

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-22

Approved August 16, 2022

Re: Renu Englehart

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from appearing, as a member of the public, during public hearings of the East Greenwich Planning Board, over which the East Greenwich Town Council has appointing authority, to provide public comment on a proposed major development of property located within a mile of the Petitioner's home.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Town Council, a municipal elected position, is not prohibited by the Code of Ethics from appearing, as a member of the public, during public hearings of the East Greenwich Planning Board, over which the East Greenwich Town Council has appointing authority, to provide public comment on a proposed major development of property located within a mile of the Petitioner's home.

The Petitioner is a member of the East Greenwich Town Council ("Town Council"), having served in that position since her election in 2018. She represents that before the East Greenwich Planning Board ("Planning Board"), over which the Town Council has appointing authority, is a Master Plan Review for a Major Residential development ("development") of property located within a mile of the Petitioner's home. The Petitioner explains that the subject property is comprised of just over 80 acres and is currently vacant. She adds that the developer intends to build approximately 410 new dwelling units on the property in a variety of housing types and styles, ranging from multi-story apartment buildings to small single-family cottages. The Petitioner states that the development is the largest proposed in East Greenwich to date. She represents that, because the applicant will deed-restrict more than 25% of the total units as affordable, the development qualifies as a Comprehensive Permit submission. The Petitioner states that such submissions are reviewed solely by the Planning Board and that the Town Council will have no part in the permitting process. She further states that any appeal of an unfavorable decision of the Planning Board would be heard by the State Housing Appeals Board, and not by the Town Council or other municipal boards.

The Petitioner represents that she does not live within the 200-foot radius of the subject property and that she did not receive an abutter's notice. The Petitioner further represents that the development would not be visible from her property and that she is currently not certain whether

and to what extent her property would or could be financially impacted because of the development. However, given the development's proximity to the Petitioner's residence, she is concerned about the amount of traffic and infrastructure needs associated with it. The Petitioner is also concerned with the source and amount of drinking water to be utilized by the development, given that her property is dependent on well water. Thus, the Petitioner would like to participate as a member of the public during the public comment section of the Planning Board's public hearings and voice her concerns relative to the proposed development. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from doing so.

The Code of Ethics prohibits a public official from using her public position, or confidential information received through her public position, to obtain financial gain, other than that provided by law, for herself, her family member, her business associate, or her employer. R.I. Gen. Laws § 36-14-5(d). The Code of Ethics also specifically 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); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). However, the Code of Ethics contains a "Public Forum Exception" which provides that it shall not be a violation of the Code of Ethics for any person to publicly express her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or her spouse or dependent child. Commission Regulation 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003) ("Regulation 1.2.3").

In past advisory opinions, the Ethics Commission has advised public officials about their rights under the "Public Forum Exception" primarily in situations where a petitioner was an abutter to a property under consideration, resulting in a rebuttable presumption of financial impact upon the petitioner. See A.O. 2020-33 (opining that a member of the West Warwick Town Council could address the Planning Board, the Zoning Board, and/or the Town Council, upon recusal, during public hearings regarding a proposed development of property located across the street from his personal residence, provided that he did not receive access or priority not available to any other member of the public); A.O. 2019-41 (opining that a member of the Middletown Town Council could attend and speak at public hearings before the Planning Board and/or, potentially, the Zoning Board regarding a proposed development of property located across the street from her personal residence, provided the petitioner did not receive access or priority not available to any other member of the public); and A.O. 2003-15 (opining that a member of the Scituate Town Council could, upon recusal, attend and provide public comment at meetings of the Zoning Board regarding a special use permit application for property to which he was an abutter, provided that he did not receive special access or priority not available to any other member of the public).

Here, unlike in the above-cited advisory opinions, the Petitioner is not an abutter to the proposed development and has not received an abutter's notice; thus, there is no rebuttable presumption of financial impact upon her or her family relative to the proposed development. Also, she is not certain at this time whether and to what extent the development would or could financially impact her property. However, given the magnitude of the development, a proposed construction of 410 new dwelling units to be located on just over 80 acres of land, which the Petitioner describes to be the largest proposed development in East Greenwich to date, the development qualifies as a matter

of general public concern justifying the application of the Public Forum Exception. Accordingly, it is the opinion of the Ethics Commission that the Petitioner, in her capacity as a member of the public, may appear and address the Planning Board during the public comment section of its public hearings regarding the proposed development of property located within one mile of her residence, provided that she does not receive access or priority not available to any other member of the public. The Petitioner is advised that she may not use her public position in any way to influence members of the Planning Board regarding this or any other matter. See section 36-14-5(d). Finally, in the unlikely event that any aspect of this proposed development comes before the Town Council, the Petitioner is strongly encouraged to recuse from participation therein and/or to seek further guidance from the Ethics Commission.

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(d)

§ 36-14-5(e)

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

520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003)

Related Advisory Opinions:

A.O. 2020-33

A.O. 2019-41

A.O. 2003-15

Keywords:

Public Forum Exception