

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion 2022-2

Approved: January 11, 2022

Re: Suzanna L. Alba

QUESTION PRESENTED:

The Petitioner, a member of the Smithfield Town Council, a municipal elected position, requests an advisory opinion regarding whether she may participate in Town Council discussions and decision-making relative to the interview, selection, and appointment of members to a sub-committee tasked with proposing to the Town Council a plan for the long-term use of a piece of property owned by the Town of Smithfield, given that the Petitioner's personal residence is located in close proximity to the subject property.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Smithfield Town Council, a municipal elected position, may participate in Town Council discussions and decision-making relative to the interview, selection, and appointment of members to a sub-committee tasked with proposing to the Town Council a plan for the long-term use of a piece of property owned by the Town of Smithfield, notwithstanding that the Petitioner's personal residence is located in close proximity to the subject property.

The Petitioner has served as a member of the Smithfield Town Council ("Town Council") since her election thereto in 2012 and as Town Council President since 2018. The Petitioner explains that she resides in a single-family home located at 85 Colwell Road in the Town of Smithfield ("Town" or "Smithfield") which is in close proximity to a 114-acre property, also known as the Camp Shepard property ("Camp Shepard property" or "Property"),¹ acquired by the Town in October of 2020 from the Greater Providence Young Men's Christian Association, Inc. ("YMCA").²

The Petitioner represents that the Town Council is considering selling a portion of the Camp Shepard property and that she has recused from Town Council discussions and votes relative to such sale. As to the remaining portion of the Property, the Town Council has passed a resolution creating the Camp Shepard Sub-Committee ("Sub-Committee") which is tasked with proposing to the Town Council a long-term plan for the use of that portion of the Property. The Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in the Town Council discussions and decision-making relative to the interview, selection, and appointment of members of the Sub-Committee. During a telephone conversation with Commission Staff, the Town

¹ The Camp Shepard property is located at 71 Colwell Road in Smithfield.

² The YMCA is a non-profit corporation located in Providence.

Manager stated that the Sub-Committee has no role in the Town Council's decision whether to sell any portion of the Camp Shepard property. Rather, the Sub-Committee will be charged with developing and recommending proposed uses for the remaining portion of the property that are expected to be primarily recreational in nature, citing as examples trails, a splash park, day camps, and the like. The Town Manager further states that proposed uses are expected to be consistent with the Town's Comprehensive Community Plan.

The goals of the Sub-Committee identified in the resolution include the following: to facilitate community engagement in creating a long-term plan for the property and identifying those uses that may be most suitable for the residents of the Town; to identify strategies that will delineate proposed recreational, leisure and cultural uses consistent with the goals of the Town's Comprehensive Community Plan; to engage and work with any necessary consultants to develop a comprehensive plan and long-term vision for the property; and to present recommendations to the Town Council on how to achieve these goals. The resolution specifies that the Sub-Committee will be comprised of nine members who will serve at the pleasure of the Town Council and will include a Town Council member selected by the Town Council, a member of the Asset Management Commission, the Director of Parks and Recreation Department, the Town Planner, the Town Manager, the Director of the Smithfield YMCA, and three Town residents to be selected by the Town Council. The Petitioner states that she does not wish to serve, nor will she serve, on the Sub-Committee. The Town Manager confirmed that he has already issued an advertisement soliciting applications from residents of the Town who wish to serve on the Sub-Committee and stated that the only requirements are that the applicants be residents of the Town and registered voters. The Town Manager noted that he will receive all of the applications, which he will later forward to the Town Council. The Petitioner explains that for these appointments the Town Council will follow its routine procedure for reviewing, interviewing, and appointing members of other Town boards and commissions. Specifically, the Town Council will interview all of the applicants in executive session where each Town Council member will have the opportunity to ask questions of the applicants. The Town Council will then vote to appoint three of the applicants to the Sub-Committee.

The Petitioner's official actions relative to the purchase of the Camp Shepard property were the subject to an ethics complaint filed against her in 2020, Complaint No. 2020-5 ("Complaint"), in which it was alleged that that the Petitioner violated the Code of Ethics by taking official actions that would have resulted in a financial impact upon her as an abutting property owner. The investigation of the Complaint revealed that the Petitioner's property, although not directly adjoining, is located within 60 feet of the Camp Shepard property.³ The Camp Shepard property had been used as a summer camp from 1970 until its closure in 2008. Since the closure of the camp, the property has been dormant, neglected, and unkept. In 2018, the YMCA began discussions with Town officials, including the Petitioner and the former and the current Town Managers, concerning a possible sale of the Camp Shepard property to the Town. The Town Manager had the authority to negotiate with the YMCA and he periodically apprised the Petitioner in her capacity as Town Council President of the status of the negotiations. The investigation

³ The investigation revealed that the Camp Shepard property and the Petitioner's property are separated by land, primarily woodlands, owned by Laurence and Kathryn Sasso, and is subject to a conservation easement granted by the Sassos to the Smithfield Land Trust.

revealed that the Petitioner participated in a Camp Shepard property site visit, discussions relative to the Town's plans for the property, which included a possibility that the Town might decide in the future to develop the property, and a vote to authorize the Town Manager to execute a purchase and sale agreement with the YMCA. The Petitioner, however, did not participate in the Town Council's vote to authorize the purchase of the Camp Shepard property, which was closed on October 30, 2020.

In reviewing the Complaint, the Ethics Commission first determined that although the Petitioner did not participate in the final Town Council vote to proceed with the purchase of the Camp Shepard property, her prior actions were taken as part of her official duties in the Town's decision to purchase the Property and such actions would be prohibited by the Code of Ethics if the Petitioner had a reason to believe or expect that, as a nearby property owner, she would have been directly financially impacted by the Town's purchase of the Property. The Ethics Commission noted that the Petitioner's property was in such close proximity to the Camp Shepard property that certain decisions that the Town could make regarding the Property might have a corresponding financial impact on the Petitioner's property. However, the Ethics Commission ultimately determined that the totality of the evidence established that it was not reasonably foreseeable that the Petitioner's participation in the Town Council's vote to simply purchase the Camp Shepard property, without taking any other action, would have had any financial impact on her property. The Ethics Commission based its decision on the fact that the vote in which the Petitioner participated was limited to whether the Town would purchase the Camp Shepard property, and that no specific use of the Property was proposed at any of the Town Council's meetings. The Ethics Commission further noted that, at its October 22, 2020 meeting which the Petitioner did not attend, the Town Council discussed the possible formation of a sub-committee to consider the Town's options as to the Property, but that such a sub-committee had yet to be formed. Therefore, any potential financial impact on the Petitioner's property as a result of speculative actions that the Town might take in the future based on recommendations from a sub-committee yet to be formed was remote at the time of her vote and remained remote at the time the Ethics Commission made a decision on the Complaint.

The Petitioner states that, in light of the resolution of the Complaint and the advice from the Ethics Commission to seek further guidance regarding future actions relative to the Camp Shepard property, she now seeks an advisory opinion regarding whether she may participate in the interview, selection, and appointment of the members of the Sub-Committee.

No person subject to the Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A person subject to the Code of Ethics has an interest which is in substantial conflict with the proper discharge of her duties if she has reason to believe that she, her family member, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). Additionally, a person subject to the Code of Ethics shall not use her public office for pecuniary gain, other than that provided by law, for herself, her family member, her business associate, or her business by which she is employed or which she represents. Section 36-14-5(d).

In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property or a property located in close proximity to the owner's property. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Given this presumption, the Ethics Commission has frequently stated that a public official may not participate in discussions and decision-making on matters concerning abutting property absent evidence that the official action would not impact the financial interest of the public official or the public official's family member. For example, in Advisory Opinion 2016-13, the Ethics Commission opined that a member of the Bristol Planning Board was prohibited from participating in the Planning Board's consideration of a proposed hotel development, given that his first cousins owned properties within the area requiring notice and would be financially impacted by the Planning Board's decision. Similarly, in Advisory Opinion 2005-66, the Ethics Commission opined that a member of the Warren Planning Board was prohibited from participating in matters before the Planning Board relating to a housing development that was to be located on property adjacent to property owned by his mother. See also A.O. 2005-7; A.O. 2003-13; and A.O. 2002-30. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussions or voting concerning property which abuts or is in close proximity with their own, absent reliable evidence that their official actions would not affect the financial interests of the public officials, either positively or negatively.

Instances in which the presumption of financial impact was found to be sufficiently rebutted include the following: A.O. 99-148 (presumption rebutted where a petitioner provided independent evidence from a licensed appraiser that his property would not be financially affected by a proposed zoning change); A.O. 98-92 (presumption rebutted where only a small fraction of the petitioner's back yard was within 200 feet of the area at issue; the proposed cul-de-sac would not be visible from her property; and where she represented that there would be no financial impact on her property); A.O. 98-35 (presumption rebutted where the requested height variance was minor; the subject dwelling was not adjacent to the petitioner's property; and the petitioner represented that the variance would have no financial impact on his property).

Here, the Petitioner represents that she did not participate in the Town Council's discussions relative to the potential sale of a portion of the Camp Shepard property. The Town Manager states that the Sub-Committee will be charged with creating and proposing to the Town Council for consideration a long-term plan for the use of the remaining portion of the Camp Shepard property that is consistent with the Town's Comprehensive Community Plan. Further, it is the Town Manager's understanding that the Town Council will be responsible for any potential sale of a portion of the Camp Shepard property, where the Sub-Committee will be responsible only for proposing a plan for recreational uses of the remaining portion of the Property. Additionally, the official actions under consideration in this advisory opinion are the Petitioner's participation in the interview, selection, and appointment of the members of the Sub-Committee, not the Town Council's discussions and decision-making relative to any proposed uses of the Camp Shepard property.

Based on the above representations, prior advisory opinions issued, the Ethics Commission's decision in Complaint No. 2020-5, and the applicable provisions of the Code of Ethics, it is the

opinion of the Ethics Commission that the Petitioner may participate in the Town Council's discussions and decision-making relative to the interview, selection and appointment of the members of the Sub-Committee, given that such participation will not have any direct financial impact upon the Petitioner or her property, and provided that none of the applicants are members of her family as defined under the Code of Ethics, her business associates, or her employer, under which circumstances she would be required to recuse from the interview, selection, and appointment of any of the applicants. The Petitioner is further advised that she must recuse from any Town Council discussions and decision-making relative to any updates and/or specific use proposals by the Sub-Committee, or seek further guidance from the Ethics Commission prior to participating in such discussions and decision-making. Notice of recusal shall be filed with the Ethics Commission in accordance with section 36-14-6.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2016-13

A.O. 2012-4

A.O. 2007-18

A.O. 2006-37

A.O. 2005-66

A.O. 2005-16

A.O. 2005-7

A.O. 2003-13

A.O. 2002-30

A.O. 99-148

A.O. 98-92

A.O. 98-35

Other Related Authority

Complaint No. 2020-5

Keywords:

Abutter

Property Interest

Recusal