

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-23

Approved: May 16, 2023

**Re: Mark Aramli**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Newport City Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating as a member of a City Council subcommittee tasked with drafting proposed revisions to the Newport Zoning Code pertaining to historic district overlays, and/or in the City Council's eventual discussions and voting relative to those proposed revisions, given that he owns properties located within a Newport Historic District.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport City Council, a municipal elected position, is prohibited by the Code of Ethics from participating as a member of a City Council subcommittee tasked with drafting proposed revisions to the Newport Zoning Code pertaining to historic district overlays, given that it is unclear from the outset whether and how he might be directly financially impacted by that participation. The Ethics Commission cannot opine at this time whether the Petitioner may participate in the City Council's discussions and voting on the proposed revisions which have yet to be drafted and submitted by the subcommittee.

On November 8, 2022, the Petitioner was elected to serve a two-year term on the Newport City Council ("City Council"). He identifies among his City Council duties the exercise of voting authority over proposed modifications to the City of Newport ("City" or "Newport") Zoning Code. He adds that embedded within the Zoning Code are the rules governing the Newport Historic District zoning overlays ("zoning overlays").<sup>1</sup> The Petitioner represents that on February 8, 2023, the City Council approved a resolution ("HDC Resolution") to begin the process of improving and modernizing the Zoning Code as it relates to zoning overlays. The Petitioner explains that the HDC Resolution is intended to encourage new and affordable housing units in Newport and to provide some relaxation of regulations such that projects will be more affordable for Newport homeowners and allow for a broader range of approval. The Petitioner represents that the HDC Resolution provides the City Council with the option of creating a subcommittee consisting of individual City Councilors and community stakeholders to assist with improving and modernizing the Zoning Code as it relates to zoning overlays.

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<sup>1</sup> The Petitioner states that, according to the City's website, more than 40% of Newport's geographical area and more than 50% of the City's 9,753 parcels are contained within historic district overlay zones.

The Petitioner states that he currently resides in a Newport Historic District and plans to construct a new residence in a Newport Historic District.<sup>2</sup> He further states that he would like to participate as a member of the City Council subcommittee authorized by the HDC Resolution tasked with drafting proposed Zoning Code revisions for consideration by the City Council. He adds that he would then like to participate in the City Council's discussions and voting relative to those proposed revisions. The Petitioner represents that the revisions may or may not carry with them financial impact upon historic district property owners, and suggests that they may merely improve the efficiency of the Historic District Commission ("HDC") application process. He cites by way of example the possible allowance of a more administrative, rather than full, HDC review of minor projects and applications. The Petitioner explains that the potential for, and extent of, direct economic impact upon residents within a Newport historic district as a result of any new revisions to the Zoning Code by the City Council is impossible to determine at this time because they have yet to be drafted. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks guidance regarding whether the official activity in which he wishes to engage is prohibited by the Code of Ethics.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," that is, when the probability is greater than "conceivably," but the conflict of interest is not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). A public official also may not use his office for pecuniary gain, other than as provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Ethics Commission will first ascertain whether it is reasonably foreseeable that the Petitioner will be directly financially impacted by his participation on the subcommittee in the drafting of proposed revisions to the Zoning Code. Because the Petitioner owns and currently resides in a home in a Newport Historic District, has plans to construct a new residence in a Newport Historic District, and is currently appealing a decision by the HDC enforcing the current Zoning Code as it relates to construction in an historic district, it is our opinion that it is reasonably foreseeable that

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<sup>2</sup> The Petitioner informs that the property on which he plans to construct a new residence is the subject of a pending appeal before the Newport Zoning Board of Review ("ZBR") from a decision by the HDC denying his application to construct the new home. It is the Petitioner's belief, based on conversations with the City Solicitor, that his appeal will be decided on the Zoning Code in place at the time of his HDC application and, therefore, any newly adopted Zoning Code provisions would not impact his pending appeal.

the Petitioner will be directly financially impacted by proposed revisions to the Zoning Code pertaining to historic district overlays.

Notwithstanding the reasonably foreseeable direct financial impact upon the Petitioner were he to participate in the drafting of proposed revisions to the Zoning Code, section 36-14-7(b) of the Code of Ethics, referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, or any person within his family, or any business associate, or any business by which he is employed or which he represents, “as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or the significant and definable class of persons within the business, profession, occupation or group.” When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

The Ethics Commission has previously applied the class exception in a variety of circumstances involving public officials. See, e.g., A.O. 2005-22 (applying the class exception and opining that an Exeter Town Council member could participate in a proposed tax freeze ordinance for all property owners aged 65 and over, notwithstanding that his spouse was over age 65 and could benefit from the tax freeze, because 250 to 300 other property owners would be similarly impacted by the ordinance).

However, in prior advisory opinions issued by the Ethics Commission involving situations where it was unclear from the outset whether and how a petitioner or his family member might be impacted by certain matters in which the petitioner sought to participate, the class exception was not applied. For example, in Advisory Opinion 2018-23, the Ethics Commission opined that a member of the Portsmouth Town Council (“Town Council”) was prohibited from participating in discussions and decision-making relative to mitigating the negative side effects caused by the operation of a town-supported wind turbine on neighboring homes. Because the Town Council was likely to consider various options, including restriction on the wind turbine’s hours of operation and/or the possibility of offering financial compensation to the affected property owners, it was unclear at the outset how any resolution would impact that petitioner. That petitioner’s participation in the discussions would have placed him in a position in which he would have provided input in defining the groups to be impacted, the extent of the impact, and ways to mitigate the impact. Therefore, the Ethics Commission deemed the class exception inapplicable. See also A.O. 2021-14 (opining that the Middletown Solicitor was prohibited from participating in Middletown Town Council discussions regarding the proposed revision of an ordinance relating to short-term residential leases, given that the petitioner and his spouse owned property regulated by said ordinance and it was unclear at the outset whether and how the actions of the Middletown Town Council, in response to the advice of the petitioner in his capacity as Middletown Solicitor, might financially impact the petitioner and his spouse).

The Ethics Commission has previously noted the general difficulty of applying the class exception to matters involving actions that impact real property, given the unique nature of each discrete piece of real estate and the fact that actions affecting real property and its value will likely create a dissimilar impact on each property owner. See, e.g., A.O. 2012-13 (opining that the class exception was inapplicable and, thus, a member of the Westerly Town Council was prohibited from participating in the consideration of a resolution to fund a sewer expansion to the Misquamicut Beach area, given that three members of the Board of Directors of the Misquamicut Beach Association (“MBA”), the petitioner’s employer, as well as 90% of the MBA’s business members and 12 of the MBA’s homeowner members would incur dissimilar financial impacts resulting from the Town Council’s approval or disapproval of the sewer expansion); A.O. 2008-63 (opining that the class exception was inapplicable and, thus, a member of the Narragansett Town Council was prohibited from participating in the hearings and vote on an amendment to the Narragansett Zoning Ordinance, given that he owned two of approximately seventy properties located within the district that was the subject of the amendment, and given that actions affecting real property and its value were likely to create a dissimilar impact on each property owner). Contra A.O. 2015-4 (applying the class exception and permitting a Charlestown Town Council member to participate in the Town Council’s discussions and decision-making relative to remediating ground water pollution, given that it was reasonably foreseeable that the financial impact upon the entire class would be substantially similar in the form of equal or proportional assessments to connect to community water and/or wastewater systems, or a Town-wide tax increase to subsidize improvements to the water and sewer infrastructure to prevent pollution and salt water intrusion).

As with these prior advisory opinions, in the context of the instant matter, given the uncertainty at this time as to the nature and scope of the proposed revisions to the Zoning Code, coupled with the general difficulty of applying the class exception to matters involving actions that impact real property, the class exception is not applicable, and the Petitioner is prohibited from participating in the drafting of the subcommittee’s proposed revisions.

Regarding the Petitioner’s inquiry into whether he would be allowed to participate in the City Council’s discussions and voting relative to the proposed Zoning Code revisions, it is our opinion that because those proposed revisions have yet to be drafted and presented to the City Council for consideration, it is unclear whether and how the Petitioner might be impacted by them. For that reason, the Ethics Commission is unable to determine at this time whether the class exception might apply to allow the Petitioner’s participation in the City Council’s review of the proposed revisions.

In summary, 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 Code of Ethics prohibits the Petitioner’s participation as a member of the City Council subcommittee tasked with drafting proposed revisions to the Zoning Code. Once the proposed revisions are finalized and presented to the City Council, the Petitioner is encouraged to seek further advice from the Ethics Commission prior to participating in any discussions and/or decision-making relative to the City Council’s consideration of the proposed Zoning Code revisions.

**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)

§ 36-14-7(a)

§ 36-14-7(b)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2021-14

A.O. 2018-23

A.O. 2015-4

A.O. 2012-13

A.O. 2008-63

A.O. 2005-22

Keywords:

Class Exception