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September 9, 2008

(via USPS)

**WHITESTOWN BOARD OF ETHICS**

8 Park Ave.  
Whitesboro, NY 13492

**Attn: Whitestown Board of Ethics Members**  
**c/o: Mary Finegan, Town Clerk**

Dear Board of Ethics Members:

Please accept this letter on behalf of my parents, Robert & Barbara Ross, who reside at 77 Cross Street, in the Village of Yorkville, Town of Whitestown.

In 2001, the Whitestown Planning Board approved an expansion project at the Holy Trinity Cemetery. The Cemetery is located on Champlin Ave., in the Town of Whitestown.

Shortly after construction, Robert & Barbara Ross began to experience ponding water in their yard following some rainfall events. Considering that this problem had never been experienced prior to the Cemetery project, the cause was rather easy to identify. For years, the Ross' attempted to resolve this issue amicably with the Town and Cemetery, but were continually rebuffed.

Given the Town's refusal to address this on-going problem, in early 2008 I conducted an extensive review of all Town records related to the 2001 approval of this project. I uncovered information that blatantly supports my assertion that this project should have never been granted approval in 2001. Therefore, in March 2008, I formalized this assertion in a complaint filed with the Town Board.

In response to my complaint, the Town Board directed the Town Engineer to prepare a response. In June 2008, the Town Engineer prepared a response report (refuting my assertions) and, in July 2008, the Town Board adopted a resolution embracing the findings and conclusions presented by the Town Engineer in his response report.

In regard to the Town's overall response to my complaint, the following summary outlines what we allege to be professional misconduct on the part of some Town Officials and Consultants. Given the Board of Ethics obligation to see "... that every effort be made to assure the highest caliber of public administration of (Whitestown) as part of our state's important system of local government", we submit the following:

**1. COMPLAINT #1 – CONFLICT OF INTEREST**

- a. In 2001, when the Whitestown Planning Board approved this controversial Holy Trinity Cemetery project, Mr. Karl Schrantz was the Chairman of the Planning Board.
- b. In 2008, the Town Board retained an engineer to evaluate and respond to our complaint. The engineer retained by the Town Board was Mr. Karl Schrantz, the same individual who was the Chairman of the Planning Board when the controversial Holy Trinity Cemetery project was approved in 2001.

- i. In the Town Engineer's report, Mr. Schrantz makes no disclosure regarding his previous involvement with this project. In my opinion, Mr. Schrantz should have recused himself merely to avoid the appearance of partiality or bias.
- ii. In the Town Engineer's report, Mr. Schrantz doesn't reveal that he is the Engineer-of-Record for this report; allegedly violating NYS Education Law. The following excerpt is taken from Guideline 3 of the NYS Guidelines for Professional Engineering Practice in New York State (my emphasis):

"Section 7209 (of Article 145 of the State Education Law) also identifies **when a professional engineer is required to sign and seal documents**. In general, all plans, specifications and **reports** prepared by the professional engineer or by a full-time or part-time subordinate under their supervision, **shall be signed and sealed when filed with public officials.**"

- iii. Since Mr. Schrantz does not disclose his involvement with the report, how do we justify our allegation that he is the Engineer-of-Record?
  1. In response to a request regarding the Town Engineer's report; the Town Attorney emailed me on 6/4/08. That email states, "I will be in contact with the Town Engineer to encourage his prompt completion of a report for review by the appropriate Town Officials." **The only 'Town Engineer' copied on this email is Mr. Schrantz.**
  2. In response to a request regarding the Town Engineer's report; the Town Supervisor emailed me on 6/10/08. That email states; "Our Town Engineer and Town Highway Superintendent have been gathering information on this issue for several weeks." **The only 'Town Engineer' copied on this email is Mr. Schrantz.**
  3. Page 1-1 of the Town Engineer's report indicates that the Town Engineer (SCE) twice met with NYSDEC. The report states; "... met with the New York State Department of Environmental Conservation (NYSDEC) at the site to review site conditions and at the SCE office to review the planning board files."
    - a. From a 6/9/08 letter, NYSDEC states; "On May 1, 2008, I met with Karl Schrantz, Shumaker Engineering, **at his request**, to discuss the complaint. On June 4, 2008, I met with Karl again to review the original plans for the project and the stormwater management plan." **The only 'Town Engineer' to attend these meetings was Mr. Schrantz.**
  4. From Page 23 of the Village of Yorkville Meeting Minutes, regarding their 7/1/08 meeting, the record includes, "At 6:45 the board met with Whitestown Town Supervisor Charles Gibbs and Whitestown Engineer Karl Schrantz **and discussed the report that Mr. Schrantz prepared relative to the Ross/Town/Holy Trinity Cemetery controversy**. No action was taken."

- c. We allege that the Town Board's retaining of Mr. Schrantz to evaluate the 2001 approval of the Holy Trinity Cemetery, an approval granted under the leadership of Mr. Schrantz, violates §13-5 (Conflicts of Interest) of the Whitestown Code of Ethics.

## 2. COMPLAINT #2 – LACK OF OBJECTIVITY

- a. The plans approved by the Whitestown Planning Board in 2001 required a ditch to be constructed along the Cemetery's western property boundary. The Town Engineer acknowledges that, as of this date, this ditch still hasn't been constructed, but concludes (on Page 3-6 of his report), "... no negative downstream impacts ... have been identified ..." due to the absence of this ditch. To the contrary:
  - i. In a 6/13/02 letter by Village Engineer Zangrilli, he wrote, "... the present grading is not as shown on the approved grading and drainage plans. During heavy rains, this storm water is running off of your property onto Village resident's property along Cross Street. This grading must be completed and improved to keep storm water from flowing onto the adjacent property along Cross Street."
  - ii. In a 10/22/04 letter by Village Engineer Zangrilli, he wrote, "The grading along the west property line, the property line that runs along the rear yards of the Cross Street houses, has not been completed in accordance with the plans. The ditch that was supposed to be installed along this property line was never constructed. Storm water running down the hill is now running into the rear yards of the houses on Cross Street. These problems must be corrected immediately."
  - iii. **Mr. Schrantz was copied on both of the above referenced letters at the time they were issued. Mr. Schrantz makes no reference to these letters, or the problems they describe, in his response report.**
- b. The plans approved by the Whitestown Planning Board in 2001 call for a reducing device to be installed in the detention basin's control structure to limit discharge. In response to accusations that this reducer was not immediately installed, the Town Engineer references a phone conversation with the Cemetery (on Page 3-2 of his report), in which he advances the position that this reducer was installed upon project completion in 2001. To the contrary:
  - i. In a 10/22/04 letter by Village Engineer Zangrilli, he wrote, "... the 10" to 6" reducer on the outlet pipe from the detention basin has never been installed." **Mr. Schrantz was copied on this letter at the time it was issued. Mr. Schrantz makes no reference to this letter, or absence of the reducer, in his response report.**
  - ii. Following the publication of his response report, we provided Mr. Schrantz with:
    1. A 10/29/04 letter by Village Engineer Zangrilli, in which he wrote (my emphasis); "I met with Mr. Mark Lazaroski from the Catholic Cemeteries, Diocese of Syracuse on October 27, 2004 to discuss the problems the Holy Trinity Cemetery expansion project is causing. **He agreed to install the reducer** pipe at the end of the detention basin discharge pipe."

2. Pictures taken by the Ross' in September 2004, clearly showing that the reducer had not yet been installed at that time.
  3. We are unaware of any steps Mr. Schrantz has taken to address the 10/29/04 letter and pictures we have presented.
- c. We allege that Mr. Schrantz's actions have violated Subsection G of §13-6 (Standards of Conduct) of the Whitestown Code of Ethics.

### 3. COMPLAINT #3 – TOWN ATTORNEY ASSUMES RECORDS ACCESS OFFICER'S "STATUTORY RESPONSIBILITIES"

- a. On 8/5/08, I submitted a Freedom of Information (FOIL) request to the Town Clerk requesting access to records pertaining to a **6/10/08** meeting that occurred between Town Attorney Schmitt and the Town Engineer. Billing records from Shumaker Engineering indicate that this meeting was related to the "Holy Trinity Cemetery – Ross Complaint". Despite several inquiries, the Town Attorney has denied us an explanation regarding the purpose of this meeting.
  - i. In a 6/3/08 email from Mr. Schmitt, he wrote, "In my opinion, this matter remains an **engineering issue**".
  - ii. In a 6/4/08 email from Mr. Schmitt, he wrote, "While I have **not been providing legal direction** concerning the preparation of the report (**or attendance at meetings**) I believe any formal response by the Town should await the Engineer's report..."
  - iii. The engineering report was issued on **6/18/08**. If considered an "**engineering issue**", and **not offering "legal direction"**, why is the Town Attorney meeting with the "independent" Town Engineer prior to the completion of their report?
  - iv. In his report, the Town Engineer references several people he met with during the preparation of this report. Perhaps of some interest, he neglects to mention any meeting with the Town Attorney.
- b. In response to my 8/5/08 FOIL request, I received an 8/12/08 email from Town Clerk Finegan (the Town's Record Access Officer) advising us that she, "... was **informed by the Town Attorney** for the Town of Whitestown, that he will be **addressing** the meeting that you are referring to, I'm sure **he will be providing all the records of the meeting from Mr. Schrantz** as well as any other Town Officials that were present."
  - i. In a 6/3/08 email from Mr. Schmitt, he informed me that, "The Town Board has appointed the Town Clerk as its Records Access Officer. This is consistent with her **statutory responsibilities** under the Town Law and Arts and Cultural Affairs Law that provide, among other things, that she has custody of all records of the Town. As the Records Access Officer, she is responsible for coordinating the Town's response to your FOIL request(s)."
  - ii. In an 8/8/08 letter from Mr. Schmitt, he informed me that he "provide(s) opinions to various Town Officials, including the Town Clerk who serves as Whitestown's Records Access Officer."

- iii. In an 8/11/08 email, Ms. Finegan stated, "I am the Records Access Officer, meaning I am the only person authorized to answer FOIL requests."
  - iv. When Mr. Schmitt "informed" the Records Access Officer that he would be "addressing" and "providing all records", we allege that he interfered with Ms. Finegan's statutory responsibilities, ironically outlined by Mr. Schmitt in his 6/3/08 email.
- c. The purpose of this meeting remains a mystery. In an 8/14/08 email from Mr. Schmitt, he wrote, "... no records of my meeting with the engineer were required to be taken, nor were any records prepared by my office with respect thereto."
- i. Additionally, despite our requests, the Records Access Officer has failed to provide any notes, meeting minutes, etc from the Town Engineer regarding his involvement in this same meeting.
  - ii. Perhaps most confusing, the Town Attorney originally responded to the Town Clerk by informing her that he would be **providing all the records of the meeting from Mr. Schrantz**, but later informed me on 8/14/08 that no such records existing. If no records existed, why wouldn't his initial response to the Town Clerk be, "no records exist"?
- d. We allege that the actions of Mr. Schmitt and Ms. Finegan have violated Subsections A, C, E and G of §13-6 (Standards of Conduct) of the Whitestown Code of Ethics.

#### 4. COMPLAINT #4 – TOWN BOARD ADOPTS RESOLUTION

- a. On 7/16/08 the Town Board adopted a Resolution regarding the "Holy Trinity Cemetery Stormwater Investigation". The Resolution is included in the 7/16/08 Town Board Meeting Minutes posted on the Town's website. However, unlike all other resolutions passed that night, the meeting minutes fail to show:
- i. Which Councilman introduced this Resolution for adoption?
  - ii. Which Councilman seconded a motion to adopt this Resolution?
  - iii. What was the roll-call vote that resulted in the adoption of this Resolution?
- b. The Resolution states, "... **the Town Board has had an opportunity to review** both the Ross Complaint, and the Response **with officials from the Village of Yorkville...**"
- i. When exactly did this meeting between the "Town Board" (presumably a quorum) and the referenced Village Officials occur?
    1. On 8/19/08, we submitted a FOIL request to the Town and requested access to the meeting minutes related to the above referenced meeting between the Town Board and Village Officials.
    2. On 8/21/08, the Records Access Officer responded, "no other documents responsive to your request can be located." No meeting minutes, or record, for this meeting were provided.
    3. We allege the referenced meeting between the Town Board and Village Officials never occurred, or if it did it violated Open Meeting/Freedom-of-Information Law as no announcements or meeting minutes have been made accessible.

4. What we allege happened was a meeting between Village of Yorkville Officials, and **only** Town Supervisor Gibbs and Town Engineer Schrantz, **not a quorum of the Town Board**. We support this allegation with the following:
  - a. From Page 23 of the Village of Yorkville Meeting Minutes, regarding their 7/1/08 meeting, the minutes state, "At 6:45 the board met with Whitestown Town Supervisor Charles Gibbs and Whitestown Engineer Karl Schrantz and discussed the report that Mr. Schrantz prepared relative to the Ross/Town/Holy Trinity Cemetery controversy. No action was taken."
  - b. We allege that this language hardly supports a Resolution adopted by the Town Board in which the Town Board indicates they reviewed our complaint and response with Village Officials.
  - c. Furthermore, we allege that the meeting conducted on 7/1/08, violated Open Meeting Law. We will take this alleged violation up separately with the Village of Yorkville.
- c. Additionally, the Resolution states, "... officials from the Village of Yorkville including its Mayor, Superintendent of Public Works and Village Engineer, who similarly have reviewed **and take no exception to the findings and conclusions reached by the Town's Engineers ...**"
  - i. We made several requests to Town Official's for records to support the language that they have attributed to Village Officials, these Officials have been non-responsive.
  - ii. On 8/5/08, I submitted a FOIL request to the Village of Yorkville that stated:
 

This is a request for access to all Records associated with the **Mayor, Superintendent of Public Works** and **Village Engineer**, as follows:

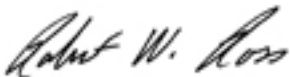
Documentation recording the discussions that took place at the "review" session(s) referenced by the Town,

And, documentation provided to the Town that substantiates their assertion that these Village Officials, "take no exception to the findings and conclusions reached by the Town's Engineers".
  - iii. On 8/8/08, I received a response from the Village of Yorkville that stated, "The records that you requested do not exist."
  - iv. From Page 23 of the Village of Yorkville Meeting Minutes, regarding their 7/1/08 meeting, the minutes state, "At 6:45 the board met with Whitestown Town Supervisor Charles Gibbs and Whitestown Engineer Karl Schrantz and discussed the report that Mr. Schrantz prepared relative to the Ross/Town/Holy Trinity Cemetery controversy. No action was taken."
    1. We respectfully disagree that "no action taken", can be interpreted as "take no exception".

- d. We allege that the Town Board (1) adopted a Resolution that contains language regarding a meeting that either never occurred, or if did we allege violated Open Meeting Law, and (2) attributes language to Village of Yorkville Officials that the Village appears resistant to support.
  - i. Since the roll-call vote is conveniently missing from the meeting minutes, we are unable to determine the majority Board Members who voted to adopt this Resolution. We allege that each member who voted in support of this Resolution violated Subsections E and G of §13-6 (Standards of Conduct) of the Whitestown Code of Ethics.
  - ii. In essence, the Resolution indicates that the Town Board agrees with the Town Engineer that the Cemetery does not and never has caused an adverse impact to the Ross' property. It will be interesting to see how Councilman Sullivan voted, given the following:
    1. In an 8/15/08 email from Councilman Sullivan, he writes, "I personally believe the answer with **your parent's problem** could be corrected by a small swale on Holy Trinity's property."

We thank you for your time and sincerely hope that, as charged by the Code of Ethics, you will make every effort to assure that the highest caliber of public administration is provided by each and every Town Official.

Regards,



Robert W. Ross, PE, NYS Lic #082606

Cc: Robert & Barbara Ross (email)  
Timothy Barone – Whitestown Board of Ethics (usps)  
Jack Barry – Whitestown Board of Ethics (usps)  
James Bepko – Whitestown Board of Ethics (usps)  
John Levitas – Whitestown Board of Ethics (usps)  
Nancy Waldron – Whitestown Board of Ethics (usps)  
Town Supervisor Gibbs – Town of Whitestown (email)  
Town Councilman Copperwheat – Town of Whitestown (email)  
Town Councilman Ciancaglini – Town of Whitestown (email)  
Town Councilman Barry – Town of Whitestown (email)  
Town Councilman Sullivan – Town of Whitestown (usps)  
Town Clerk Finegan – Town of Whitestown (email)  
Town Engineer Schrantz – Shumaker Engineering (email)  
Town Attorney Schmitt – Gorman, Waszkiewicz, Gorman & Schmitt (email)  
Mayor Petruccione – Village of Yorkville (usps)  
Deputy Mayor Thomas – Village of Yorkville (usps)  
Trustee Leone – Village of Yorkville (usps)  
Trustee Deluca – Village of Yorkville (usps)  
Trustee Spellman – Village of Yorkville (usps)  
Village Engineer Zangrilli – Zangrilli Engineering (email)