

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-8

Approved: February 15, 2022

Re: Alayne White

QUESTION PRESENTED:

The Petitioner, a member of the Bristol Zoning Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her, in her private capacity, from participation in various activities relative to a proposed mill redevelopment in the Town of Bristol.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Bristol Zoning Board, a municipal appointed position, is not prohibited by the Code of Ethics, in her private capacity, from participation in the various activities as described below relative to a proposed mill redevelopment in the Town of Bristol.

The Petitioner serves as a second alternate member on the Bristol Zoning Board (“Zoning Board”), having been appointed to that position by the Bristol Town Council (“Town Council”) in July of 2019. She states that currently before the Bristol Planning Board (“Planning Board”) is a request for a zoning change filed by a developer who has proposed a plan for a large-scale redevelopment of the Bristol Yarn Mill (“redevelopment”), also known as Robin Rug, which would include, among other things, a large number of residential apartment units, commercial space, and parking. The Petitioner further states that the Planning Board’s recommendation will be considered by the Town Council, which is ultimately responsible for the decision to approve or deny the zoning change.

The Petitioner represents that she resides in a home abutting the redevelopment project. Specifically, she explains that the redevelopment includes a very large parking lot that is directly to the north of her home’s backyard. The Petitioner states that in her private capacity she operates a small business out of her home providing facial treatments, which requires a certain level of quietness in order for her clients to enjoy their treatments. She explains that she and her neighbors are concerned about the impact that any increase in vehicular traffic resulting from the redevelopment would have on the use and enjoyment of their properties. The Petitioner states that she and her neighbors are specifically concerned about the increased use of the parking lot and the anticipated noise and activity associated therewith. Therefore, they would like to make their concerns and requests relative to the abutting parking lot known by jointly sending letters to the Planning Board and the Town Council. They would also like to communicate with and invite the developer, and possibly the Planning Board, to a site visit of their backyards to view the parking lot from that standpoint. They are hoping that a site visit would help the developer, and/or the

Planning Board, to make an informed decision about the parking lot's orientation, design, lighting, landscaping, and the like. The Petitioner states that she would also like to submit a letter to the editor of a local newspaper, in her private capacity, to voice her views relative to the redevelopment.

The Petitioner represents that she has spoken with the Bristol solicitor who does not believe that the redevelopment will go before the Zoning Board; however, the Petitioner is prepared to recuse from any Zoning Board discussions and decision-making relative to that matter. Finally, the Petitioner states that the Zoning Board does not have any appointing authority over the members of the Planning Board who, like the members of the Zoning Board, are appointed by the Town Council. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in the following activities in her private capacity: co-signing letters to the Planning Board and the Town Council expressing her and her neighbors' concerns and requests; inviting the Planning Board and/or the developer for a site visit of the Petitioner and her neighbors' homes; communicating, either individually or in conjunction with her neighbors, with the developer or a representative thereof; and sending letters to the editor of the local newspaper.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with her official duties if it is reasonably foreseeable that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of the public official's activity, to the public official, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). Further, the Code of Ethics prohibits a public official from representing herself or authorizing another person to appear on her behalf before a state or municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Section 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). Finally, section 36-14-5(d) prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or any business by which she is employed or represents.

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. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussion or vote on decisions concerning property that abuts their own, absent reliable evidence that their official action would not impact their own financial interests, either positively or negatively. Here, given that the Petitioner is an abutter of the redevelopment and, thus, presumed to be financially impacted by it, she properly anticipates the need to recuse in her public capacity from any Zoning Board discussions and decision-making relative to the redevelopment pursuant to sections 36-14-5(a) and 36-14-7(a). Notice of recusal shall be filed with the Ethics Commission consistent with section 36-14-6.

Further, section 5(e)(1) and Regulation 1.1.4 prohibit the Petitioner from representing herself or authorizing another person to appear on her behalf before a municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Here, the Petitioner is neither a member of nor employed by the Planning Board or the Town Council; nor is she the appointing authority for either. Additionally, the Petitioner is not asking to appear before her own board (the Zoning Board). She represents that currently there is no matter relative to the redevelopment pending before the Zoning Board, that no such matter is likely to come before the Zoning Board, and that if such matter does come before it, she is prepared to recuse from Zoning Board discussions and decision-making. Therefore, section 5(e)(1) and Regulation 1.1.4 do not apply in the instant matter. See A.O. 2020-52 (opining that a member of the Westerly Planning Board was not prohibited from representing himself before the Westerly Zoning Board in connection with the remodel and expansion of his primary residence given that he was neither a member of the Zoning Board nor did he have appointing authority over it).

Accordingly, based upon the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from co-signing letters in her private capacity relative to the redevelopment to be sent to the Planning Board and the Town Council. Further, the Petitioner is not prohibited by the Code of Ethics from inviting the Planning Board for a site visit to view the parking lot from the neighbors' perspective, nor is she likewise prohibited from communicating with and inviting the developer or a representative thereof to do the same. Finally, the Petitioner is not prohibited by the Code of Ethics from writing letters in her private capacity as a Bristol resident and business owner to the editor of the local newspaper regarding the redevelopment. See, e.g., A.O. 2008-1 (opining that a member of Johnston Board of Canvassers was not prohibited in his private capacity as a citizen from participating in political fundraising, soliciting political party memberships, making political contributions, or writing letters to the editor and editorials concerning political issues).

The Petitioner is advised that all of the above-cited activities must be conducted strictly in her private capacity as a resident and/or business owner of Bristol and without the use of her public position or resources, or confidential information obtained as part of her public position. Public resources may include, but are not limited to, use of the Petitioner's Zoning Board email address, stationary, and office supplies.

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)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2020-52

A.O. 2012-4

A.O. 2008-1

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

Keywords:

Recusal

Representing Oneself or Others