

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN
REGULAR MEETING – MONDAY – MARCH 25, 2013 6 PM
TOWN HALL – JUDGE WELSH ROOM

Chairman Austin Knight convened the meeting at 6:00 PM noting the following:

Board of Selectmen attending: Austin Knight, Elaine Anderson, John Santos, David McChesney and Erik Yingling

Other attendees: Town Manager Sharon Lynn, Assistant Town Manager David Gardner and Municipal Finance Director Dan Hoort.

Recorder: Vernon Porter

The following are meeting minutes, in brief:

1A JOINT MEETING WITH PROVINCETOWN PUBLIC PIER CORPORATION

Update on Pier repair progress from February Blizzard.

Attendees: Lee Ash, Chairman, Carlos Verde, LeRoy (Scott) Fraser, Richard Wood and Harbormaster& Pier Manager Rex McKinsey.

Chairman Ash went over the progress since the last meeting with the BOS. (See attachments #1 and 2). They are still waiting for the proposals and costs from Bourne Engineering (Mr. Russell Titus). Approximate cost of \$240K. Seasonal repairs will be made from the Pier's Capital Reserve Fund.

PPPC has received a waiver of procurement advertising requirements for emergency repairs from DCAMM. This wavier still requires the due diligence of getting at least three quotes. The scope of work involves replacement of 54 piles around the "T" and main pier along with some chock and wale timbers that have split. We have one quote of \$136,950 and should have the others by the end of the week. Chapter 13 of the Articles of 2000 (the enabling legislation) requires the Board of Selectmen approve any expenditure over \$50,000 (except the annual operating budget).

Article 11 - This discussion is awaiting the proposal and cost from Bourne Engineering. The wave design study would be a separate contract. The engineering is estimated to be \$30-40K.

This morning, the Finance Committee voted to support the article for \$300,000 with an amendment of \$50,000 for an added economic benefit study with scope to be determined.

Sharon Lynn will oversee Article 11 and will be there for oversight throughout.

MOTION: Move that the Board of Selectmen vote to approve expenditure over \$50,000 from the Provincetown Public Pier Corporation Capital Reserve for repairs to the Main Pier and "T" sections pursuant to Chapter 13 of the Acts of 2000; and as approved to form by town Counsel.

Motion by: Elaine Anderson Seconded By: David McChesney Yea 5 Nay 0

MOTION: Move that the Board of Selectmen vote to support Article 11 in the amount of

not to exceed \$300,000.00.

Motion by: John Santos **Seconded By:** Erik Yingling ~~**MOTION WITHDRAWN-**~~

1B JOINT MEETING WITH BUILDING COMMITTEE

Attendees: Thomas Coen Chair, Kevin Shea, Donald Murphy and Sheila McGuinness.

Voted today not to recommend ATM Article 30. Building Committee questions the footage and space requirements and also questions the accuracy of the numbers that were reported by the FinCom. Information in report is misleading.

Open discussion with Building Committee on Town Meeting ATM Article 30. (\$8.5 million). Building Committee does not support Article 30. They have looked at the proponent's information and do not find it credible or accurate and does not believe it responds to the town's police department needs. Asked the Board of Selectmen, once again, to do site visits and review all the plans.

1C APRIL 1, 2013 SPECIAL & ANNUAL TOWN MEETINGS

Adoption of Board of Selectmen's Recommendations on Articles

This is a continuation from the Board of Selectmen's meeting on March 18, 2013.

A tally sheet contained for recording the recommendations of the Board of Selectmen is attached. Charter Section §2-3-11 provides that "Prior to a vote on an article submitted by a town board, the town board shall state the numbers of its members in favor of and opposed to the article, and its chairman, or his designee, shall explain the view of the majority to the meeting."

DPW Director David Guertin and DPW Asst. Director Richard Waldo - Discussed DPW's request for six vehicles. Mr. Guertin gave a full explanation of why the all the vehicles need to be approved. It is imperative that all vehicles be replaced for safety and economic reasons.

John Santos - Questioned why can't we use Airport Vehicles? They should be in our inventory. Buy 4 vehicles only and use diesel and not gas vehicles.

MOTION: *Move that the Board of Selectmen vote to indefinitely postpone STM 8 - Town Emergency Shelter Retrofit.*

Motion by: Elaine Anderson **Seconded By:** David McChesney Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote to approve ATM 11 #12 - FY 2014 Capital Improvements Program Public works Fleet Replacement Plan in the amount \$279,555.00.*

Motion by: Erik Yingling **Seconded By:** David McChesney Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote to RECONSIDER - STM -12 - Purchase of pick-up Trucks for Water Department.*

Motion by: Erik Yingling **Seconded By:** Elaine Anderson Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote to RECOMMEND - STM-12 - Purchase of pick-up Trucks for Water Department as amended to reduce the purchase from two vehicles to one vehicle reducing the amount from \$50,000.00 to \$25,000.00.*

Motion by: Erik Yingling **Seconded By:** Elaine Anderson Yea 5 Nay 0

MOTION: *Move that the Board of Selectmen vote to recommend Article 30.*

Motion by: Erik Yingling **Seconded By:** John Santos
Yea 2 Nay 3 (Austin Knight / Elaine Anderson / David McChesney)
- **DOES NOT PASS** -

MOTION: *Move that the Board of Selectmen vote NOT to recommend Article 30.*

Motion by: Elaine Anderson **Seconded By:** David McChesney
Yea 3 Nay 2 (Erik Yingling / John Santos)

2. **PUBLIC STATEMENTS**

Rebecca Mazaratti - Read letter sent to BOS via email re: Conflict of Interest of Dorothy Palanza on Planning Board. (See attachment #3). Asks the Board of Selectmen to reconsider their vote as there is clearly a conflict.

Scott Caldwell - Will vote for DPW vehicles this year. People concerned about the price tag of the proposed new Police Station. The current building should be maintained.

Clarence Walker - Responding on several issues this evening. Did not support FinCom's vote on the DPW fleet replacement. FinCom are requested a Pier Economic Development Study to determine what the economic benefits of the finger piers/or pier itself. What are the economic driving forces for the pier? What are the possibilities for the pier and what needs to be done to protect it? As for the Building Committee, they operated under their mandate from the Board of Selectmen and the Committee Chair made a very good point in that the Board of Selectmen should give direction to the Building Committee. Actual costs of the police station is not known.

Barbara Rushmore - Requested many times to put public statements first on the Board's agenda. You made a mistake to vote on Article 30. Keep an open mind on the location and you should have waited until town meeting before you voted on Article 30. Existing lot of the police station is 17,000 square feet and it should be redeveloped. Pier needs to have seasonal floating piers so they can be removed. Should not build wave attenuation on the harbor.

Francine D'Olympia - Asked the Board of Selectmen to reconsider their decision to allow Dorothy Palanza to sit on Article 29.

3. **SELECTMEN STATEMENTS**

Elaine Anderson - Changing order of public statements is a charter change and should be considered. Would like the Board of Selectmen to reconsider Dorothy Palanza's conflict of interest exemption.

MOTION: *Move that the Board of Selectmen vote to reconsider the Board of Selectmen's previous vote on March 11, 2013 to exempt Dorothy Palanza of a conflict of interest on the Planning Board regarding the proposed Art Gallery by-law.*

Motion by: Elaine Anderson **Seconded By:** David McChesney
Yea 2 Nay 3 (Austin Knight / John Santos / Erik Yingling)
- **DOES NOT PASS** -

David McChesney – Smithsonian has named Provincetown number 10 of the Best 201 small cultural towns to visit.

Erik Yingling - We need to be calmer and more civil to each other.

John Santos - Working with the Pier Corp on wave attenuation and support.

Austin Knight – Apologize for getting upset earlier regarding Town Meeting Article 30.

4. **BOARD OF SELECTMEN'S APPOINTMENTS** - None

5A **MAYORS FOR FREEDOM TO MARRY**

Currently 315 Mayors or heads of the municipality for towns met this commitment, the largest cities of the country and also medium size and small communities. Marriage for same gender couples is legal in Massachusetts but same gender couples legally married are denied all federal rights by a law called DOMA. This is discrimination with many practical consequences on their lives.

These mayors or chairmen take a stand against discrimination and make good on the promise of the Pledge of Allegiance: "with liberty and justice for all". I hope that you will take a stand for justice for all your citizens as our President did and many mayors in Massachusetts and join this initiative

MOTION: *Move that the Board of Selectmen vote to support and become a member of the national bipartisan initiative called Mayors for the Freedom to Marry in support of marriage equality.*

Motion by: David McChesney **Seconded By:** Elaine Anderson Yea 5 Nay 0

5B1 **TOWN HALL AUDITORIUM – REQUEST FOR BEER & WINE SERVICE**

Girly Girl PARTS Give Back – Cape Cod Women's Music Festival

Libby White present on behalf of applicant and will sign the application on behalf of the applicant. Seeking a one day license and there is no nudity.

MOTION: *Move that the Board of Selectmen vote to, pursuant to the Regulations for Public Use of Town Hall, to authorize the consumption or sale of beer, wine or champagne service in the Town Hall Auditorium as requested by Sarah Swain, of Girly Girl PARTS Gives Back, for the Cape Code Women's Festival to be held on Saturday, May 11, 2013 (6:00 pm to 10:00 pm).*

Motion by: David McChesney **Seconded By:** Erik Yingling Yea 5 Nay 0

5B2 **TOWN HALL AUDITORIUM – REQUEST FOR BEER & WINE SERVICE**

Maker / Motta Wedding

Alcohol service will be managed by and under the Ptown Parties' liquor license.

MOTION: *Move that the Board of Selectmen vote to, pursuant to the Regulations for Public Use of Town Hall, to authorize the consumption or sale of beer, wine or champagne*

14

service in the Town Hall Auditorium as requested by Sarah Maker, for a private wedding to be catered by Ptown Parties, to be held on Saturday, June 15, 2013 (noon to 9:00 pm).

Motion by: David McChesney Seconded By: John Santos Yea 5 Nay 0

5B3 TOWN HALL AUDITORIUM – REQUEST FOR BEER & WINE SERVICE
Provincetown Tennessee Williams Festival

This is an annual event. Alcohol service will be managed by and under the Far Land Provisions liquor license.

MOTION: *Move that the Board of Selectmen vote, pursuant to the Regulations for Public Use of Town Hall, to authorize the consumption or sale of beer, wine or champagne service in the Town Hall Auditorium as requested by Jef Hall-Flavin, representing Provincetown Tennessee Williams Festival, to be held on Saturday, June 1, 2013 (6:30 pm to 9:30 pm).*

Motion by: Erik Yingling Seconded By: Elaine Anderson Yea 5 Nay 0

5B4 TOWN HALL AUDITORIUM – PROVINCETOWN BUSINESS GUILD
Annual Carnival Concert

This is an annual event. Alcohol service will be managed by and under the Far Land Provisions liquor license.

MOTION: *Move that the Board of Selectmen vote, pursuant to the Regulations for Public Use of Town Hall, to authorize the consumption or sale of beer, wine or champagne service in the Town Hall Auditorium as requested by Erin Atwood, of Provincetown Business Guild, for the Carnival Concert, to be held on Saturday, August 21, 2013 (7:00 pm to 11:00 pm).*

Motion by: David McChesney Seconded By: John Santos Yea 5 Nay 0

5C SIGNAGE PLAN REQUEST
Pilgrim Monument and Provincetown Museum (PMPM)

PMPM Executive Director John McDonagh – Sample of signage attached to agenda item.

MOTION: *Move that the Board of Selectmen vote to approve the Pilgrim Monument and Provincetown Museum sign plan as submitted in addition to adding a sign at the corner of Jerome Smith and Winslow Street.*

Motion by: Erik Yingling Seconded By: David McChesney Yea 5 Nay 0

5D1 PARADE PERMIT – CLOSING STREET - Provincetown Film Society, Inc.

Rescheduled to April 8, 2013 meeting.

5D2 PARADE PERMIT – PROVINCETOWN BUSINESS GUILD
Annual Carnival Parade

Parade will commence at the Harbor Hotel, proceed down Commercial St. and end at the Coast Guard Station and Franklin Street.

MOTION: *Move that the Board of Selectmen vote approve the Parade application submitted by Executive Director Erin Atwood on behalf of the Provincetown Business Guild for the*

5E4 **BOND ANTICIPATION NOTE #1099**

From the April 5, 2010 Special Town Meeting:
Article #5 – North Union Field Land Acquisition

TOTAL BAN #1099 \$349,820.00

Interest Rate = $\$349,820.00 \times 0.45\% / 365 = \$1,574.19$.

Water Leak Detection Article 4/1/02 ATM 4-13 will be paid down by \$15,000.

North Union Field Land Acquisition 4/5/10 STM 5 will be paid down by \$9,500.

MOTION: *Move that the Board of Selectmen vote to issue Bond Anticipation Note #1099 in the amount of \$349,820 dated April 1, 2013 at .45% (\$1,574.19.) interest payable at maturity to Cape Cod Five Cents Savings Bank due April 1, 2014.*

Motion by: John Santos **Seconded By:** David McChesney Yea 5 Nay 0

5E5 **BOND ANTICIPATION NOTE #2000**

From the April 4, 2011 Annual Town Meeting:
Article #17 - Water Main Replacement

TOTAL BAN #2000 \$72,000.00

Interest Rate = $\$72,000.00 \times 0.45\% / 365 = \324.00 .

MOTION: *Move that the Board of Selectmen vote to issue Bond Anticipation Note #2000 in the amount of \$72,000 dated April 1, 2013 at .45% (\$324.00.) interest payable at maturity to Cape Cod Five Cents Savings Bank due April 1, 2014.*

Motion by: John Santos **Seconded By:** Erik Yingling Yea 5 Nay 0

6A **TOWN MANAGER SHARON LYNN FOLLOW-UP**

State Legislature did not meet on room tax and real estate transfer tax last week due to snow storm. Has been rescheduled to Tuesday, April 2, 2013. Chairman Knight and I will be attending.

We had visit today from Energy and Environmental Affairs Secretary Rick Sullivan who was here to kick off Governor Patrick's initiative on Economic Development.

6B **OTHER** - None

7. **BOARD OF SELECTMEN'S MEETINGS**

MOTION: *Move that the Board of Selectmen vote approve, as printed, the minutes of: March 11, 2013 (Regular Mtg.); March 12, 2013 (Annual Traffic Hearing) and March 19, 2013 (Joint Mtg. ConCom) with change so noted.*

Motion by: David McChesney **Seconded By:** John Santos Yea 5 Nay 0

8. **CLOSING STATEMENTS** - Erik Yingling – Apologize for his tone earlier.

Motion to adjourn by John Santos at 9:00 PM.

Minutes transcribed by: Vernon Porter, Secretary to Board of Selectmen
March 27, 2013



OFFICE OF THE HARBORMASTER

MACMILLAN PIER

#1A
#1 attachment
3-25-13
Vg

Joint Meeting with Board of Selectmen March 25, 2013

We have received a waiver of procurement advertising requirements for emergency repairs from DCAMM. This waiver still requires the due diligence of getting at least three quotes. The scope of work involves replacement of 54 piles around the Tee and main pier along with some chock and wale timbers that have split. We have one quote of \$136,950 and should have the others by the end of the week.

Chapter 13 of the Articles of 2000 (the enabling legislation) requires the Board of Selectmen approve any expenditure over \$50,000 (except the annual operating budget).

5/2/13
SA
Duc

Move that the Board of Selectmen vote to approve expenditure over \$50,000 from the PPPC Capital Reserve for repairs to the Main Pier and Tee sections pursuant to Chapter 13 of the Acts of 2000; and approved to form by Town Counsel.

Article 11

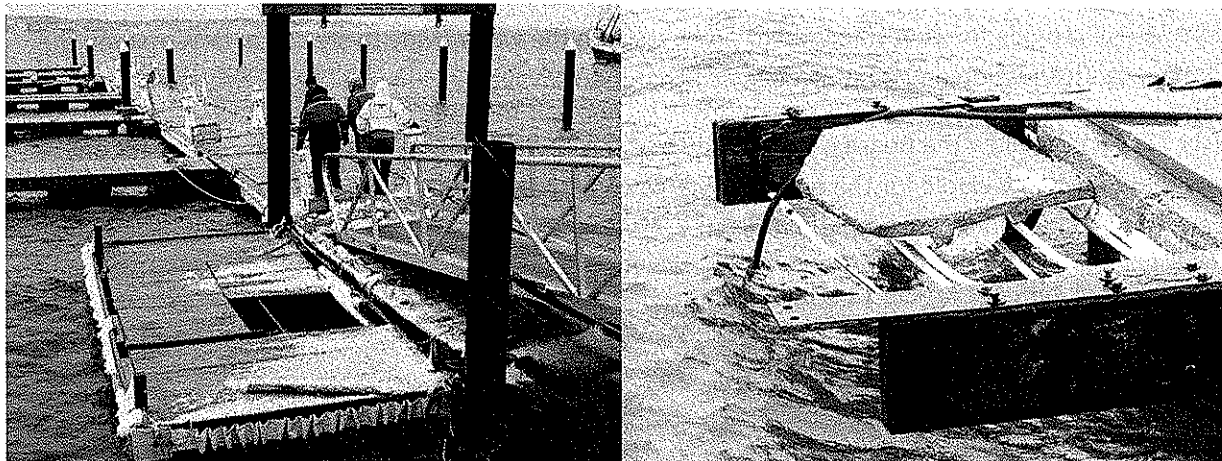
This discussion is waiting the proposal and cost from Bourne Engineering. The wave design study would be a separate contract from the engineering estimated to be \$30-40K.

This morning Finance Committee voted to support the article for \$300,000 with an amendment of \$50,000 for an added economic benefit study with scope to be determined.

1A - Bos hfyg
3/25/13
attach #2

Provincetown Town Warrant
Special Town Meeting, April 1, 2013
Article 11 - Design and Repair to the MacMillan Pier Floating Docks and Finger Piers

The reconstruction of MacMillan Wharf was completed in 2003. At that time, the Town of Provincetown accepted a floating dock and finger pier design requiring wave attenuation on the east side of the pier. However, due to the concerns of some townspeople, the Selectmen had voted in 1999 against installing the proposed wave attenuation. Without the required attenuation, the storm of December 2003 then destroyed the majority of the fingers on the docks. The Town of Provincetown reached a negotiated agreement through attorneys for the contractor to replace the fingers. However, the floating docks that were originally engineered to require wave attenuation remained unprotected from repeated northeasterly storms. The two concrete main floats are not designed to be removed from the water seasonally (the fingers are removed) and have only survived the past 10 years or so due to regular shoring up and repair work utilizing both the PPPC annual maintenance budgets and capital reserves. All the while, the concrete outer shells have continued to crack and fall away from the lack of initial design protection from storm damage, especially particular to our winter months.



The recent winter blizzard damaged the two floats to an extent where the engineers declared them unsafe. The Provincetown Public Pier Corporation has worked hand-in-hand with town departments and officials to document the damage for MEMA (Massachusetts Emergency Management Agency) and FEMA (Federal Emergency Management Agency), though any revenue stream from this source would only present itself down the road. The current PPPC capital reserves (just over \$200,000) set aside for annual capital projects will be used to make necessary repairs for the immediate season, allowing the Dinghy Dock and approximately 40 small boat fishers to return and carry on with the upcoming season. The PPPC will be able to rent as usual to the tenants, which will continue the revenue stream (over \$100,000) that is part of the annual budget income. Finally, approximately 54 wooden fender piles throughout the wharf that were scheduled for future replacement were compromised to the point of now requiring more immediate replacement. At this writing, an initial expenditure of capital reserves has been spent to begin the repair process to try to meet the deadline of returning tenants as soon as possible.

Boskutg 3/25/13
Public Statement Attach #3

Vernon Porter

From: Cohn Meryl <merylcohn777@gmail.com>
Sent: Monday, March 25, 2013 12:56 PM
To: Elaine Anderson; Erik Yingling; Francis J. Santos; Austin Knight; David McChesney; Vernon Porter
Cc: David Gardner
Subject: Re: Conflict of Interest

Dear Provincetown Board of Selectmen:

We (the undersigned) watched the PTV televised conversation between Dorothy Palanza and the Board of Selectman from March 11th, 2013 pertaining to her Planning Board conflict of interest regarding petitioned Article 29, the proposed expanded Bylaw definition of Art Galleries. Since Chairman Austin Knight wisely stated that the board's decision was based on current information and may be changed in the future, we would urge you to consider the following:

Ms. Palanza, a gallery owner and member of the Planning Board, came to the meeting prepared with a partial definition of the Conflict of Interest from the Summary of Law for Municipal Employees, General Laws Chapter 268A (section d, pasted below) and denied any financial conflict of interest. However, while the discussion emphasized the part of the definition that said "the conflict must be direct and immediate," and that "financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts," the entire definition under section d, the category of "Self Dealing and Nepotism" also says that a trustee may not participate or vote in any particular matter in which it is "reasonably foreseeable to create a conflict."

Given that Ms. Palanza owns ArtCurrent, an art gallery, it is **reasonably foreseeable** that her Planning Board participation in expanding the definition of art gallery will create a conflict. A business of any category seeking to expand its definition, whether to include more items or to attract more customers, also stands to expand their sources of revenue (e.g. in this case, sell more paintings). Since ArtCurrent Gallery (which already lists "performance art" on its website) and Ms. Palanza both stand to gain financially if the new bylaw is approved, this does constitute a reasonably foreseeable conflict, and we respectfully ask the Board of Selectman to reconsider their decision to allow Ms. Palanza to participate in the Planning Board discussion and vote on this matter.

Section 268A:19 states that it shall not be a violation "if the {board member} first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest"; however, missing from the discussion was both the full definition of the law and the impact and extent of Ms. Palanza's involvement. Ms. Palanza stated that she was "involved in the art world here and in New York and in Europe too; that that helps when you are looking at definitions of what is considered art and how to explain it to a public." However, despite Ms. Palanza's potentially positive intentions, the town process of bylaw revision should be clean and free from ethical issues, and it is a reasonably foreseeable financial conflict of interest for Ms. Palanza to be involved in the highly influential Planning Board discussion and vote regarding Article 29.

While we sympathize with the frustration involved in finding a sufficient number of members to serve on town boards, in this case the three remaining Planning Board members (without conflicts of interest) do constitute a quorum. And while we realize it may be difficult to overturn a previous decision, sometimes it's the right thing to do. We believe this is such an instance.

Yours truly,

Mary Beth Caschetta

Meryl Cohn

Francine D'Olimpio

Donna Flax

Evelyn Gaudiano

Phil Gaudiano

Lisa Kohler

Carolyn Kramer

John Lotti

Rebecca Matarazzi

Michael McCabe

Marie O'Shea

Laura Rood

Catherine Russo

Jack Yandrisovitz

Summary of Conflict of Interest Law for Municipal Employees, Section d

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or **reasonably foreseeable to create a conflict**. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

Example of violation : A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

Example of violation : A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

Example: A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Example where there is no violation : An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax