

-----Original Message-----

From: Robert Berg

Sent: Friday, February 26, 2016 4:48 PM

To: 'Wayne Esannason'; Mayor

Cc: Steve Pappalardo

Subject: RE: Trustee Finger - Homestead Tax Vote and Failure to Recuse

Hi Wayne. Thanks for responding to me so quickly. I respectfully disagree with your conflict of interest analysis with respect to Trustee Finger. At a minimum, as I told the Board of Trustees and Trustee Finger, his firm's representation of many condominium clients in Westchester County raises an appearance of impropriety. Given that all other Trustees and the Mayor were present and able to participate in the deliberations and the vote, Trustee Finger's participation was not needed, and he should have recused himself, even if he was not required to do so (which I do not necessarily concede). In Scarsdale, we pride ourselves on running a good, clean government. That's why I believe the Village Board should refer this matter to the Village Board of Ethics. While Trustee Finger may not be on the Village Board at the time of the next revaluation, the issue of the circumstances under which a sitting Trustee should recuse himself/herself will undoubtedly arise again, and guidance from the Village Board of Ethics may be helpful. I appreciate the fact that Mayor Mark will present my request at the next agenda meeting. Best regards, Bob Berg.

-----Original Message-----

From: Wayne Esannason [<mailto:wesannason@scarsdale.com>]

Sent: Friday, February 26, 2016 4:32 PM

To: Robert Berg; Mayor

Cc: Steve Pappalardo

Subject: RE: Trustee Finger - Homestead Tax Vote and Failure to Recuse

Mr. Berg:

I am responding to your email below regarding Trustee Finger's decision denying your request to recuse himself from the Village Board's vote regarding the Homestead Tax Option. We agree that because Trustee Finger does not represent any condominiums in Scarsdale, his vote on the Homestead Tax Option did not equate to a direct conflict of interest.

However, you have suggested that the Village Board's vote on the Homestead Tax Option has obvious ramifications for Trustee Finger's condo clients in Westchester County. To support that claim, you stated that Scarsdale's decision on the Homestead Tax Option will be influential in the determination of other taxing entities in Westchester County. While Mr. Finger's clients are located in various jurisdictions throughout Westchester County, each taxing jurisdiction has its own legislative body that may consider the Homestead Tax Option. In doing such, I believe that each legislative body will evaluate the implications of the Homestead Tax Option and its impact on their constituents, and not base their decision on how Scarsdale voted. Further, we learned on Tuesday evening, prior to the Village Board's vote, that the Towns of Greenburgh and Ossining voted against the Homestead Tax Option. I surmise that both of these communities made their determination based upon the impact of the Homestead Tax Option on their constituents, and did so without any influence from Scarsdale's later decision on the matter.

Regarding the question of an appearance of an impropriety, it is important to note that all appearances of impropriety do not necessarily require recusal. In fact, in many instances such as the case at bar, disclosure of a remote or indirect interest is all that is required. It is clear from the public hearing record that Trustee Finger and you, publicly disclosed Trustee Finger's representation of condominium associations throughout Westchester County prior to the Village Board's vote on the Homestead Tax Option. This disclosure negates any claim of an ethical violation.

The Village Board voted 7-0 to defeat the Homestead Tax Option. As such, Trustee Finger's vote was not outcome determinative. In this regard, the issue of whether Trustee Finger should have recused himself is moot. Your suggestion that the matter be forwarded to the Board of Ethics for an opinion that will serve as guidance for future revaluations is acknowledged. However, I do not believe that the Village Board will be authorizing another revaluation update in the near future. Assuming that Trustee Finger is still on the Village Board when the Village Board is asked to consider authorizing another revaluation, I think it would be more relevant and appropriate to consider whether to seek an opinion from the Board of Ethics at that time. However, after speaking with the Mayor, he has advised me that he intends to present the issue of referral to the Village Board at its next agenda meeting.

Wayne Esannason,
Village Attorney

-----Original Message-----

From: Robert Berg [<mailto:rberg@denleacarton.com>]

Sent: Wednesday, February 24, 2016 2:46 PM

To: Mayor <mayer@scarsdale.com>; Wayne Esannason <wesannason@scarsdale.com>

Subject: Trustee Finger - Homestead Tax Vote and Failure to Recuse

>

> After the initial hearing on the Homestead Tax option two weeks ago, I came to learn that Trustee Finger's law firm, Finger & Finger, represents about 25 condos and coops in the Westchester area. The Board of Trustee's vote on the Homestead Tax option has obvious ramifications for Trustee Finger's condo clients -- even though he doesn't now represent any condos in Scarsdale. Any condo clients of Trustee Finger's firm would oppose enactment of the Homestead Tax option in their municipalities, just as the Christie Place condo has strenuously opposed the adoption of the Homestead Tax option because of the tremendous property tax break they receive by having their units valued on an imputed rental income basis rather than on their fair market values. Scarsdale's decision on the Homestead Tax option will be influential in the determination of other taxing entities in Westchester when they undergo revaluations, and Finger & Finger's condo clients located in those places will oppose enactment of the Homestead Tax option. Moreover, Trustee Finger may at some point in the future represent the Christie Place condos or any new condos built in Scarsdale. Thus, he had a clear conflict of interest and should have recused himself.

>

> I therefore sent Trustee Finger, you, and Wayne an email respectfully two weeks ago asking Trustee Finger to recuse himself from the discussion and vote on the Homestead Tax option. Last night, he declined to do so, and he voted against the adoption of the Homestead Tax option.

>

> Frankly, I'm at a loss to understand his refusal to recuse himself. His vote was not needed, since the other trustees unanimously rejected adoption. I find Trustee Finger's unwillingness to recuse himself

from a vote where the appearance of a conflict of interest is so apparent rather disturbing. I'm sure his condo clients in other Westchester municipalities are quite pleased with his vote -- and that's why he should not have voted. I suggest that the Village Board of Trustees direct the Village Board of Ethics to convene and review Trustee Finger's decision not to recuse himself. A determination from the Board of Ethics will be helpful to guide trustees' conduct in the future. Please let me know how you intend to proceed. Regards, Bob.

>

> Robert J. Berg

> (914) 522-9455

>>