

RECEIVED
STATE ETHICS COMMISSION

2021 SEP 14 AM 10:19

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 21-0006

IN THE MATTER

OF

ERIK FLEMING

ORDER TO SHOW CAUSE

1. The State Ethics Commission ("Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On July 29, 2021, the Commission found reasonable cause to believe that Erik Fleming ("Fleming") violated G.L. c. 268A, § 19, and authorized the initiation of adjudicatory proceedings.

FACTS

3. Fleming, a resident of Hardwick, was at all relevant times an elected member of the Town of Hardwick ("Town") Planning Board ("Planning Board").

4. At all relevant times and in his private capacity, Fleming was a trustee of the Eagle Hill School ("Eagle Hill"), a private college preparatory school located in Hardwick which provides educational services for fees.

5. As a trustee, Fleming chairs the Building Committee and oversees new construction and renovations at Eagle Hill. Fleming has knowledge of the cost of such new construction and renovations because he regularly obtains information from Eagle

Hill's accountant regarding construction charges, and presents that information to the Eagle Hill Board of Trustees.

6. On April 9, 2018, Eagle Hill filed an application for site plan approval to construct a new STEM¹ building on its campus.

7. Under the Town of Hardwick Zoning Ordinance ("Zoning Ordinance"), site plan approval is a prerequisite to obtaining a building permit for new construction.

8. Site plan approval requires a simple majority vote of a quorum of the Planning Board. A quorum of the Planning Board is three of its five members.

9. On May 14, 2018, Fleming sought advice from the Legal Division of the State Ethics Commission as to whether he could participate as a member of the Planning Board in its review of Eagle Hill's site plan for its new STEM building.

10. The Legal Division advised Fleming that he was prohibited by the conflict of interest law from participating as a member of the Planning Board in its review of Eagle Hill's site plan.

11. The Legal Division advised Fleming that as an elected official, no disclosure by him was possible to allow his participation in Eagle Hill's site plan review.

12. The Legal Division further advised Fleming that he should abstain entirely from the Planning Board's review of Eagle Hill's site plan.

13. The same day Fleming received advice from the Legal Division, he filed a

¹ Science, technology, engineering and mathematics.

G. L. c. 268A, § 23(b)(3) disclosure form with the Hardwick Town Clerk disclosing his relationship to Eagle Hill and indicating that “if necessary” he would vote as a Planning Board member on Eagle Hill’s site plan.

14. On May 15, 2018, the Planning Board opened a public hearing on Eagle Hill’s application for site plan approval for its new STEM building. There were four Planning Board members present, including Fleming.

15. At the May 15, 2018 Planning Board public hearing, Fleming disclosed his relationship to Eagle Hill and improperly invoked the Rule of Necessity.

16. Fleming then participated as a Planning Board member in the board’s discussion concerning the site plan for Eagle Hill’s new STEM building.

17. The Planning Board continued this discussion at a June 12, 2018 public hearing, at which five Planning Board members, including Fleming, were present, and Fleming again participated in the discussion as a Planning Board member.

18. At the June 12, 2018 public hearing, Fleming voted to approve the site plan for Eagle Hill’s new STEM building.

19. Fleming thereafter signed the Planning Board’s written decision approving the site plan.

LAW

20. General Laws chapter 268A, § 19, prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, a business organization in which he is serving as officer, director, trustee, partner or employee has a financial interest.

21. As a Town Planning Board member, Fleming was a municipal employee of the Town as that term is defined by G. L. c. 268A, § 1(g).

22. As an organization that provides educational services for fees, Eagle Hill is a business organization within the meaning of § 19.

23. Fleming is a trustee of Eagle Hill.

24. Eagle Hill's application for site plan approval was a particular matter within the meaning of § 19.

25. Fleming participated as a municipal employee in the Planning Board's approval of Eagle Hill site plan application by discussing, voting on and signing the written site plan approval decision as a Planning Board member.

26. Eagle Hill had a financial interest in the site plan approval because it affected the use of its property and was a prerequisite to securing a building permit to construct the STEM building.

27. Fleming knew Eagle Hill had a financial interest in the site plan approval because as a trustee he oversaw new construction and renovations at Eagle Hill, including the STEM building project.

28. Therefore, by participating as a Planning Board member in the approval Eagle Hill's new STEM building site plan while serving as a trustee of Eagle Hill, Fleming violated § 19.

WHEREFORE, Petitioner asks that the Commission:

1. find that Fleming violated G.L. c. 268A, §19; and

2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully submitted,

Petitioner State Ethics Commission
By its attorney(s),



Candies Pruitt
Staff Counsel
State Ethics Commission
One Ashburton Place, Room 619
Boston, MA 02108
(617) 371-9500

Date: September 14, 2021