

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

In re: Joseph A. Serdakowski

Complaint No. 2002-6

ORDER

This matter having been heard before the Rhode Island Ethics Commission on November 26, 2002, pursuant to Commission Regulation 1011, and the Commission having considered the Complaint herein, the arguments of counsel and the proposed Information Resolution and Settlement, which is incorporated by reference herein, it is hereby

ORDERED, ADJUDGED AND DECREED

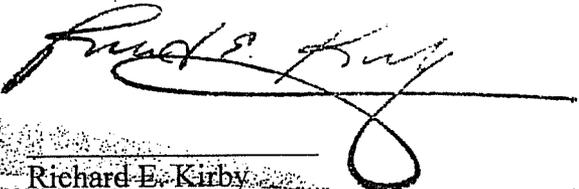
THAT, the Commission approves the Informal Resolution and Settlement as submitted; and

THAT, the Commission incorporates by reference herein its findings of fact and conclusions of law as those set forth in the Informal Resolution and Settlement; and

THAT, the Respondent, by presenting to the members of the East Greenwich Planning Board the details of the proposed land swap and subdivision plans involving Respondent and the French Estate, represented himself and another person before a municipal agency of which he is a member without first seeking and obtaining a hardship waiver from the Rhode Island State Ethics Commission in violation of R.I. Gen. Laws §§ 36-14-5(e)(1) & (2); and

THAT, the Respondent is ordered to pay a civil penalty in the amount of One Thousand Five Hundred (\$1,500) Dollars.

Entered as an Order of this Commission, effective November 26, 2002.



Richard E. Kirby
Chairperson

STATE OF RHODE ISLAND
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INFORMAL RESOLUTION AND SETTLEMENT

Respondent, Joseph A. Serdakowski, and the Rhode Island Ethics Commission hereby agree to a resolution of the above-referenced matter as follows:

A. **Finding of Fact and Admissions**

1. The Respondent has been a member of the Town of East Greenwich Planning Board since November 13, 1990. He is currently, and was at all times relevant to the facts as outlined herein, Vice-Chairman of the Planning Board.
2. For a period of 22 years prior to the filing of the instant Complaint, Respondent and his family resided at 274 Moosehorn Road, East Greenwich, on a lot of land at the corner of Moosehorn Road and Miss Fry Drive consisting of approximately 1.82 acres. Respondent represents that the zoning for this section of East Greenwich was expanded to two (2) acres minimum after the construction of the home, making this lot a legal, non-conforming lot.
3. Directly adjacent to Respondent's lot on Moosehorn Road is a lot of land owned by the Estate of Donald French, consisting of approximately 6.11 acres of land. Donald French and the Respondent were neighbors for 20 years. Following Donald French's death in 2000, the French estate came to be controlled by French's daughter, Donna Boileau, and French's former attorney Fredrick C. Kilguss, Jr., both of whom were appointed equal co-executors of the Estate.
4. Upon learning that the Estate was contemplating subdividing the property, Respondent

contacted the Co-Executors to support a plan originally considered by French and the Respondent while French was alive. This plan would benefit both the Estate and the Respondent; however, the French Estate would be the sole beneficiary of any cash proceeds from the subdivision. The plan consisted of an administrative subdivision of land (herein sometimes referred to as a "land swap") between the Estate and Respondent pursuant to which Respondent would transfer a portion of his land fronting Miss Fry Drive to the Estate and in return the Estate would transfer to Respondent of a portion of land fronting Moosehorn Road.

5. The supposed financial benefit to the Estate of the proposed land swap would be to allow one of the Estate's three lots to front Miss Fry Drive rather than Moosehorn Road, creating a more prestigious address and a consequently higher sale price for that lot. In addition, public water, storm water drains and underground utilities are accessible from Miss Fry Drive, thus reducing development costs and further enhancing the value of said lot.
6. The supposed benefit to the Respondent of the proposed land swap included a slight addition to Respondent's property. Respondent asserts that since his property was a legal non-conforming lot, a requirement of an administrative subdivision is that a non-conforming lot involved in such a "land swap" must move in the direction of compliance, in this case increase in size to move closer to the two (2) acre minimum lot size.
7. Additionally, the lot configurations as designed would minimize the loss of privacy experienced to both the French Estate and the Respondent's properties by locating one of the new lots behind the two homes instead of between them.
8. Respondent understood that to the extent that these matters concerning the land swap and

subdivision came before the East Greenwich Planning Board, Respondent would be required to recuse from any participation and vote as a Board member. Respondent notified the French Estate of this in writing in his initial communications with the Estate.

9. One of the co-executors, Frederick Kilguss, was in favor of Respondent's plan and believed that it would maximize the size of the Estate for the benefit of Donald French's heirs. Respondent, along with Co-Executor Kilguss, met regularly with professionals retained by the Estate to assist in the planning of the land swap and subdivision.
10. The Respondent, a Registered Professional Engineer, prepared detailed plans at no cost to the Estate.
11. There was a regular meeting of the East Greenwich Planning Board on March 6, 2002. No matters relating to the French Estate or Respondent's land were included on the agenda.
12. At the conclusion of the agenda items of the March 6, 2002 Planning Board meeting, Respondent requested the attention of the other members of the Planning Board. Respondent then proceeded to a drawing board to sketch out two options for subdivision of the French Estate, one plan with three lots fronting Moosehorn Road, and another with one lot fronting Muss Fry Drive. Respondent sought feedback from the Board members as to responses, suggestions or "red flags" they perceived. This discussion lasted between 2 and 5 minutes. Following the meeting, Respondent called Donna Boileau to report that he had "laid all the groundwork down" regarding the subdivision to the Planning Board and that he had "pretty much" received a consensus from the Board that there were no problems with the preferred plan.

B. Conclusion of Law

1. The Respondent, as a member of the Town of East Greenwich Planning Board, was at all relevant times a municipal appointee subject to the Code of Ethics in Government.
2. The Respondent, by presenting to the members of the East Greenwich Planning Board the proposed land swap and subdivision plans involving Respondent and the French Estate, represented himself and another person (the French Estate) before a municipal agency of which he is a member without first seeking and obtaining a hardship waiver from the Rhode Island State Ethics Commission in violation of R.I. Gen. Laws §§ 36.14-5(e)(1)&(2)

C. Mitigating Factors.

The Respondent makes the following representations, and asserts that the factors justify a reduction of the recommended civil penalty of One Thousand Five Hundred (\$1,500.00) Dollars to a less or no monetary sanction:

1. Respondent has served on the East Greenwich Planning Board for twelve years and, as a licensed engineer, brought valuable experience and knowledge to the Board in carrying out its duties.
2. Respondent did not attend the Planning Board meeting on March 6, 2002 with the intention of discussing the subdivision plans with his fellow board members. With respect to that meeting it should be noted that:
 - a. Respondent spent over one hour at the blackboard explaining the various intricacies of the Town's regulations concerning minimum buildable area [MBA]. The Respondent was a principal architect of the MBA provision, which had been included in the subdivision regulations for several years.

- b. At the end of the Respondent's presentation he gave two examples to the Board involving the French Estate property.
 - c. Respondent did not bring any written materials with him to the meeting involving the French Estate property.
 - d. Respondent sought no vote from the Board members.
 - e. The matter was not on the agenda.
 - f. No proposal was submitted to the Board
 - g. No vote was taken
 - h. One board member, Timothy Gallogly, stated that he was not listening to Respondent's presentation. He was talking to Albert DiFiore, attorney to the Planning Board.
 - i. The Planning Board Chair, James Paolino, testified that he did not understand what Respondent was presenting. Also, Mr. Paolino stated that he did not know if anyone on the Planning Board was really following Respondent. Furthermore, Mr. Paolino testified that Respondent did not seek any compliment from him or any members of the Planning Board to approve either option presented.
 - j. When Respondent called Mrs. Boileau after the meeting he was overstating the event that occurred at the meeting in an effort to ease her frustration over the length of time it was taking to subdivide the property.
3. The Respondent and Donald French were neighbors for 20 years. During that time, they discussed many options for subdividing French's land, including the creation of a lot fronting Miss Fry Drive.

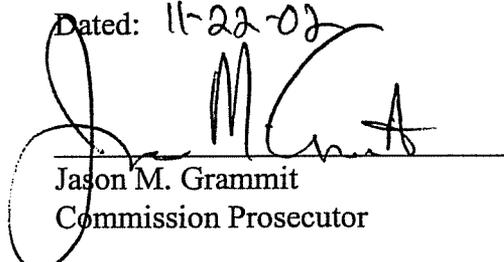
4. The East Greenwich Police Department thoroughly investigated Ms. Boileau's allegations. The Rhode Island State Attorney General's office found that the complaint did not warrant any further investigation.
5. Respondent was suspended from this position on the Planning Board as a result of the report before the report was reviewed by the Rhode Island State Attorney General's office. The Respondent was reinstated to the Planning Board after a public hearing lasting many days. During this period of time the Respondent was the subject of many news articles appearing in the print and television media. Although the allegations contained in the headlines never proved to be true, the Respondent's name and reputation has been irrevocably marred by these events.
6. Respondent has incurred thousands of dollars in legal fees as well as additional costs in defending his reputation and position on the Planning Board.
7. Respondent and his family hastily chose to move out from his home of 22 years into another home in East Greenwich to help mitigate the emotional distress of the situation, incurring significant relocation expenses including a "bidding war" on the new house purchased.
8. This complaint was filed by the two members of the East Greenwich Town Council who voted for removal of Respondent after the majority of the East Greenwich Town Council voted to reinstate Respondent.
9. One of the complainants again attempted to remove Respondent from the Planning Board after the filing of this complaint, using the existence of this complaint as the basis for the removal.
10. Respondent continues as Vice-Chairman of the East Greenwich Planning Board.

D. Settlement

The Respondent agrees that, pursuant to the above Findings of Fact and Conclusions of Law, the Prosecution will recommend, pursuant to R.I. Gen. Laws 36-14-154(d), the imposition of a civil penalty of \$1,500. While agreeing to the imposition of such penalty, the Respondent reserves the right to argue for a lesser penalty or the imposition of no penalty.

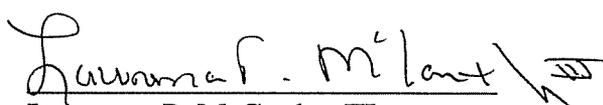
The above terms represent the full and complete Informal Resolution and Settlement for Complaint No. 2002-6.

Dated: 11-22-02



Jason M. Grammit
Commission Prosecutor

Dated: 11-21-02



Lawrence P. McCarthy, III
Attorney for Respondent

Dated:



Joseph A. Serdakowski
Respondent