

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-15

Approved: April 4, 2023

Re: Robert S. DeGregorio

QUESTION PRESENTED:

The Petitioner, a member of the Warwick Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated.¹

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Warwick Zoning Board of Review, a municipal appointed position, is prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated.

The Petitioner is a member of the Warwick Zoning Board of Review ("Zoning Board"), having been appointed to that position in 2022 by the Mayor of the City of Warwick ("City"), and currently serves as the Zoning Board's Vice-Chairperson.² Under state law and the City's Zoning Code of Ordinances ("Zoning Ordinance"), the Zoning Board's powers include hearing and deciding appeals from decisions of the municipal Administrative Officer, the Planning Board, and the Historic District Commission, authorizing hardships, variances, and special use permits, and referring matters to the Planning Board or other municipal boards and agencies, as appropriate, for findings and recommendations.³

In his private capacity, the Petitioner represents that he is employed as a licensed real estate salesperson for The Slocum Agency, Inc. ("Slocum Agency"), and Slocum Homes, Inc. ("Slocum Homes"), both of which are owned by Philip Slocum. The Petitioner further represents that Slocum Agency provides real estate and insurance brokerage services and is comprised of three

¹ The advisory opinion request was submitted by the Petitioner and Philip Slocum, a member of the Warwick Planning Board. Their dual request was consolidated and is addressed in the instant opinion issued only to the Petitioner. As such, the facts represented herein were provided and confirmed by both the Petitioner and Philip Slocum.

² The Zoning Board is comprised of five members and two alternates.

³ See R.I. Gen. Laws §§ 45-23-66, 67, 69, & 70; §§ 45-24-64, & 68; Warwick Zoning Code of Ordinances, Sec. 904.

subsidiary companies including Slocum Homes, which deals primarily in real estate. The Petitioner states that he has been employed by Philip Slocum for more than 30 years and currently serves as the Director of Finance for Slocum Agency, a salaried position, and as a real estate salesperson for Slocum Homes, for which he receives a share of earned commissions.

The Petitioner states that his employer, Philip Slocum, has been a member of the Warwick Planning Board (“Planning Board”) since his appointment thereto in 1999, and that he has served as the Planning Board’s chairperson for the past five years.⁴ The Petitioner further states that, as a Planning Board member, Mr. Slocum participates in the Planning Board’s review and approval or denial of land-development and subdivision applications. The Petitioner represents that decisions of the Planning Board may be appealed to the Zoning Board. In such appeals, the Petitioner states that the Zoning Board’s review is limited to whether the Planning Board heard the subject application properly; whether the Planning Board followed all appropriate actions such as providing notice and considering the evidence and testimony; and whether there were any facts that supported the Planning Board’s decision.

The Petitioner explains that there are currently pending before the Zoning Board two appeals of a Planning Board decision to approve a conditional master plan of a major land development project that was filed by applicants seeking to construct a contractor trades storage facility with associated parking. The Petitioner states that the applicants have appealed the Planning Board’s decision on the basis that the Planning Board committed procedural errors by the manner in which it approved their application and the conditions it attached to its approval. The Petitioner states that a second appeal was filed by abutters to the subject land development project who seek a reversal of the Board’s approval. The Petitioner explains that Mr. Slocum participated in the Planning Board’s review of the subject application and was one of the three members who opposed the Planning Board’s decision to approve the application. The Petitioner further explains that the appeals to the Zoning Board will involve the Zoning Board’s review of the entire record of the Planning Board’s master plan hearings including documents filed by the applicants and objectors, audio recordings of the hearing, and the Planning Board’s decision. The Petitioner informs that while his employer will not physically appear before the Zoning Board during the appellate proceedings, the Planning Board and its members are parties to the appeal and will be represented by the City’s assistant solicitor.

Cognizant of the Code of Ethics and in the interest of avoiding any potential conflicts in carrying out his public duties, the Petitioner seeks guidance as to whether he may participate in the Zoning Board’s consideration of the appeals.

The Code of Ethics requires a public official to recuse from participation when his employer, business associate, or family member, either personally or through an authorized representative, appears or presents evidence or arguments before his municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”). An exception found at Regulation 1.2.1(B)(1) provides that a public official is not required to recuse when his employer, business associate, or family member is before the public official’s agency solely in an official capacity as a duly authorized member or employee of

⁴ The Planning Board consists of seven members.

another state or municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the employer, business associate, or family member is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

The Ethics Commission considered a similar set of facts in Advisory Opinion 2022-3, which asked whether a member of the State Housing Appeals Board (“SHAB”) could participate in the SHAB’s consideration of an appeal from a decision of the Town of Lincoln Planning Board of Review (“Planning Board”), given that the petitioner’s brother-in-law was a member of the Planning Board and participated in the decision being appealed. The Ethics Commission considered the brother-in-law to be a “participant” in the appeal since he was a member of the Planning Board which authorized the Town Solicitor to represent its interests before the SHAB.⁵ For support, the Commission relied on its opinion in A.O. 2021-45 in which it found that a member of the Burrillville Zoning Board of Review would be prohibited by both Regulation 1.2.1(A) and the nepotism provisions of Regulation 1.3.1(B)(1) from participating in appeals to the Zoning Board by parties aggrieved by a decision of the Building Official, who was the petitioner’s father-in-law.

In the instant matter, while the individual members of the Planning Board such as Mr. Slocum have no personal financial interests in the appeals and will not personally present any evidence or arguments in the course of the appeals before the Zoning Board, the Planning Board as a body is a party to the appeals, the decision in which the members participated is the subject of the appeals, and the Planning Board will be represented before the Zoning Board by the City’s assistant solicitor. Under these circumstances, and consistent with our reasoning in Advisory Opinion 2022-3, it is our opinion that Regulation 1.2.1(A) requires the Petitioner to recuse from the instant appeals before the Zoning Board of the Planning Board decision in which Mr. Slocum participated.

The exception to Regulation 1.2.1(A)’s application, found at section 1.2.1(B)(1), for situations in which one’s employer is before one’s agency solely in an official capacity as a member of another state or municipal agency to participate in non-adversarial information sharing is not applicable here, because the appellate process is by its very nature adversarial. Appeals to the Zoning Board filed by parties aggrieved by a Planning Board decision at which the Planning Board is represented by legal counsel is adversarial by its nature. An adversary proceeding is “a hearing involving a dispute between opposing parties.”⁶ In contrast, non-adversarial or ministerial functions include activities such as providing status reports, seeking approval to advertise bids, submitting or retrieving papers, and submitting bills or invoices. See A.O. 2016-11 (opining that a Tiverton Town Council member was not required to recuse when her spouse, the Town’s Director of Public Works, appeared before the Council seeking approval to advertise or award a public bid, requesting emergency funding to repair equipment, or providing status reports on the budget and operations of the Department of Public Works on the basis that these constituted non-adversarial information sharing and coordination of activities between the Council and one of its municipal departments); A.O. 2001-52. Here, the Zoning Board’s power to review the record in the aggrieved parties’

⁵ The Commission also relied on the nepotism provisions of Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004), which prohibits participation in matters in which one’s family member is either a party or participant.

⁶ Black’s Law Dictionary, 58 (8th ed. 2004).

appeals of a Planning Board decision in which the Planning Board is a party renders such proceedings adversarial. For this reason, the exception found at Regulation 1.2.1(B)(1) is not applicable. See A.O. 2022-3 (opining that the exception found at Regulation 1.2.1(B)(1) did not apply because the appellate proceedings before the State Housing Appeals Board were adversarial).

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 prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated. The Petitioner is advised that if any of the circumstances set forth herein change, he should seek further guidance from the Ethics Commission. All notices of recusal shall be filed consistent with the provisions of R.I. Gen. Laws § 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:

§ 36-14-6

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2022-3

A.O. 2021-45

A.O. 2016-11

A.O. 2001-52

Keywords:

Conflict of Interest

Employer

Recusal

Ministerial