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State Ethics Commission
Enforcement Division
One Ashburton Place, Room 619
Boston, MA 02108-1501

RE: Complaint of Violation of Conflict of Interest Against
Southborough Selectmen Bonnie J. Phaneuf and John F. Rooney

Dear Sir or Madam:

Please be advised that I represent a group of approximately one hundred seventy (170) citizens of the Town of Southborough in matters relating to the Southborough Zoning Board of Appeals ("ZBA"), the Southborough Board of Selectmen ("Selectmen") and, in particular, former ZBA chairman and current member Leo F. Bartolini, Jr. ("Bartolini").

On December 15, 2016, I filed a Complaint of Violation of the Conflict of Interest Law on behalf of my clients against Bartolini with the State Ethics Commission ("Commission"). On February 16, 2016, I filed a Supplemental Complaint on behalf of my clients against Bartolini with the Commission. Both of those complaints are currently pending before the Commission.

The primary focus of these complaints has been Bartolini's participation in the hearings and decisions by the ZBA on a large residential project entitled "Park Central" which has been proposed by William Depietri of Capital Group Properties, LLC, Southborough, MA ("Depietri"). Park Central is to consist of 180 units of housing under a comprehensive permit pursuant to MGL c. 40B as an affordable housing project and 139 units of market rate housing under a MGL c. 40A, §10 use variance. The use variance was granted by the ZBA on June 10, 2015. The comprehensive permit was granted by the ZBA on August 24, 2016. Both projects

faced significant opposition from neighbors and residents in Southborough, including the citizens I represent.

During the approximate thirty (30) ZBA hearings on the Park Central project before the ZBA, most of which Bartolini served as chairman, my clients were concerned with Bartolini's conduct in terms of failing to adhere to basic principles of zoning law, open meeting law, public records law, his arrogance towards the public and his disregard for public comments and the strong appearance of favorability towards Depietri and the Park Central project. As a result, my clients filed a petition to the Board of Selectmen, dated July 9, 2016 and filed on July 21, 2016, signed by seventy (70) citizens, seeking the removal of Bartolini from his position as chairman and a member of the ZBA. A copy of the petition is attached hereto as Exhibit "A". MGL c. 40A, §12 authorizes the Board of Selectmen to remove a member of the ZBA "for cause" as opposed to "just cause". In response to the July 9, 2016 petition, the Selectmen scheduled a meeting and an executive session for August 2, 2016, presumably pursuant to MGL c. 30, §21(a)(1), of the Open Meeting Law, to hear complaints against, and consider the discipline or dismissal of, Bartolini from his position on the ZBA. However, no member of the petitioners or the public was allowed to attend to testify in support of the petition. Under the Open Meeting Law, the Selectmen had the option to conduct the meeting in open public session and to allow the petitioners to participate fully in the hearing in support of their allegations.

The minutes of the August 2, 2016 meeting, a copy of which is attached hereto as Exhibit "B", reflect that on August 2, 2016, Selectmen Bonnie Phaneuf ("Phaneuf") and John Rooney ("Rooney") both fully participated in the executive session. Clearly included in the executive session were issues presented in the petition related to Bartolini's handling of the Park Central project. Rooney was quoted in a local blog revealing the actual results of the executive session. It was later determined by my clients, from examination of COI disclosure forms and other

public records, that on August 2, 2016, the following conflicts existed regarding Phaneuf and Rooney:

1. Bonnie Phaneuf's son has a financial interest in a company which does business with Depietri. Phaneuf herself was the founding principal of Phaneuf Concrete Cutting from information available on "Mass Corp Lookup".
2. John Rooney, an attorney, is a business tenant as a member of a law firm in a building owned by Depietri in the Park Central Office Park which directly abuts the Park Central residential project.

The minutes of the August 2, 2016 meeting do not show any disclosure of those facts on the record or any public disclosures pursuant to MGL c. 268A, §23(b)(3) prior to the executive session. At the conclusion of the executive session, the Selectmen decided to accept Bartolini's recommendation that he step down as chairman but remain as a full voting member of the ZBA. As stated above, Rooney announced that decision as the then Selectmen Chair, see copy of article dated August 3, 2016 attached hereto as Exhibit "C". The petitioners were aggrieved by the Selectmen's failure to take a position to suspend or remove Bartolini in the face of significant concerns presented regarding his handling of the Park Central project and other important matters. This is critical due to the fact that, on August 24, 2016, Bartolini was one of the three (3) ZBA members who gave final approval to the comprehensive permit. Without his vote, the Park Central project would not have had the three (3) votes required under MGL c. 40B and Depietri would have had to file the application for comprehensive permit anew.

By petition dated September 1, 2016 and filed September 29, 2016, some one hundred seventy (170) people filed a Second Request for Removal of Leo F. Bartolini, Jr., from the ZBA with the Selectmen. (See Exhibit "D") Specifically cited as one of the reasons for the petition was the following:

Continued loss of public confidence in the adequacy of Mr. Bartolini's judgment and temperament for a ZBA role, especially relative to the Park Central site development and ZBA process.

Upon receipt of the petition, the Board of Selectmen met to prepare a list of eight (8) charges to be considered against Bartolini in an open public hearing to be conducted on December 6, 2016. At that meeting, Phaneuf and Rooney allegedly indicated that they would recuse themselves from voting on developing the charges or participating in the hearing. The reasons given to a local publication on or about November 18, 2016 (Exhibit "E") appear to be the following:

1. Phaneuf's recusal was based upon discussions with the Ethics Commission. She believes she may be called to testify based on her role in examples cited in the complaint petition. However the explanation she provided does not appear to have involved advising the Commission of her and her son's financial involvement in Phaneuf Concrete Cutting and its relationship to Depietri as documents in the previous §23(b)(3) disclosures.
2. Rooney said he reluctantly agreed to recuse himself after being instructed by the "Attorney General" that he does have a conflict. Rooney is a tenant at a Park Central office building, owned by Depietri, abutting the development. The "Attorney General" ruled that Park Central is clearly intertwined based on complaints in the petition.

These recusals at this juncture are even more suspicious since, in September of 2016, Phaneuf and Rooney participated in the Selectmen's Flagg Road Safety Forum which dealt with the traffic impact to the residential neighborhood from the Park Central project. Rooney was involved in citing traffic studies that had been done for the project.

On December 6, 2016, the Southborough Board of Selectmen conducted a hearing which lasted for several hours on the eight (8) removal charges against Bartolini. At the outset of the hearing, Phaneuf and Rooney allegedly recused themselves. However, neither of them left the hearing room and they were present during the entire hearing. The petitioners made a power

point presentation, in addition to presenting testimony. (See Exhibit "F") The Selectmen voted to continue the matter to December 19, 2016 for deliberation and decision. On December 19, 2016, when the matter of the continued hearing was advanced on the agenda for discussion by Selectman Cimino, Phaneuf retained her seat at the Selectmen's table and Rooney sat in a chair beside the Selectmen's table. Neither Phaneuf nor Rooney recused themselves from the December 19, 2016 meeting. The Selectmen decided that, rather than deliberating on the eight charges and the evidence from the December 6 hearing, including multiple allegations of conflict of interest violations by Bartolini, the Selectmen would vote to stay the decision on Bartolini pending the results of the State Ethics Commission investigation into the December 15, 2016 Complaint of Violation of Conflict of Interest filed by the undersigned against Bartolini with the Commission. Since December 19, 2016, Bartolini has participated in one (1) ZBA hearing on an appeal by Depietri from the Planning Board's denial of site plan approval for Park Central. The hearing has been continued to April 12, 2017. At the first hearing, I raised the issue of the pending COI complaints against Bartolini before the Commission and requested that Bartolini recuse himself. He refused. The ZBA Chairman, Andrew Dennington, himself an attorney, refused to ask Bartolini to recuse himself and proceed with the hearing.

As a result of a public records request made to the Southborough Town Clerk and the Southborough Town Administrator, the following conflict of interest materials were provided regarding Phaneuf and Rooney and their relationship to Depietri and, consequently, Park Central:

1. Bonnie J. Phaneuf
 - a. 1/11/16 §23(b)(3) disclosure form regarding "Park Central 40B" (Exhibit "G") and the fact that Phaneuf's son, who owns a concrete cutting business, has provided services to a company owned by Capital Group Properties which is controlled by Depietri. Phaneuf states the following on page 2:

However I have made the decision not to take part on the 40B proposal at SHOPC and BOS mtg.

- b. 6/8/16 §23(b)(3) disclosure form related to a "mixed-use development" (Park Central) (Exhibit "H") and the reference to the fact that her son owns the concrete cutting business and has done work for a company controlled by Depietri. Despite the fact that the subject matter of the disclosure relates to the Flagg Road Safety Study Presentation and the traffic impact upon the residential neighborhood from the traffic generated from Park Central, she provides the following response to the important question:

How do your official actions or decisions matter to the person or organization?
None

2. John F. Rooney

- a. 3/2/15 §23(b)(3) disclosure form (Exhibit "I") that Rooney is negotiating a lease with Capital Properties which is controlled by Depietri while at the same time participating in the Selectmen's road layout hearing. However, Rooney fails to complete the section on page 2 as to whether he can perform his official duties objectively and fairly.
- b. 1/20/16 §23(b)(3) disclosure form (Exhibit "J") regarding Park Central project and Planning Board's request for outside counsel with statement that Rooney's law firm leases space from Capital Properties which is controlled by Depietri. This time Rooney completes the statement on page 2 that he feels he can perform his official duties objectively and fairly.
- c. 1/22/16 email from Rooney entitled "Request for Advice". (Exhibit "K") What is particularly glaring about this correspondence is the fact that it appears that Rooney, as an attorney, has not previously sought a written conflict of interest opinion from

town counsel or the Commission in accordance with MGL c. 268, §22. More surprising is the fact that he states that he has "reached out to counsel for Capital Properties to determine if the Flagg Road issues have any substantive impact to the proposed development". That, more appropriately, would be a conclusion to be reached by town counsel or the Commission based upon the submission by Rooney of the detailed factual statement required by §22.

- d. 1/22/16 and 1/25/16 email from Rooney to Selectmen Daniel Kolenda, Bonnie Phaneuf, Paul Cimino and Brian Shea (Exhibit "K") advising them that he has been informed by the State Ethics Commission the he is "unable to participate in any discussions that relate to or may impact the Park Central 40B Project". He goes on to state that the §23(b)(3) disclosure form he filed "does not sufficiently address the matter" and that it has been determined that "we are an 'abutter' to the project and I am an elected official". As an additional area of concern, this communication to the other four members of the Board of Selectmen constitutes a "deliberation", by use of email, outside of a posted public meeting, among a quorum of the Board of Selectmen and violates the provisions of the Open Meeting Law, specifically MGL c. 30A, §20.

In conclusion, the complaints of violation of conflict of interest that I am making against Phaneuf and Rooney are summarized as follows:

1. Bonnie J. Phaneuf

Phaneuf violated the Conflict of Interest statute on 8/2/16 by participating in an executive session relating to Bartolini's conduct on the ZBA, specifically referencing the Park Central project. Phaneuf's violation of §23(b)(3), at a minimum, is on the basis that, failing to make a public disclosure, in writing or verbally, before entering said executive session, she has given my clients the reasonable impression that she is unduly influenced

by the kinship, rank or position of Depietri on Bartolini as a result of her son doing business with companies controlled by Depietri and, consequently, is engaged in protecting Bartolini from removal from the ZBA despite the documented issues regarding the Park Central project. This violation is especially flagrant since she filed two §23(b)(3) disclosure forms in 2016 regarding the Park Central project before this executive session. Phaneuf then compounded the violation by participating in the Selectmen's Flagg Road Safety Forum which related to the traffic impact from Park Central upon the abutting residential neighborhood without making any §23B disclosures in advance of this meeting.

In addition, the 8/2/16 violation is all the more glaring by the fact that, in November, 2016, she stated publicly that she would not participate in the development of the charges on the Bartolini hearing on the second citizens' petition which, in fact, was a restatement of the charges, including the Park Central project, from the first petition in which she participated on 8/2/16. In addition, her public disclosure of her reason for recusal was incomplete in that, in addition to her being a potential witness in the hearing on the eight (8) charges, she failed to publicly disclose her son's business relationship with Depietri at that time.

On December 6, 2016, when the Selectmen were hearing the Park Central charges against Bartolini, Phaneuf allegedly recused herself. However, she remained present in the hearing room which violates the standards the Commission has established that an official with a conflict of interest should leave the room during the proceedings. On December 19, 2016, Phaneuf did not even officially recuse herself but remained at the Selectmen's table during the discussion as to how the Selectmen should address the charges and the results of the hearing.

2. John F. Rooney

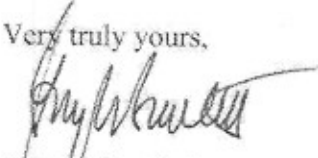
As an attorney, Rooney knew well enough to file §23(b)(3) disclosure forms on four (4) occasions prior to the 8/2/16 executive session on the Park Central issues. However, those were apparently done without benefit of a written conflict of interest opinion from either town counsel or the Commission pursuant to §22. Rooney had clearly been advised, on or about 1/25/16, by the Commission, that he was “unable to participate in any discussions that relate to or impact the Park Central 40B project” given his law firm’s status as an abutter to the project. By his participation in the 8/2/16 executive session, Rooney clearly violated §19 by participating in a particular matter, the complaints against Bartolini regarding the Park Central project, in which Rooney and his law firm had a financial interest as an abutter.

Rooney’s later decision to recuse himself from the preparation of charges and conduct of the public hearing on the second petition confirms the violation on 8/2/16. In addition, Rooney violated the §19 standards on 12/6/16 when, after allegedly recusing himself from the hearing, he remained in the room, ostensibly to observe the proceedings. On 12/19/16, he, along with Phaneuf, failed to formally recuse themselves or leave the Selectmen’s table and leave the room when the agenda issue of the continued hearing and disposition was brought up, further exacerbating the §19 violation.

Based upon the foregoing, I respectfully request that you conduct an investigation into these allegations and determine that Bonnie J. Phaneuf and John F. Rooney have violated the public trust, their oath of office, and, at a minimum, the applicable provisions of MGL c. 268, §§19 and 23 of the Conflict of Interest law by their conduct described above.

I am available to meet with a representative of your office in support of your investigations into these allegations. Please contact me if I may be of further assistance. Thank you for your cooperation.

Very truly yours,



Gary S. Brackett

GSB/dsh

Enclosures

cc: Brian Shea, Chairman, Board of Selectmen (via email)
Mark Purple, Town Administrator (via email)
Andrew Dennington, Chairman, ZBA (via email)
James F. Hegarty, Town Clerk (via email)
Aldo Cipriano, Town Counsel