evidence submitted had nothing to do with Shelburne Green. Mr. Pauza wanted clarification of the relevance of these videos. Mr. Pierce explained that he is only here because of his concerns of prejudgment. And these videos bolster the original claim.

Mr. Pauza made his opening statement. When the DRB is in session, we will form opinions and they will be expressed. He is concerned that they must be quiet. There is no dispute that he expressed an opinion on Shelburne Green. But he is open to changing his mind. The DRB stands by its rulings. There are no casual rulings. There needs to be a change in conditions to change a ruling. It is necessary to adapt rules to market conditions and Shelburne Green met the criteria. In hind sight, if Mr.

Pauza had known in the fall of 2018 that he needed to make the disclosure of the statement he made two years prior, he would have made that disclosure and stated that he could continue in a non-biased manner.

Committee members asked clarifying questions. There was discussion around the DRB's quasi-judicial role and non-quasi-judicial role. It was clarified that the DRB makes judgments based on the zoning bylaws and town plan which are not created by the DRB. The DRB only gives feedback on the rules to the Planning Commission when the rules are unclear and the DRB needs clarification on a rule. Mr. Pierce cautions that the DRB trying to influence policy is problematic and creates conflict when applications come in. Mr. Pauza stated a secondary role of the DRB that identifies issues with the clarity of the rules or design. And they ask for more information. If the rule is ambiguous, the DRB will side with the landowner. The DRB gives feedback to the Planning Commission not for policy but for clarity.

Vice Chair Little stated the Stowe Club Highlands rule of law, involved in the Shelburne Green application, is complex and asked Mr. Pauza to take us through the proceedings of that application. After some elaboration, Mr. Pauza explained the applicant said to the DRB that the applicant would not propose a change in café hours. Mr. Pauza responded to this and offered that he would consider it. The applicant did not pursue it at the time. Two years later, Mr. Pauza said that changes in conditions warranted a change in café operating hours. There were no conversations with Shelburne Green outside the DRB meetings.

**Final Comments:** Mr. Pierce stated that the Ordinance bars public statements of prejudgment. He feels a prejudgment has occurred. It is crucial that the DRB members be fair and open.

Mr. Pauza stated he has no predisposition to hours. The client came in and while in session he (Mr. Pauza) provided an opinion. Had he known that would have jeopardized his ability to participate now, he would have disclosed. Shelburne Green decided to drop it in 2016. But last month or so, Shelburne Green reapplied and it passed.

**Closed the Hearing:** The Chair closed the hearing. The public wanted to make comments. The Chair would not allow public comments. Mr. Pauza did not bring any witnesses. It was not clear to Mr. Pauza that he could present other witnesses.

Call to re-open the hearing, to call witnesses. We do not have an admission of a violation.

**Reopened the Hearing:** The Chair reopened the hearing. Mr. Pauza asked if there was anyone who wanted to speak on his behalf. The following people raised their hands: Mary Kehoe, Mark Sammut, Lee Krohn, David Hillman, Norm Stanislas and Bill Posey.

The Chair asked them to stand and administered the oath.

**Witness Testimony:**

David Hillman is a member on the DRB. The DRB Rules of Procedure definition of the conflict of interest at Section III. C. 3. states, "A situation where a board member has publicly displayed a prejudgment of the merits of a particular proceeding before the board. This shall not apply to a member's particular political views or general opinion on a given issue." Mr. Hillman pointed out a lot of their work is opinion and discussion trying to understand how the applicant is conforming to the rules. These are the rules that the DRB follows.

Bill Posey has been before Shelburne committees for years. The DRB members, the Town Planner and others offer opinions for discussion. It needs to be discussed otherwise just let Dean make all the decisions.

Mark Sammut Vice Chair of the DRB – The Complaint, as he reads it, references Shelburne Green. The videos presented after the complaint was filed do not apply to the Shelburne Green, are taken out of context, and therefore are irrelevant.

Norm Stanislas is the Property Manager at Shelburne Green and also the site contractor. Mr. Stanislas stated he does not know Mr. Pauza outside of the DRB. Mr. Stanislas has been before the board many times and Mr. Pauza has been very professional each time. This is a huge injustice to Mr. Pauza, the DRB and the Town of Shelburne. Please take into consideration the comment has not done anyone any harm.

Lee Krohn – Shelburne Town Manager –It is the job of the DRB to neither favor nor not favor. The Complainant has a bias against the landowner and property. And now a member of the DRB has been taken out of the process. There is now one less member who could hear an application from Shelburne Green without bias.

Mary Kehoe, Selectboard member, but she stated she is here as a resident, ex-DRB member, and Shelburne taxpayer. She served with Mr. Pauza a long time on the DRB. There is no member more dedicated than Mr. Pauza. He wrote the rules down on the back of his name card so he could be able to reference them. And he works hard as a volunteer to understand and be fair. She has seen him change his mind many times. This matter is moot because he has recused himself. And there is no more harm that can befall the town. As a DRB member, she recused herself from this application, because her son was a member of the law firm representing the applicant. She left Meeting Room One and went down the hall to the kitchen. She could hear Mr. Pierce aggressively questioning the applicant from the kitchen.

Lee Krohn spoke again about a larger issue. We ask volunteer members to sit and hear and render decisions. Courts rule that if the laws are vague deference must go to the landowner. The comments in question were in the context of the process, not

at the farmer's market or in a bar. We do not want committee members to stop the conversations in the appropriate setting. If you rule in favor of the Complainant, you are telling our committee and board members they can say nothing in the context of a hearing. If board members cannot say what they think or feel, why are they there?

Mr. Pierce made a few comments. Those who say there is personal motive may themselves have one. And may have an interest in how the DRB rules on Shelburne Green because it may advance their interests. The statement that I aggressively questioned the application when Mary Kehoe recused herself, neglects to recognize the fact that I was at that hearing as a representative of the previous Town Manager to argue a position before the Board. And this position was reviewed and supported by the Town Manager before the hearing. There are two sides to every story. Mr. Pierce requests that the Committee not give much weight to the witnesses' testimony because he did not hear much that is relevant to this Complaint.

Mr. Pauza had nothing else to add to the testimony or final comments.

It was clarified that Shelburne Green includes the brewery and several other businesses that would come before the DRB through the Shelburne Green and not individually. And the brewery is the one related to this Complaint.

Chair Suskin notes that both Mr. Pauza and Mr. Pierce have asked the Committee for education and guidance for the DRB. Based on the comments this evening, he is glad that both parties have requested education. Whether it comes from this Committee or others it will be helpful. Knowing what is permissible in a hearing, in deliberative session, and what you cannot do at all, will be beneficial. The Chair looks forward to working with the Town Manager to bring awareness and clarity to the Shelburne Committees, Boards and Commissions. Thank you all.

8:55 PM – Closed the hearing and entered into deliberative session.

9:35 PM – The Committee came out of deliberative session with no comment.

Respectfully submitted by Diana Vachon Clerk

January 14, 2019.